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Dear Andrew, Brent and team,

## Independent retailers support enhancement of the Consumer Care Guidelines

2degrees, Electric Kiwi, Flick Electric, and Pulse Energy (the independent retailers) welcome the Electricity Authority's review of the Consumer Care Guidelines and would support mandatory minimum standards for residential consumer protection adopted as part of enhancement of the Guidelines.<sup>1</sup> We have identified a significant number of examples where the Guidelines could be improved, and better help ensure consistency with the Authority's statutory objectives.

As independent retailers each of us are proud of the benefits we deliver to consumers, including through lower prices, which help ease financial difficulties and hardship.

We are acutely aware electricity is an essential service which comes with social responsibilities, and there are wider societal, health and consumer welfare (long-term) benefits to Kiwi households and consumers from provision of electricity services.

We have engaged extensively with the Electricity Authority on pro-consumer/welfare issues such as promoting a stronger, more competitive electricity market and development of the Consumer Care Guidelines. We appreciate the voices and perspectives of agencies like FinCap and Anglican Care, during the development of the Guidelines, and would welcome the opportunity to again work collaboratively to ensure the Guidelines are fully workable and better meet the interests and wellbeing of Kiwi households and families.

### **It would be helpful if the Authority was clearer about the practices it is concerned about [Q1]**

The Authority has noted "A review of retailers' self-assessed alignment with the Guidelines, published in June 2023, showed that retailer alignment with the Guidelines was variable, and

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<sup>1</sup> Given the overlap, our submission to MBIE Energy Hardship Expert Panel, Competition is the best way to protect consumers from paying too much and to reduce harmful practices, 28 April 2023, is also part of this submission.

implementation has not been as consistent as we expected". The Authority reached this conclusion on the basis of an assessment of whether each Part of the Guidelines is fully adhered to or not.

The Authority's operational review note suggested "four of the intended outcomes of the Guidelines are not being adequately delivered" but did not explain the specific nature or extent of the non-compliance. One of the elements of non-compliance related to "Customers responding to retailer communications" rather than retailer non-compliance.<sup>2</sup>

We cannot stress strongly enough that if there are aspects of the Guidelines that the Authority thinks aren't being adequately or properly applied then it is crucial the Authority makes this explicitly clear so retailers know what changes may be needed to their application of the Guidelines.

In order for the Authority to determine the extent to which non-compliance is a problem it needs to consider: (i) which specific clauses aren't being complied with and the nature of the non-compliance; and (ii) the reasons for any non-compliance. For example, there is a world of difference between disconnecting medically dependent consumers and not notifying customers of pricing plans of other retailer's "in the market".

### **The Guidelines can be enhanced to better protect consumers [Q 7 & 8]**

The Authority faces a 'chicken and egg' type issue with the Consumer Care Guidelines in that in order to determine parts of the Guidelines should be mandated the Authority first needs to determine whether the Guidelines (individually and collectively) best protect consumers and achieve the Authority's statutory objectives. As far as we are aware, the Authority has not formally or informally reviewed the Guidelines against its statutory objectives, either under the previous or new version.

We consider that changes are needed to ensure the Consumer Care Guidelines are fit-for-purpose and better achieve/ensure consistency with the Authority's statutory objectives.

The independent retailers consider there is material scope to improve the drafting of the Guidelines, regardless of the extent to which they are mandated, to: (i) improve the clarity and workability of the Guidelines (including removing ambiguities, inconsistencies and other anomalies); (ii) reduce the extent to which elements of the Guidelines may cause undue costs or inefficiencies; and (iii) ensure all elements of the Guidelines provide consumer protection e.g.:

- **The Guidelines should not purport or attempt to regulate consumers.** The Guidelines include various 'requirements' for consumers including that "Customers engage with retailers in good faith". Instead of the Guidelines trying to tell consumers what they should do, it might be better to detail what retailers can do if a customer doesn't act in good-faith e.g. clause 48 of the previous Vulnerable Consumer Guidelines stated: "If a vulnerable consumer does not cooperate or, without good cause, materially breaches arrangements that have been agreed after the process outlined in this Guideline has been followed, the retailer may disconnect the consumer".

The Guidelines include other 'requirements' for customers and consumers we do not consider reasonable or appropriate e.g.: (i) new customers should not be expected to review the terms and conditions each time they switch retailer unless they choose to "" (clause 22); (ii) the requirement to obtain information about "historic financial pressures or other life events" (clause 24b) could be seen as invasive and could give rise to privacy issues; and (iii) retailers can

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<sup>2</sup> Including matters raised in the Electricity Authority, Review: Operational Review of the Consumer Care Guidelines, 28 February 2023.

advise that MDCs SHOULD develop an individual emergency response plan but can't tell the MDC they "NEED" to (clause 84).

- **The Guidelines should not duplicate requirements in other Guidelines or legislation.** This is bad regulatory practice and means that retailers are subject to 'double jeopardy'/inefficient duplication of regulation/overlap between different regulators e.g. clause 111 in relation to the Fair Trading Act.
- We agree **all retailers should be required to have a Consumer Care Policy**, and the Guidelines should prescribe what the Policy needs to include. The Authority should also review the Consumer Care Policies just as it does with electricity distributor pricing methodologies, and the Commerce Commission with regulated supplier Asset Management Plans.
- We don't think the Guidelines should extend to mandatory drafting of the content of each retailer's Consumer Care Policy. Each retailer's policy should reflect their own policies for protecting consumers. We are not sure of the value of Consumer Care Policies to the extent they are required to copy content from the Guidelines.
- **Retailers should be required to have processes/systems to identify and assist customers having difficulty paying their bills and provide reasonable warning of unpaid bills** (and what should be done about this). This doesn't mean the Guidelines necessarily need to prescribe, for example, how many days should be allowed for payment or what happens on day 24 after a bill hasn't been paid (clause 41).
- **All retailers should be required to provide reasonable advance notification to their customers that they could be disconnected.** This should include when the disconnection may occur and what the customer needs to do to avoid disconnection/what the customer needs to do in order to be reconnected.

We consider that retailers should use debt collection agencies and court orders as a last resort, rather than "only use disconnection as a last resort measure".

- **Retailers should only be able to disconnect a customer if they are in a position to promptly reconnect supply/enable the customer to take the necessary steps to be reconnected.**
- **Retailers should not be able to disconnect a customer for non-payment where the household has a MDC or a non-verified MDC.** Retailers should have the right to seek verification of MDC status (including proof of address) and re-verification of MDC status (only where the status may not be permanent) and address, BUT the Guidelines SHOULD NOT prescribe that retailers MUST verify MDC status or MUST periodically seek re-verification.
- **The Authority should monitor compliance with the Guidelines**, including: (i) reviewing the quality of different retailers' Consumer Care Policy (similar to the Authority's review of distribution pricing methodologies and the Commerce Commission review of Asset Management Plans); and (ii) reviewing the reasons for deviation from the Guidelines under clause ix or where the Guidelines are otherwise voluntary.

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## Summary of the independent retailers' views

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### Stronger competition would help protect consumers

- We agree with the MBIE Energy Hardship Expert Panel that “Ensuring we have competitive and efficient energy markets underpins wider efforts to reduce energy hardship”. Fixing competition and affordability is the main issue that needs to be resolved for consumer care.
- In 2022, 110,000 households couldn't afford to keep their home adequately warm.<sup>3</sup> The Consumer Care Guidelines won't help reduce these figures but stronger competition would.
- **The best way for consumers to reduce financial pressures/ensure their electricity supply arrangements best meet their particular needs can simply be to switch to an alternative/more competitive/lower priced retailer.** For example, some consumers may find it helpful to switch electricity retailer so they can have weekly billing or to be on tariffs where they can reduce the amount they pay by managing how and when they use electricity e.g. some retailers manage hot water cylinders so they are heated off-peak.

### The independent retailers support minimum mandatory standards [Q6, 7 & 8]

- We consider that consumer protection and the Consumer Care Guidelines are a core element of the Authority's role. The inclusion of the explicit consumer protection objective reinforces but doesn't change this. The consumer and consumer interests are at the heart of both of the statutory objectives.
- **The independent retailers support the Consumer Care Guidelines** and have identified significant improvements that should be made to the Guidelines.
- **[Q6] Ongoing development of the consumer care guidance package:** There are a wide range of examples where the Guidelines lack clarity or are otherwise ambiguous. Some parts of the Guidelines may also be counter to the interests of consumers. The Authority also undertook to engage with stakeholders on fraudulent customers and vacant premises when the Authority finalised the current Guidelines and these matters remain outstanding.
- The Commerce Commission and Financial Markets Authority have recently published a joint message “Supporting customers in financial difficulty”.<sup>4</sup> There is significant overlap between this document and the Authority's Consumer Care Guidelines, and it also has principles and guidance that could be usefully adopted in the Consumer Care Guidelines e.g. the list of “Practical ways customers might be helped”.
- **[Q7&8] We support minimum mandatory consumer protection standards. All consumers should be treated with respect and dignity.** While the Consumer Care Guidelines are 35 pages

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<sup>3</sup> MBIE, Report on energy hardship measures: Year ended June 2022, available at: <https://www.mbie.govt.nz/assets/measures-of-energy-hardship-june-year-2022-report.pdf#page10>.

<sup>4</sup> [https://www.fma.govt.nz/assets/Reports/Supporting-customers-in-financial-difficulty-FMA-and-Commerce-Commission-joint-message-September-2023-.pdf?utm\\_medium=email&utm\\_campaign=FMA%20Update%20September%202023&utm\\_content=FMA%20Update%20September%2023+CID\\_0e31870c34d2661bde3555c17bf5725c&utm\\_source=FMA%20Campaign%20Monitor%20Emails&utm\\_term=Download%20the%20Supporting%20customers%20in%20financial%20difficulty%20document%20here](https://www.fma.govt.nz/assets/Reports/Supporting-customers-in-financial-difficulty-FMA-and-Commerce-Commission-joint-message-September-2023-.pdf?utm_medium=email&utm_campaign=FMA%20Update%20September%202023&utm_content=FMA%20Update%20September%2023+CID_0e31870c34d2661bde3555c17bf5725c&utm_source=FMA%20Campaign%20Monitor%20Emails&utm_term=Download%20the%20Supporting%20customers%20in%20financial%20difficulty%20document%20here)

long, when stripped back to what is important, we consider the following to be the core/key requirements for consumer protection:<sup>5</sup>

- All retailers should be required to have a Consumer Care Policy;
- Retailers should be required to have processes/systems to identify and assist customers having difficulty paying their bills and provide reasonable warning of unpaid bills (and what should be done about this);
- All retailers should be required to provide reasonable advance notification that they could be disconnected. This should include when the disconnection may occur and what the customer needs to do to avoid disconnection/what the customer needs to do in order to be reconnected;
- Retailers should only be able to disconnect a customer if they are in a position to promptly reconnect supply/enable the customer to take the necessary steps to be reconnected; and
- Retailers should not be able to disconnect a customer for non-payment where the household has an MDC or a non-verified MDC.

**There are some elements of the Guidelines (including Parts 2, 6, 7 and 8) that should either be amended or deleted; particularly if the Guidelines or parts of the Guidelines are mandated e.g.**

- We do not consider it would be appropriate to try and place regulatory obligations on customers or consumers in the Guidelines such as that “Customers engage with retailers in good faith and respond to retailer communications, to avoid or minimise non-payment issues” (outcome B(c)) and “the MDC needs to develop an individual emergency response plan to use during any electricity outages” (clause 84).
- In relation to Part 2, retailers should have a Consumer Care Policy and the Guidelines should prescribe what must be included in the Policy but, if mandated, it should be the retailer’s own policies and not drafted by the Authority e.g. clauses like clause 8 should not be mandated.
- In relation to Parts 6 and 7, while we consider electricity retailers should have processes/systems to identify and assist customers having difficulty paying their bills, and provide reasonable warning of unpaid bills and potential disconnection, we would caution against over-prescribing what these requirements should look like e.g. how many days should be allowed for payment or what happens on day 24 after a bill hasn’t been paid (clause 41).
- In relation to Part 8, we don’t consider it in the interests of consumers for the Guidelines to REQUIRE retailers to confirm MDC status or periodically confirm MDC status (particularly where medical dependence is permanent). The Guidelines should simply require that retailers cannot disconnect if there is an MDC or an unverified MDC.

### **Consumer protection requires trade-offs to be made [Q2, 9 & 10]**

- **The Authority should explicitly consider the trade-offs between different elements of consumer protection and between consumer protection (equity) and efficiency.**
- Retailers have a responsibility to help their customers avoid building up debt they cannot manage. **There is a balance between protecting consumers against disconnection and protecting them against accumulating excessive debt** which they will have difficulty paying later. An intended outcome is to “prevent [customers] accumulating debt” but the prescriptive

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<sup>5</sup> Derived from the joint independent retailer submission: Ecotricity, Electric Kiwi, Flick Electric and Vocus, Independent retailers support introduction of new Consumer Care Guidelines, 27 November 2020.

requirements which delay when disconnection can occur can result in (inefficiently) higher accumulated debt than would otherwise be the case and increase harm to consumers (bigger debt problems). At present, clause ix provides some leeway for retailers to deal with these issues in a pragmatic and practical manner by taking “alternative actions that achieve the purpose and outcomes in Part 1”.

- Mercury has warned “the overly prescriptive nature of some parts of the Guidelines risks stifling competition and innovation ... forces retailers to change existing processes at great cost even if their own solutions or existing processes align with the desired outcomes” and “will make it extremely difficult for retailers to achieve “complete alignment” and won’t necessarily deliver the best outcomes or protections for consumers”. The incumbent retailers have collectively (ERANZ) commented that the Guidelines are too prescriptive.<sup>6</sup> We agree.
- Another consensus view that emerged amongst independent and incumbent retailers, in response to the Authority consultation on the Consumer Care Guidelines, was that it should be recognised the costs of complying with the Guidelines are ultimately borne by consumers. If inefficient or high costs are created by the Guidelines (existing or new) this would undermine their success in helping reduce financial difficulties and non-payment/disconnection issues.
- Any decisions on changes to the Guidelines should be made against the new two-pronged long-term benefit of consumers and consumer protection objectives.<sup>7</sup> **The Authority should explicitly consider the trade-offs between different elements of consumer protection and between consumer protection (equity) and efficiency.**

### **Compliance monitoring needs to be significantly improved**

- **Compliance monitoring needs to be rigorous and properly resourced** otherwise the outcomes may end up being very similar regardless of whether parts of the Guidelines are mandated.
- **Consideration should be given to whether to mandate compliance reporting:** If the Authority makes some elements of the Guidelines mandatory it should also consider making the provision of monitoring information in Part 10 mandatory.<sup>8</sup>

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<sup>6</sup> Including matters raised in the Electricity Authority, Review: Operational Review of the Consumer Care Guidelines, 28 February 2023.

<sup>7</sup> Use of one part of the Guidelines to evaluate whether another part should be mandated results in circular arguments.

<sup>8</sup> The Authority had intended to consult on whether to make Part 10 of the Guidelines mandatory in 2021 but did not do so.

## The Guidelines need to be reviewed against the Authority’s statutory objectives

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Any decisions on changes to the Guidelines should be made against the new two-thronged long-term benefit of consumers and consumer protection objectives.<sup>9</sup> The Authority needs to confirm whether the Guidelines best achieve its statutory objectives before it can determine the extent to which they should be mandated.

While the Authority says “the Guidelines were consistent with the efficiency elements of the [Authority’s] main, and only, statutory objective at the time” we are unaware of the basis for this claim. The Authority never tested the Guidelines against its statutory objective or efficiency criteria during the Guidelines development process or as part of the final decision to introduce the Guidelines.

The issue of consistency with the efficiency objective was discussed as a reason for making the Guidelines voluntary. The likelihood of inconsistency between efficiency and the Consumer Care Guidelines was a reason why there was “regulatory ambiguity in the Electricity Authority’s ability to regulate for the protection of household and small business consumers” prior to the introduction of the new consumer protection statutory objective.<sup>10</sup>

It should also be acknowledged the current Guidelines were written in a way that is suitable if they are voluntary with a focus on conveying intended outcomes and philosophies. This in no way means the Guidelines can’t or shouldn’t be mandated but changes to the Guidelines would be needed first.

## Outstanding matters from the development of the Guidelines should be resolved [Q3]

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Given the importance of the Guidelines the intended stakeholder engagement on how the Guidelines deal with fraudulent behaviour and vacant premises should now be undertaken.<sup>11,12</sup>

The Authority recognised these matters are highly controversial. There was essentially consensus opposition amongst incumbent and independent retailers to these elements of the Guidelines.

At the time the Authority was undertaking its technical consultation on the draft Guidelines we noted “The[s]e are important issues the Authority has flagged won’t be resolved before the Guidelines are finalised. This results in a material qualification to the extent the Guidelines can be said to be “based on general industry consensus”. Resolving these issues will likely necessitate further amendments in the (near) future”.<sup>13</sup>

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<sup>9</sup> Use of one part of the Guidelines to evaluate whether another part should be mandated results in circular arguments.

<sup>10</sup> Reference: Paragraphs 21-22 of the Cabinet Minute, <https://www.mbie.govt.nz/assets/progressing-the-electricity-pricereviews-recommendations-minute-of-decision.pdf>.

<sup>11</sup> Refer to Electricity Authority, Consumer Care Guidelines Decision (draft), 23 February 2021, and Consumer Care Guidelines Decision, 30 March 2021.

<sup>12</sup> The Authority had also intended to consult on whether to make Part 10 of the Guidelines mandatory in 2021 but has not done so.

<sup>13</sup> Ecotricity, Electric Kiwi, Flick Electric, Pulse and Vocus (joint independent retailer submission), Independent retailers welcome the improvements made to the draft Consumer Care Guidelines”, 10 March 2021.



## An Operational Review could address clarity and workability issues etc [Q6]

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We support the Authority's intention "to hold periodic operational reviews" and that the "operational review of the guidelines [would be held] with stakeholders". We consider that an Operational Review, open to all stakeholders, including all retailers, would be invaluable and is overdue based on the Authority's intentions when it finalised the Guidelines.<sup>14</sup> Question 6 if prioritised and dealt with more broadly may provide sufficient basis to address operational and drafting matters as part of Authority decisions on whether to mandate elements of the Guidelines.

One of the challenges the Authority faced when it developed the new Guidelines was that it basically had to re-draft from scratch, given the deficiencies of the Electricity Commission's Guidelines. The new Guidelines are highly prescriptive which makes it more challenging (and more important) to get the drafting right.

Inevitably there is further scope to improve the Guidelines. We agree with ERANZ it would be helpful to have a common, industry-agreed interpretation of certain parts of the Guidelines<sup>15</sup> and consider the best way to do this would be to clarify and improve the drafting of the Guidelines.

### Illustrative examples of drafting issues with the existing Guidelines

The below is intended to be non-comprehensive list of issues and limitations of the current version of the Guidelines which should be addressed as part of the next steps in the current review:<sup>16</sup>

- **Compliance expectations:** What is the intended difference between "encourage", "may" and "should" in the Guidelines? It appears there is an implicit distinction that "should" reflects things retailers need to do to comply (subject to clause ix) while "encourage" and "may" reflects things retailers may choose to do but doesn't impact compliance with the Guidelines. This distinction is far from clear though.

For example, where the Guidelines (clause 26) state "If a new post-pay customer nominates an alternate contact person, retailers should seek the contact person's agreement to act in that capacity (this may be when the retailer first needs to contact the nominated person)". We interpret this as the Guidelines intended to be indifferent as to whether the retailer seeks agreement "when the retailer first needs to contact the nominated person" or an earlier date.

Likewise, the Guidelines specify when (clause 39) "A retailer may progress a customer in debt to "Part 7: Progressing to disconnection for non-payment of electricity invoices and reconnection""

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<sup>14</sup> The Authority indicated it considers it undertook an Operational Review in a now deleted report (Electricity Authority, Review: Operational Review of the Consumer Care Guidelines, 28 February 2023). This appears to have been very limited and high-level in nature and was limited to a small group of stakeholders (ERANZ, Utilities Disputes Limited, FinCap, and Anglican Care) which excluded independent retailers. We were not made aware of the review and only heard about it when the deleted report was briefly posted.

While the Authority had been clear "The periodic reviews would be operational in nature, and not replicate the extensive development process undertaken over 2020-21" we would expect all stakeholders would be informed of any review and afforded opportunity to engage on the matter.

<sup>15</sup> Electricity Authority, Review: Operational Review of the Consumer Care Guidelines, 28 February 2023.

<sup>16</sup> Some of these issues were raised during the technical consultation (or earlier) on the Guidelines. These include issues the Authority attempted to address in drafting issues but wasn't entirely successful e.g. we raised the issue that there could be a "very cold day" through-out winter in places like Queenstown. The Authority partially addressed this by deleting reference to "very cold day" but the broader issue still applied about application of this example to the "endanger the wellbeing"/"severe weather event" threshold.

and when (clause 40) “a retailer may proceed with disconnection” but the Guidelines would not and should not require the retailer to undertake these steps.<sup>17</sup>

- Compliance with the Consumer Care Guidelines should not be contingent on other guidelines or legislation otherwise retailers will be subject to double jeopardy/inefficient duplication of regulation/overlap between different regulators e.g. clause 111 and the Fair Trading Act.
- Clause 126(b) does not provide for the prospect that a retailer may not intend to fully comply with the VOLUNTARY Guidelines i.e. it requires retailers that are not fully compliant to provide “a plan and a commitment to achieve alignment”.

A retailer may choose to not fully align with the new Guidelines for various reasons, including because the approach they adopt better protects consumer interests.<sup>18</sup>

- **Consumers versus customers:** The Guidelines talk a lot about the interaction of retailers with both customers “and consumers permanently or temporarily resident at a customer’s premises” (outcome B) but the reality is that most interaction will be with the customer only (or someone authorised to speak on the customer’s behalf). The Guidelines aren’t clear what is specifically intended by the expectation “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 retailer” (outcome C).
- **Alternative contact versus support person:** The Guidelines are entirely silent on when to contact the support person. Clause 14(a)(vii) and (viii) specify requirements around the customer’s preferences for an alternative contact person and a support person without making clear when one or the other should be contacted. Clause 43(d) vaguely says the retailer should “use these contact persons” but not how.<sup>19</sup> Clause 22(b) specifies that the retailer should seek authorisation to liaise with the alternative contact person but there is no equivalent clause for a support person. Likewise, there is no support person equivalent to clauses 26 and 32.

We don’t consider the Guidelines have resolved Trustpower’s request “the Authority ... further clarify the difference between a customer-nominated “support person” ... and “alternate contact person””.

- Clause 82(a) states that “Where an MDC who is not a customer, or an unverified MDC who is not a customer, has nominated: ... a support person, the retailer should contact the MDC/unverified MDC directly”. This raises at least two ambiguities: (i) when should the retailer contact the consumer rather than the customer?; and (ii) if the consumer has nominated a support person why do the Guidelines specify that the retailer should contact the consumer rather than the support person? The first question also applies to clause 82(b).
- Clauses like 38 that “Retailers should better serve customers by using customer account history data to understand where targeted assistance could be effective in avoiding payment arrears” are vague and imprecise.

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<sup>17</sup> The Guidelines also include “will”: clause 28(b) states “when credit for the pre-payment service is used up disconnection will occur”. We don’t think it is appropriate that the Guidelines specify when disconnection “will” occur as opposed to “may” occur.

<sup>18</sup> For example, contracting a specialist to make a visit to the household, rather than the person who is going to do the disconnection, is in breach of the existing Vulnerable Consumer Guidelines, but clearly a more appropriate approach for retailers to adopt.

<sup>19</sup> The references to support persons are that: (i) the support person’s contact details etc should be recorded (clause 14(a)(viii)), (ii) a requirement to “remind the customer they may nominate a support person” (clause 43(d)), and that (iii) if a customer has “a support person, the retailer should contact the MDC/unverified MDC directly” (clause 83(c)) and not the support person.

- Clause 88 is a matter that should be addressed in the Default Distributor Agreement not the Guidelines.
- **Data collection:** Clause 14(a)(ii) requiring Retailers to document “a customer’s preferred day(s) or the week to be phoned ... and the time(s) within (those) day(s)” is too prescriptive and is information which, if relevant to the customer at all, would likely become quickly out-of-date. The clause also does not appear to have any practical function. While the Guidelines require this information to be recorded, there are no provisions for when it should be applied e.g. what happens if the preferred day(s) don’t correspond with a 24 hour disconnection notice? This clause should be deleted.
- What practical function does recorded information on a customer’s “primary heating sources” serve (clause 15(d))?
- It isn’t apparent how a “customer record” should “show ... how, over a customer’s journey with a retailer, the retailer has acted to meet the intent of these guidelines” (clause 17(e)) or what is meant by “customer’s journey” e.g. for most existing customers who do not have payment issues the retailer may have a relatively passive relationship with the customer. The customer that is relevant here is only the customer/s with payment issues?
- **Customer engagement:** How should retailers advise new customers about the process that will be followed if an invoice is not paid (clause 27)? Is it reasonable to expect the retailer to advise all customers of this given non-payment issues will only apply to a small minority of customers? Would it be better to advise the customer at the time non-payment occurs?
- The clause 14(a)(iv) requirement to “check with the customer that the customer should be able to understand the retailer’s communications” is poorly written and doesn’t appear to make sense. How does a retailer check that the customer “should be able to understand” versus ‘does understand’?

This is also too prescriptive and (as per the comments on the Retailer’s Terms and Conditions) fails to recognise most customers won’t need or want to read the retailer’s documentation.

- Clause 19: It is unclear what information is required to be made “easily available” to enable potential new customers “to make informed decisions”.
- How would a retailer know whether “new customers have reviewed the terms and conditions” (clause 22) and is it reasonable to expect customers to review terms and conditions each time they switch retailers?
- Retailers do not necessarily have any way of knowing, or basis for forming a “reasonable opinion” “whether the person is ... liaising with and actioning the advice or assistance received from a support/social agency” (clause 24(a)).
- The requirement to obtain information about “historic financial pressures or other life events” appears to be invasive and could give rise to privacy issues (clause 24(b)).
- We do not consider that retailers should be expected to advise customers enquiring or wishing to change a pricing plan about “options generally available in the market”. It is not the retailer’s job to notify their customers if another retailer may have a better/cheaper plan. That is the job of competitors.

- **Non-payment/disconnection process:** Outcome A(c) specifies that retailers should “only use disconnection as a last resort measure” but we question whether the Authority intends that disconnection should be applied before or after (as implied by “last resort”) pursuing other means to obtain payment such as debt collection agencies or court orders?
- It would be useful to clarify how clause 41 and 57(a) (reference to “five attempt to contact”) sit together. It appears that the two clauses are intended to duplicate or overlap each other.
- Similarly, it could be useful to clarify what is supposed to happen between the 24 days referred to in clause 41 and the 44 days referred to in clause 57(b).
- Similarly also, clause 59 says that “For customers on a non-monthly invoice cycle, the timing of each step in paragraph 57 may be proportionally altered to align with the above step durations” but there is no equivalent provision for the 24 days in clause 41.
- How should clause 66 be dealt with, for example, in the middle of winter in the South Island where it could be interpreted the disconnection at any time could “endanger the wellbeing of the customer or any consumer at the premises”?
- **Customer/consumer obligations:** Retailers can advise that MDCs SHOULD develop an individual emergency response plan but can’t tell the MDC that they “NEED” to (clause 84).
- **MDC verification:** Retailers should not be required to “ask the unverified MDC for a valid HP Notice if one has not been provided with the application for MDC status” to comply with clause 91/91(b)(iv) e.g. the retailer may be happy to take the consumer/customer’s word for it that they are a MDC or wait until non-payment before seeking verification.
- There can be circumstances where medical dependence is permanent in which case verification (clause 97) should be limited to confirming the MDC is still resident at the premises.
- The Guidelines don’t define “permanent” and “temporary residence” e.g. we assume if a MDC is living part-time between more than one residence they are intended to be treated as resident in both, but this is not entirely clear, and it is not clear whether they would be covered by permanent or temporary?

We reiterate it would be useful to clarify residing “permanently” can include part-time residence e.g. where the consumer resides in more than one house. The reference “permanent and temporary” was intended to address this ambiguity, but we remain of the view that it does not do so. The Authority has stated it “Clarify[ied] that MDCs may be at premises on a temporary basis (e.g., instances of children spending time with each parent in separate households)”. However, permanently living part-time in more than one place is not the same as being “at premises on a temporary basis”.

- **Miscellaneous:** Clause 62(a) is circular: “Retailers should satisfy themselves that any of their representatives who visit a ... customer’s premises or uncontracted premises for the purpose of contacting the customer ... make a reasonable effort ... to contact any customer or consumer at the premises”. The site visit itself is presumably the reasonable effort?
- The hyperlinks to Authority webpages no longer work.

## Changes are needed to make the Guidelines suitable for mandating [Q8]

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We consider that there are elements of the Guidelines, as presently drafted, that would not be suitable for mandating and could harm consumers. These elements should be amended or removed.

For example, in relation to Part 8, most stakeholders would agree medically dependent consumers should NOT be disconnected for reasons of non-payment, but we consider requiring retailers seek verification of medical dependence could harm consumers (including costing the consumer who may be suffering from hardship financially) if mandated and should be removed from the Guidelines (clause 91/91(b)(iv)).

Likewise, some forms of MDC are permanent. It would be insensitive and inappropriate to strictly follow the Guidelines and seek re-confirmation of MDC status potentially on an annual basis (clause 97).

The Guidelines should be amended to make it clear retailers: (i) are entitled to seek verification/reverification; and (ii) cannot disconnect unless, or until, they have undertaken a verification process and determined the consumer is not an MDC.<sup>20</sup>

Some retailers may decide they prefer to accept the consumer's word they are an MDC or are comfortable with forms of verification that aren't currently recognised in the Guidelines. Some retailers may determine it is operationally efficient to seek verification when a consumer is, or might be about to, enter the non-payment or disconnection processes, particularly to the extent only a small minority of MDCs may have payment issues.

## Concluding remarks

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The independent retailers support the Guidelines.

The independent retailers consider the Consumer Care Guidelines have an important role in articulating the Authority's expectations about retailer conduct and how to protect the interests of consumers; particularly the most vulnerable members of society, consumers that may be facing financial difficulty (temporary or otherwise) and consumers who are medically dependent on electricity.

We partially agree with the Authority's preferred option 3. There are core elements of the Guidelines which should be mandated as minimum consumer protection standards. Some elements of the Guidelines (including in Parts 2, 6, 7 and 8) may harm rather than protect consumers and should be amended or removed.

Some of the amendments that should be made to better align the Guidelines with the statutory objectives may go beyond "resolv[ing] interpretation issues" or changes that "do not significantly amend ... the Guidelines".

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<sup>20</sup> The previous Electricity Commission Guidelines included the principle that "Prior to commencing a disconnection process, retailers should have established a process to ascertain whether the domestic consumer is potentially a vulnerable consumer or a medically dependent consumer when the disconnection is imminent" [footnote removed]: Guideline on arrangements to assist vulnerable consumers, Version 2.1, clause 28.

There are also difficult trade-offs to be made between different elements of consumer protection and between consumer protection and efficiency which should be evaluated against the statutory objectives. Care is needed to ensure protection against disconnection doesn't result in increases in consumer debt, which could put vulnerable consumers in a worse position, and that the Guidelines don't result in unduly increased (inefficient) costs which ultimately need to be recovered from consumers e.g. the Guidelines state that fees for disconnection/reconnection should "reflect reasonable costs" and the Guidelines also impact the level of those costs.

## **Next steps**

It is important we – as an industry – get the Consumer Care Guidelines right and ensure safeguards in place for consumers are clear and appropriate. This isn't simply a case of making binary decisions about whether to mandate the Guidelines. It also isn't simply a case of deciding what particular parts of the Guidelines should be mandated and then deciding if changes should be made to those parts when they are mandated.

In order to determine whether a part of the Guidelines should be mandated the Authority needs to first determine whether they best protect consumers and achieve the Authority's statutory objectives. The Authority has not formally or informally reviewed the Guidelines against its statutory objectives, either under the previous or new version.

There are a number of outstanding issues from when the current version were finalised in 2021, as well as scope for material improvements to the Guidelines that should be made (including the extensive matters covered in our submission, and other issues other stakeholders may raise<sup>21</sup>). Some of these improvements may go beyond "interpretation issues or areas of the Guidelines that ... need to be clarified". We consider these matters will require an 'operational review' type consultation open to all stakeholders.









We would like to see the Authority revert to the collaborative type approach, including workshops (rather than webinars), that worked well during the development of the Guidelines, so the policy development process can benefit from a sharing of ideas and views from a diverse range of stakeholders rather than relying on 'propose-respond' type consultations etc.

Finally, we consider the nature of the compliance monitoring is important in order to ensure confidence that the Consumer Care regime will provide the intended protections for consumers. This should also be included as part of next steps. The Authority had intended that it would look at whether Part 10 Information Disclosure and Monitoring should be mandated in 2021 but this has not been done.

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<sup>21</sup> Including matters raised in the Electricity Authority, Review: Operational Review of the Consumer Care Guidelines, 28 February 2023.

Yours sincerely,

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