

2 October 2023

Electricity Authority
PO Box 10041
Wellington 6143

By email: consumercareconsultation@ea.govt.nz

Submission on: Options to update and strengthen the *Consumer care guidelines*

Introduction

1. Thank you for the opportunity to make a submission on “Options to update and strengthen the *Consumer care guidelines*”. This submission is from the Consumer Advocacy Council, the independent advocate for residential and small business electricity consumers in Aotearoa New Zealand.
2. If you have any questions regarding our submission, please contact:
 - Emma Sturmfels, acting manager, Consumer Advocacy Council
 - Email: [REDACTED]
 - Phone: [REDACTED]

General comments

3. The Consumer Advocacy Council welcomes the focus of this consultation on improving consumer protections in the electricity market. The evidence of consumer harm in this market shows that reliance on voluntary guidelines is not providing effective protection and mandatory safeguards are required.
4. While we welcome this review, we consider the approach adopted by the Electricity Authority does not reflect its expanded legislative mandate. This mandate was extended in 2022 to give the Authority a specific objective to:

protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers (section 15(2), Electricity Industry Act).
5. The *Consumer care guidelines* predate this law change. However, the guidelines have been used as the basis for this consultation. We believe this approach is incorrect and that the Authority must first consider its legislative mandate and discharge its statutory obligations in a reasonable manner.
6. We submit the guidelines do not adequately meet the Authority’s new objective. First, there are significant shortfalls in the protections they provide for consumers. Second, the guidelines’ intended outcomes are aimed at achieving a “balance” between consumer and

retailer interests, which we believe conflicts with the protection function mandated by the act.

7. Legal advice obtained by the Council supports our view that such a “balancing” approach is inconsistent with the Authority’s objective in section 15(2). To help the Authority ensure it delivers on its legislative mandate, our submission sets out options to improve consumer protection consistent with this mandate.

Responses to consultation 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.

8. The Consumer Advocacy Council strongly agrees the guidelines are not delivering improved outcomes for electricity consumers.

Voluntary guidelines are not effective

9. Within the international literature, there is considerable evidence that voluntary guidelines are not an effective way to deliver adequate consumer protection. Key problems with voluntary approaches include:
 - failure of companies to implement voluntary standards
 - variable interpretation by companies of these standards
 - uneven service outcomes for consumers
 - lack of transparency of companies’ processes and policies
 - absence of sanctions and consumer redress where standards have been breached.
10. The Electricity Authority’s own review of the guidelines’ implementation provides evidence of these problems. As the consultation document notes (p11), the review showed retailers’ stated alignment with the guidelines was variable:
 - of 29 retail brands that provided a self-assessment, nine self-assessed as not being fully aligned, covering 27% of domestic consumer installation control points (ICPs)
 - a further nine retail brands, covering 4.7% of domestic consumer ICPs, did not provide an assessment of their alignment
 - the number of domestic connections not covered by the guidelines’ provisions relating to disconnection was estimated to be 519,950 (27%); the number not covered by provisions for medically dependent consumers was estimated to be 440,766 (23%).
11. These results are of significant concern, given the high risk of adverse outcomes for consumers when electricity services are disconnected.
12. We note these results are based on retailers’ self-assessment of their compliance and actual alignment may be significantly worse than the results portray. As the Electricity Authority has stated, “By its nature self-reporting is subjective and variations can emerge. In this context, self-reporting biases could be borne out of enthusiasm to show compliance or, alternatively, conservative positioning”.¹
13. Electricity regulators in other countries have acknowledged the problems with voluntary standards and moved to put in place mandatory consumer protections. For example:

¹ See [Summary of Retail Brands’ self-assessments of alignment with the Consumer Care Guidelines](#)

- in Australia, mandatory consumer protections are included in the National Energy Retail Rules, which apply to the sale and supply of energy in New South Wales, Queensland, South Australia, Tasmania and the Australian Capital Territory.²
- in the UK, retailers must comply with standard conditions of electricity supply, which contain mandatory obligations to protect consumers in vulnerable situations, including an obligation to maintain a “priority services register” of vulnerable consumers.³

14. These moves reflect the recognition that electricity is an essential service and that consumers must be able to access electricity services regardless of their socio-economic position. Further information about the consumer protections in place internationally is available in [Consumer protections in the electricity sector](#), a report by consultancy Allen + Clarke that was commissioned by the Council. The report is also attached to this submission.

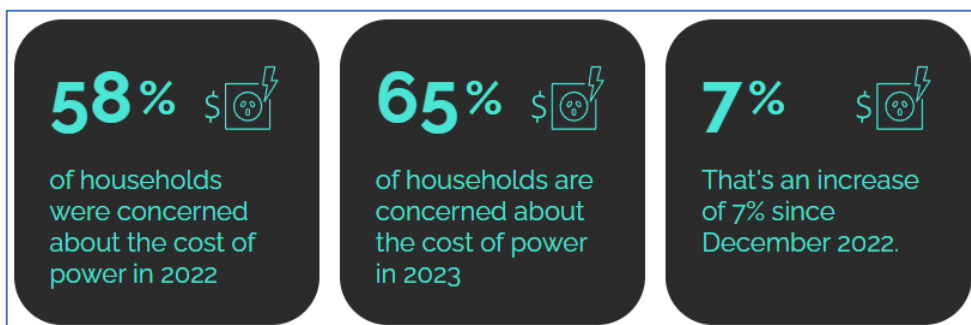
15. Aotearoa New Zealand’s reliance on voluntary guidelines puts us increasingly out of step with countries with which we typically compare ourselves. As a result, consumers here enjoy fewer protections than those elsewhere. This gap, and the associated consumer harm, will likely increase unless mandatory standards are introduced.

Evidence of problems for consumers

16. To help gauge consumer experiences in the electricity market, the Council regularly carries out surveys and undertakes other research.

17. Our [latest survey](#) (July 2023) found growing concern about electricity costs and evidence these costs were causing financial pressures for some households. Two-thirds of domestic consumers (65%) were concerned about electricity costs, up from 58% in 2022 (see Figure 1).

Figure 1: Electricity cost concerns



Sample: 1000 consumers; margin of error +/-3%

18. Electricity was identified as the third biggest concern, after groceries and petrol (see Figure 2).

19. Four out of 10 consumers also said they had experienced financial pressures in relation to power bills and found it harder to pay bills than a year ago. Across all consumers:

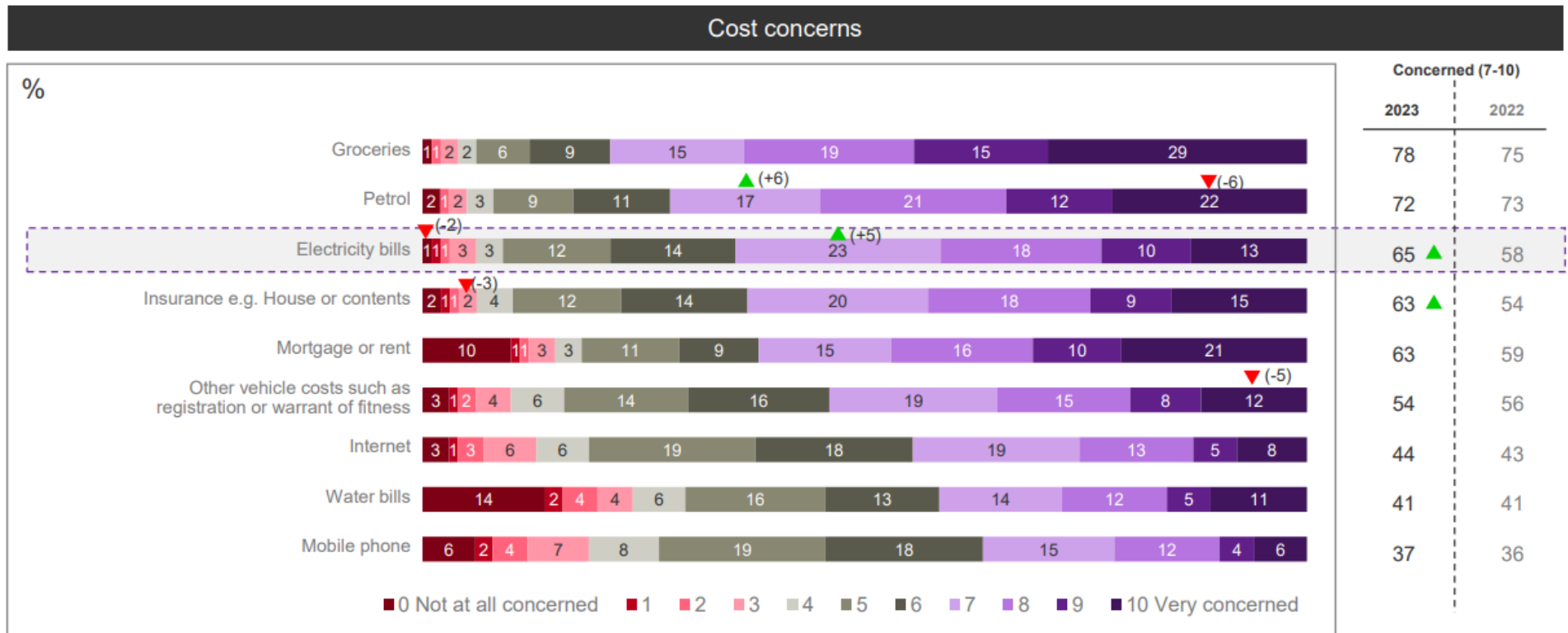
- 29% had received a larger electricity bill than expected

² See [National Energy Retail Rules](#)

³ See [Standard Conditions of Electricity Supply Licence](#)

- 4% had been seriously worried about being disconnected and had to make sacrifices to pay their power bill
- 4% had to borrow money to pay their bill.

Figure 2: Electricity cost concerns



20. Data from other sources also provides evidence of the financial pressures on consumers, particularly vulnerable consumers, from electricity costs.
21. Work and Income figures show the number of hardship grants paid to cover electricity and gas costs is increasing. Hardship grants have risen from 30,725 in 2013 (\$13.79 million) to 40,470 in 2022 (\$17.75 million).⁴ This is an increase of 32% in the number of grants and an increase of 29% in the amount paid each year (see Table 1).

Table 1: Work and Income hardship grants for electricity and gas

Year (to December)	Number of grants	Amount of grants
2013	30,725	\$13.79 million
2014	25,990	\$10.83 million
2015	21,998	\$10.06 million
2016	24,947	\$11.79 million
2017	29,967	\$13.24 million
2018	35,987	\$15.35 million
2019	48,864	\$18.65 million
2020	46,668	\$18.68 million
2021	39,966	\$15.57 million
2022	40,470	\$17.75 million

Data sourced from national level data tables (23/6/23) at <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/benefit/index.html>

22. The financial pressures on households highlight the importance of putting in place effective safeguards to protect consumers from the harm caused from loss of access to essential electricity services and from unfair treatment by retailers that can exacerbate financial problems.
23. Qualitative research we commissioned from Fincap indicates worrying shortfalls in retailers' treatment of vulnerable consumers.⁵ This research involved interviews with financial mentors about their experiences of assisting consumers with electricity problems. The research report noted that:
- interviewees expressed frustration about the inconsistencies in how electricity retailers were helping communities affected by disruptions such as Covid-19 and Cyclone Gabrielle
 - there were difficulties navigating the inconsistent service provided by electricity retailers' contact centres
 - proactive offers of early assistance for consumers experiencing payment difficulties were not provided, or were ineffective
 - retailers could be inflexible when establishing payment plans for arrears

⁴ See "National level data tables" at <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/benefit/index.html>

⁵ See [Put on hold? Cyclone Gabrielle, Covid-19 disruption and business as usual – do our electricity consumer protections work when whānau most need them?](#)

- retailers appeared to be relying on payments from Work and Income to cover debt, instead of assisting consumers to manage power costs.

24. These problems illustrate the gaps in consumer protection that can arise with voluntary standards and highlight the need for mandatory rules to protect vulnerable consumers struggling with costs and safeguard their access essential electricity services.

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

25. We consider the policy objective must align with the Authority’s statutory objectives and, in particular, reflect the new objective introduced into the Electricity Industry Act in 2022. This new objective is to:

protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers [section 15(2)].⁶

26. The intention of introducing a new objective was to give the Authority a specific, legislative obligation in relation to domestic and small business consumers. This new objective gives elevated legal status to protections for these consumers and safeguards must be adequate to reflect this.

27. Given the guidelines were developed before the act was amended, we consider it is not appropriate for the Authority to simply adopt a policy objective of delivering the guidelines’ existing purpose and intended outcomes. We urge the Authority to take this opportunity to review the guidelines and ensure they align with its statutory objectives.

28. As currently written, we consider parts of the purpose and intended outcomes conflict with these objectives.

29. Of particular note, para 4.3 of the consultation paper states “the guidelines’ outcomes aim to balance domestic consumer and retailer interests”. This “balancing” approach does not reflect the Authority’s explicit protection function in the act. Protecting the interests of domestic consumers requires more than a “balancing” approach.

30. As noted above, legal advice obtained by the Council supports our view that the Authority cannot balance interests against one another given its additional objective. We therefore recommend the Authority reviews the existing purpose and intended outcomes (if these are to be retained) to ensure they align with the act and can withstand legal challenge.

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.

31. We consider the question that needs to be asked is whether the guidelines remain fit for purpose, given the Authority’s legislative objective to protect the interests of domestic and small business consumers.

⁶ This objective is reflected in the additional function of the Authority in new section 16(1)(ia) “to undertake measures aimed at protecting the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers”.

32. From a consumer perspective, there are shortfalls in the guidelines in relation to the safeguards they provide and therefore they do not reflect a consensus. In several areas, the guidelines provide significantly fewer safeguards than consumer protection regimes in other countries.
33. Given the shortfalls, we consider the guidelines need amending to provide effective safeguards that will improve consumer outcomes. We discuss the amendments in further detail in our response to question 5 below.

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

34. We understand the Authority's approach to limit options to areas covered by the current guidelines is intended to minimise the period of time before which code changes can be made.
35. The Council agrees the introduction of mandatory consumer protections in the code should be given urgency. However, we believe this can be done while also expanding the existing provisions in the guidelines.
36. As noted, there are several areas in the guidelines where amendments are needed to improve consumer protection. These amendments will also serve to clarify retailers' obligations. We therefore urge the Authority to take a broader approach.
37. The benefits of taking a broader approach are twofold. A broader approach would:
 - help ensure there is an effective consumer protection regime in place, thereby reducing harm to consumers, and
 - minimise the need for further consultations to address shortfalls and the costs to all parties of participating in these consultation processes.
38. We consider a broader approach would also be consistent with the Authority's expanded objectives and ensure code changes align with the act.
39. We recognise this would require the Authority to commit additional resources to ensure there can be comprehensive consultation on code changes in early 2024 with amendments in place by mid-2024. Given the existing evidence of harm being caused to vulnerable consumers, we believe an expedited process is justified.

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.

40. We have identified several areas where the guidelines require improvement. The changes we propose seek to strengthen the guidelines' provisions relating to:
 - medically dependent consumers
 - disconnection
 - prepay electricity
 - billing, and
 - bonds and fees.

41. They also address issues regarding the clarity of retailers' obligations by providing specific ways for companies to show they are complying with their obligations.
42. These changes fall within existing areas covered by the guidelines and we believe they should be included within the scope of the current consultation process and the consultation on code changes proposed for early 2024. We note many of the changes relate to matters raised when the guidelines were initially developed so this is not the first time they have been discussed.

Medically dependent consumers (MDCs)

Expand protections for MDCs

43. We recommend protections for MDCs should be expanded to include consumers who are particularly vulnerable, due to age, to the adverse health effects from the loss of electricity.
44. We consider the current guideline provisions relating to MDCs are too narrowly drafted and place an undue onus on vulnerable consumers to prove their health status. As a result, many people at high risk of harm are unlikely to be identified.
45. Using age as a proxy to identify those at high risk of health effects provides a simple way to help minimise adverse outcomes for these consumers and meet the Authority's objective in section 15 (2) of the act.
46. Internationally, steps are already being taken to extend protections from disconnection to cover young children and elderly people who are more likely to suffer adverse health outcomes from the loss of electricity.
47. For example, in the UK suppliers are prohibited from disconnecting, during winter months, customers who have reached state pension age. In addition, suppliers that have signed the *Energy UK Vulnerability Commitment* will not disconnect customers where there are children under six living in the home.⁷
48. Under clause 6 of this commitment, retailer signatories have agreed to "never knowingly" disconnecting:

*a vulnerable customer at any time of year, where the household has children under the age of 6 (or under the age of 16 during the winter moratorium) or where for reasons of age, health, disability or severe financial insecurity, that customer is unable to safeguard their personal welfare or the personal welfare of other members of the household.*⁸

49. We urge the Authority to adopt a broader definition of a "medically dependent consumer" that would cover consumers at high risk of adverse health effects due to age.

Strengthen prepay protections for MDCs

50. We consider two specific changes are needed to strengthen provisions relating to prepay electricity and MDCs.

⁷ See <https://www.energy-uk.org.uk/wp-content/uploads/2023/03/Energy-UK-Vulnerability-Commitment-Good-Practice-Guide-Dec-2022.pdf>

⁸ Ibid, p14.

51. First, the guidelines should specifically prohibit retailers from requiring households where an MDC resides to switch to prepay services. This could be done by amending clause 85 as follows (amendment in red):

*Retailers should not proactively recommend a prepayment service to a customer, **or require a customer to switch to a prepayment service**, if the customer, or a consumer permanently or temporarily resident at the customer's premises, is an MDC [clause 85].*

52. Second, retailers should be prohibited from allowing a prepay service to automatically disconnect if there is an MDC residing at the premises. This would ensure MDCs have the same protections from disconnection, regardless of whether they are on a post-pay or prepay plan.
53. These amendments would reduce the risk of harm to MDCs from prepay services automatically disconnecting and better align protections with those in other countries.

Disconnection

Expand protections for consumers in energy hardship

54. We consider the provisions regarding disconnection need to be strengthened to better protect vulnerable consumers who, due to low income, are struggling to manage rising electricity costs.
55. We recommend mandatory rules should include a prohibition on disconnecting consumers in energy hardship. This would ensure low income is never used as a justification for removal of access to essential electricity services.
56. Prohibiting disconnection (and associated disconnection and reconnection fees) in cases of energy hardship would be consistent with the Authority's objective in section 15(2) of the act. It would also help ensure safeguards better align with international trends to protect vulnerable consumers as power prices rise.
57. As the Authority may be aware, the European Commission recently proposed changes to the EU's electricity market rules that would protect vulnerable consumers in arrears from being disconnected.⁹
58. Such proposals recognise electricity, like water, is an essential service and consumers experiencing hardship should not be denied access. This recognition should also be central to electricity companies' understanding of their social responsibilities.
59. Placing a specific prohibition on the disconnection of energy hardship customers would incentivise retailers to:
- proactively assist customers to manage their energy use and costs
 - take steps to identify customers who may be experiencing payment difficulties
 - offer flexible payment arrangements such as smooth pay, which can help households to budget
 - train staff to identify appropriate support for energy hardship customers
 - establish their own energy hardship funds to support vulnerable customers.

⁹ See https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1591

Prepay electricity

Strengthen protections for prepay customers

60. The Council believes protections for prepay customers urgently need to be strengthened. Consumers on prepay often have no other choice of retailer and are therefore at a significant disadvantage compared with post-pay customers. We consider interventions are therefore required to safeguard their interests.
61. Despite paying for power in advance, prepay customers can end up paying more than those on post-pay plans. This is because:
- Prepay services typically provide only an “all-inclusive” tariff option. This means prepay customers are denied access to day/night plans and other time-of-use pricing that may help them manage costs.¹⁰
 - Additional fees are typically charged to top-up prepay meters, adding to monthly costs for these customers.¹¹
 - Prepay customers usually do not have access to “discounts” available to post-pay customers. For example, post-pay customers are often given discounts for paying by direct debit and/or receiving their bill electronically. Similar discounts are not offered to those on prepay.
62. These factors mean prepay customers are being unfairly disadvantaged in comparison to those on post-pay. Many of those on prepay are also likely to be vulnerable consumers and experiencing energy hardship. Improving protections for these consumers would therefore address an area of significant harm.
63. We urge the Authority to give priority to protections for prepay customers. To address problems in the prepay sector, we recommend the following safeguards:
- Require retailers to provide the Authority with their methodology for determining the cost of prepay plans. The Authority should assess this pricing methodology to ensure prepay tariffs do not disadvantage customers (compared with post-pay customers) and reflect the benefit to retailers of getting payment in advance.
 - Require retailers to provide a free prepay top-up option e.g., free top-up via internet banking.
 - Require retailers to offer prepay customers a standard meter if they experience payment difficulties or are automatically disconnecting multiple times.
 - Require retailers to contact a prepay customer before allowing the prepay meter to automatically disconnect.
 - Prohibit retailers from recovering debt through a prepay plan.
 - Establish a right for consumers to withdraw from a prepay service contract at or before the end of a trial period.
 - Require retailers to provide emergency credit on every prepay meter for three days of electricity.

¹⁰ See, for example, Globug pricing plans. Only a low user and a standard user tariff are offered: <https://www.globug.co.nz/pricing-plans/>

¹¹ For example, Globug states “the most cost effective way to top-up is using internet banking in the GLOBUG app, or on the GLOBUG website”. This costs 20¢ per top-up. Assuming three top-ups per week, the annual cost would be \$31.20. Globug customers topping up in-store pay 75¢ per top-up, equating to an annual cost of \$117 (topping up three times a week). See <https://globug.co.nz/how-it-works/>

- Require retailers to report prepay usage and automatic disconnection information to the Authority. The Council disagrees with the assertion in clause 72 of the guidelines that a disconnection resulting from a prepayment service running out of credit should not be considered a disconnection “because the customer has understood and accepted the risks associated with being on a prepayment service where disconnection will occur if the prepayment service runs out of credit”.

Billing

Require bills to display a “best plan” message at least every three months

64. The guidelines contain an obligation on retailers to give customers “every opportunity to be on the best pricing plan” to meet their needs (clause 8). However, the guidelines are silent on the minimum steps retailers must take to comply with this obligation.
65. To address this, we recommend bills should be required to contain a “best plan” message every three months. This message would inform customers whether they could save money by switching to another plan and, if so, how much they could save.
66. The Council has [developed a model electricity bill](#) that contains a “best plan” message (see Attachment 2). This bill was informed by the Australian Energy Regulator’s “Better bills” project, which involved extensive research with consumers and resulted in requirements for bills that:
- contain a best plan notice, telling consumers if they could save money by switching
 - give consumers essential information upfront (on page 1 of the bill)
 - use simple language, avoid jargon and abbreviations, and present information in a way that is easy to understand.¹²
67. To gauge views of Kiwi consumers, we carried out focus group testing of our model bill. In addition, we surveyed a nationally representative sample of consumers to gather views on including a best plan notice. The survey found 87% of consumers thought this notice would be useful on their power bills.
68. Given the extensive research supporting a best plan notice, we urge the Authority to include requirements for it in the proposed consultation on code changes.
69. We also urge the Authority to include requirements for bills to contain key information consumers need to better understand their power costs and compare prices. This information, as shown on our model bill, should include on the first page:
- the customer’s details, including the name of their power plan and ICP number
 - the amount due and due date
 - information about ways to pay
 - a best plan notice
 - the retailer’s contact details, details of who to call if the customer has a complaint and a link to the Powerswitch price comparison site.
70. Bills should also provide a breakdown of the customer’s monthly charges and information about their annual power use. This information can be provided on the second page of the bill.

¹² See [Australian Energy Regulator’s better bills guideline](#)

71. We note billing is the top cause of complaint to Utilities Disputes. While the nature of these complaints varies, poor-quality information on bills is one factor that leads to disputes. Requirements for bills to provide key information and present it clearly could therefore be expected to reduce the likelihood of disputes arising.

Bonds and fees

Strengthen protections for energy hardship customers

72. The Council recommends strengthening protections for energy hardship customers in relation to bonds and fees. Specifically, the Authority should:

- prohibit retailers from requiring a bond from an energy hardship customer, and
- require retailers to waive certain fees (e.g., late payment fees) for hardship customers.

73. When consumers are in hardship, bonds and late payment charges increase financial pressures and raise the likelihood that customers will fall into payment arrears. We consider that limiting retailers' ability to charge fees in these situations is consistent with the Authority's objective under section 15(2) of the act.

74. In addition, it helps align safeguards with those in other countries. For example, in Australia retailers cannot charge bonds or late payment fees to hardship customers.¹³ Electricity companies that operate on both sides of the Tasman will already be familiar with these provisions.

Require retailers to pay interest on bonds.

75. We also recommend retailers be required to pay interest on bonds, where they elect to require a bond from a customer. This would ensure customers are compensated for the retailers' use of their money for the period that the bond is held.

Other matters

76. As noted in the consultation document (p19), there are other areas of consumer protection that are currently not covered by the guidelines. In addition to the matters outlined above, the Council supports the development of specific protections for:

- domestic consumers using distributed energy resources such as solar panels
- consumers experiencing family violence, in line with rules introduced by the Australian Energy Market Commission that require retailers to implement a Family Violence Policy. Retailers are expected to protect customers' physical safety (by, for example, not disclosing their location) and recognise the financial difficulties that can arise for customers after leaving a violent household.¹⁴

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?

77. In addition to the matters raised in our response to question 5, we consider the guideline's wording relating to the disconnection of MDCs needs to be strengthened.

78. Clause 79 of the guideline states (*emphasis added*):

¹³ See [National Energy Retail Rules](#)

¹⁴ See [Australian Energy Market Commission](#)

*Retailers should have and use processes and systems to request and record sufficient information on MDCs to make sure, **as far as practicable**, that no premises at which an MDC permanently or temporarily resides are disconnected for reasons of non-payment of a debt to the retailer*

79. The inclusion of “as far as practicable” should be removed as it conflicts with the wording of clause 66 (b), which states:

Retailers should not disconnect a post-pay customer’s premises or uncontracted premises either in person or remotely, if any of the following apply: ...

b. at least one verified or unverified MDC permanently or temporarily resides at the premises

80. Clause 66 (b) places a clear prohibition on disconnection, which is undermined by clause 79. This should be remedied by amending clause 79 as recommended above.

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?

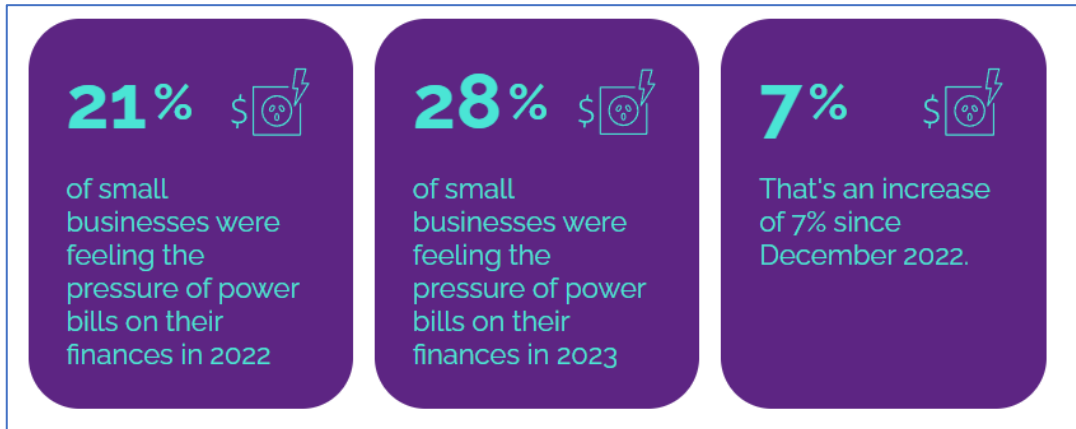
81. We agree parts two, six, seven and eight are of high importance. However, as we have noted, there are significant shortfalls in the protections provided. This means the harms occurring to domestic consumers will not be effectively addressed if these parts are made mandatory without further amendment.
82. If option 3 is progressed, we urge the Authority to take the opportunity to address these shortfalls and consult on required changes during the code consultation due to take place in early 2024.
83. We also urge the Authority to consult at that time on the penalties for breaches of the new code provisions. Without meaningful penalties, there will be little incentive for retailers to comply. The range of penalties should include both fines and requirements for retailers to pay compensation to customers adversely affected by a breach.

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

84. Our preference is for priority to be given to codifying all parts of the guidelines, with necessary strengthening of key provisions outlined above. We consider this approach would deliver the best outcomes for consumers by ensuring a robust protection framework is in place. It would also provide certainty to retailers on their obligations.
85. While we recognise this would require the Authority to commit resources to a comprehensive consultation on code changes in early 2024, we believe this commitment is justified given the existing evidence of harm being caused to vulnerable consumers.
86. We are disappointed the consultation paper has not considered the extension of protections to small business consumers. While the guidelines were written with a focus on domestic consumers, many of the provisions would also offer improved protections for small business consumers.

87. Our survey research shows these consumers are also experiencing problems in the electricity market. In our [latest survey](#), 28% of small business said power bills were placing pressure on their finances, up from 21% in 2022.

Figure 3: Small business cost concerns



Sample: 500, margin of error +/-4%.

88. We consider the absence of protections for small business consumers is a significant omission, given the Authority has a specific legislative objective to protect the interest of these consumers. We urge the Authority to address this omission.
89. In line with its statutory objective, we recommend the Authority begins work on extending protections to small business consumers. As a first step, this could include extending provisions in parts 2, 3, 4, 5, 9 and 10 to these consumers.
90. We also consider the Authority should review its *Final Principles and Minimum Terms and Conditions for Domestic Contracts for Delivered Electricity*, require retailers to integrate these terms and conditions into their consumer care policies, and extend relevant provisions to cover small business consumers.

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

91. The criteria used by the Authority to assess options should align with its statutory objectives.
92. We therefore recommend the first criterion should be protecting the interests of domestic consumers, reflecting section 15(2) of the act. Using this criterion to inform the assessment framework will require the Authority to review the outcomes listed in clause 7.2 of the consultation document.
93. The second criterion should be improving the market for the long-term benefit of consumers, reflecting section 15 (1) of the Act.
94. We disagree with criterion 3 and do not believe it aligns with the Authority's statutory objectives. We recommend the Authority remove this criterion.

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

95. We agree criteria four and five, which relate to timeliness and Authority cost, should be weighted less than criterion related to consumer outcomes.
96. However, the Authority must consider the likely costs to consumers of any delays in implementing a comprehensive mandatory protection framework.

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?

97. We agree that retailers already following the guidelines should not experience a significant increase in their compliance costs if any part of the guidelines is mandated. When the guidelines were introduced, the industry agreed to comply with their provisions. Retailers that have done so should not expect to face any additional costs.
98. We note that guidelines relating to vulnerable consumers have been in place, in some form, for more than 15 years. Retailers should therefore be fully aware there are societal expectations on them in regard to how they treat vulnerable consumers and that additional responsibilities come with being a provider of essential electricity services.
99. We also note this is an industry that enjoys significant profits and has capacity to absorb any additional compliance costs that may be associated with mandatory consumer protections.

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

100. We strongly agree concerns regarding retailer alignment with the guidelines are likely to continue if the status quo remains. As discussed in our response to question 1, voluntary guidelines have proven largely ineffective in improving consumer protection.
101. If the guidelines remain voluntary, there is a high risk that problems will worsen given the financial stress on vulnerable consumers from power prices and cost of living pressures. It is therefore essential action is taken now to implement mandatory consumer safeguards.

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

102. By ensuring retailers are governed by the same rules, options three and four would both be expected to improve the operation of the market for the long-term benefit of consumers.
103. We consider the largest gains would be expected from option 4 as it provides a broader approach to addressing retail market failures and the imbalance of power between retailers and consumers.

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

104. Option 2 would provide little, if any, benefit to consumers. Voluntary approaches to consumer protection are of limited use. As the Authority's review found, compliance with the existing guidelines varies and there is significant non-compliance. We cannot see any justification for continuing with a voluntary approach.
105. Option 3, by mandating parts 2, 6, 7 and 8 of the guidelines, would provide additional protections for domestic consumers than currently exist. We agree this would be a marked improvement on the status quo.
106. However, there are major gaps in the protections provided in these sections, most notably for vulnerable consumers and those on prepay plans. Consumer harm would therefore not be adequately addressed simply of mandating these sections. It may also create confusion having some parts that are mandatory and some that are voluntary.
107. Option 4, by mandating parts 1 to 9, provides the most comprehensive option and hence could be expected to result in additional benefits for consumers. However, as with option 3, notable gaps in protection for vulnerable consumers and prepay customers would remain unless the guidelines' provisions are strengthened as discussed above.
108. Implementation of requirements relating to information disclosure and monitoring will also be crucial to the effective operation of the consumer protection framework put in place. Without robust monitoring processes, and meaningful penalties for non-compliance, the incentives on retailers to change their behaviour will be limited and consumer benefits will be undermined.
109. We therefore submit part 10 of the guidelines should be mandated to give the Authority, and consumers, data necessary for monitoring retailer behaviour and compliance.

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

110. We agree with the Authority that option 2 will not deliver improvements to consumer welfare and should not be progressed.
111. We disagree that option 4 will result in negative effects on the market that will outweigh consumer benefits. We consider the effects on retailers are overstated, particularly in view of the profits being made in the sector.
112. We note retailers in several other countries operate under stronger consumer protection requirements than exist in the guidelines and we are not aware of any robust evidence to show these requirements create impediments to market operation for the long-term benefit of consumers.
113. On the contrary, it is market failure that has necessitated government intervention. At present, the costs of lax protection in the New Zealand electricity market fall heavily on consumers. These costs include the adverse health effects that can result when consumers are denied access to electricity to heat their homes.

114. A robust cost-benefit would need to include consideration of the health and welfare benefits that can be expected from an effective consumer protection framework. The existing evidence of energy hardship being experienced by vulnerable consumers highlights the need to ensure comprehensive mandatory safeguards are in place.

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

115. As noted in our responses to questions 15 and 16, we consider option 4 would deliver the most benefits for consumers, *provided* existing shortfalls in the guidelines were addressed.

116. If option 3 is progressed, we urge the Authority to address identified gaps in protections for vulnerable consumers and prepay customers and consult on required changes to address these gaps during the code consultation due to take place in early 2024.

117. We would be happy to meet with the Authority to discuss our views in more detail.

Yours sincerely,



Deborah Hart

Chair

Consumer Advocacy Council

Attachments:

1. Consumer protections in the electricity sector
2. Model electricity bill

20 October 2023

To: Consumer Advocacy Council (Deborah Hart, Chair)

From: Government, Competition, and Regulation Team

Subject: Consumer Care Guidelines Consultation | Implications of s 15(2) of the Electricity Industry Act 2010

Introduction

1. The Electricity Authority ("**EA**") is currently consulting on options to update the Consumer Care Guidelines ("**Guidelines**"),¹ through a consultation paper dated 4 September 2023 ("**Consultation Paper**").²
2. You have asked our opinion on whether the EA has applied the correct legal test in the Consultation Paper in light of the Electricity Industry Act 2010 ("**Act**"), as amended by the Electricity Industry Amendment Act 2022 ("**Amendment Act**"). In particular, the Amendment Act gave the EA an additional statutory objective to "protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers."³

Context and legislative history

3. In 2019 the Electricity Price Review ("**EPR**") was published which found, among other things, that clarification was needed in respect of the EA's ability to protect the interests of household and small business consumers in light of its then statutory purpose.⁴ The clarification was seen as necessary as a number of participants to the EPR noted that it was ambiguous as to whether such interests could be protected under the former statutory test.⁵ At that stage the EPR recommended introducing an explicit consumer protection function.⁶
4. In response to the findings of the EPR, Parliament amended the Act in 2022 to include an additional statutory objective (the "**additional objective**"⁷) and function, which requires the

¹ Electricity Authority, Consumer care guidelines, effective from 1 July 2021 ("**Guidelines**").

² Electricity Authority, Options to update and strengthen the Consumer Care Guidelines, Consultation paper, 4 September 2023 ("**Consultation Paper**").

³ Electricity Industry Act 2010, s 15(2).

⁴ Electricity Price Review, Final Report, 21 May 2019 at 59 ("**EPR**"); Electricity Industry Act 2010 s 15.

⁵ See, for example EPR, at 59.

⁶ EPR at 59.

⁷ Two new objectives were added, but we are principally concerned with additional objective in s 15(2) of the Electricity Act 2010, as s 15(3) is a guide to what s 15(2) applies to.

EA to protect⁸ the interests of domestic consumers⁹ and small business consumers¹⁰ in relation to the supply of electricity to those consumers, and to undertake measures to do so.¹¹

5. This new statutory objective for the EA is set out in section 15 of the Act, and provides as follows:

- (1) The main objective of the Authority is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.
- (2) The additional objective of the Authority is to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers.
- (3) The additional objective applies only to the Authority's activities in relation to the dealings of industry participants with domestic consumers and small business consumers.

6. The Explanatory note to the Bill when introduced noted that the additional objective was introduced to *remove uncertainty* (emphasis added) where:¹²

protecting small consumers in their dealings with industry participants may not necessarily be consistent with the Authority's objective of promoting competition in, and reliable supply by, or efficient operation of the industry.

7. The additional objective was intended to be a "relevant consideration" in relation to industry participants' dealings with small consumers.¹³ To that end, s 15(3) provides that the additional objective *only* applies to the EA's activities in relation to the dealings of industry participants with domestic consumers and small business consumers.¹⁴

8. This has clarified that the EA in the exercise of its functions has the objective of protecting domestic and small business consumers when carrying out activities in relation to the dealings of industry participants with those consumers. In this limited context the EA may act to protect consumers and small businesses, even when this might be considered to be inconsistent with its main (and historic) objective. The EA is therefore clearly acting consistently with its statutory objectives in promulgating and consulting on Guidelines directed at consumer care, whether these be voluntary or mandatory in nature.

⁸ Electricity Industry Act 2010, s 15(2)-(3). As amended by the Electricity Industry Amendment Act 2010.

⁹ **Domestic consumer** is defined in Electricity Industry Act, s 5 as "means a person who purchases or uses electricity in respect of domestic premises".

¹⁰ **Small business consumer** is defined in the Electricity Industry Act, s 5 as "means a consumers that is not a domestic consumers and (a) that is in class specified in regulations made under section 133A; or (b) if no such regulations have been made, that consumes less than 40MWh of electricity per year". Currently no regulations have been made under section 113A.

¹¹ Electricity Industry Act 2010, s 16(1)(ia). As amended by the Electricity Industry Amendment Act 2010.

¹² Electricity Industry Amendment Bill (63-1), Explanatory Note, Part 1.

¹³ Electricity Industry Amendment Bill (63-1), Explanatory Note, Part 1; Electricity Industry Act 2010, s 15(3).

¹⁴ Electricity Industry Act 2010, s 15(3).

9. The legislative history and statutory provisions themselves do not, however, suggest that the additional objective was designed to supplant the EA's role in promoting competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. Nor is the additional objective intended to be an absolute. The EA is not *required* to act inconsistently with its main objective. As an expert body, the EA will ultimately need to draw the boundaries, or limits, of consumer protection in the substantive content of any final Guidelines, and in any associated amendments to the Electricity Industry Participation Code,¹⁵ taking into account its main and additional objectives.¹⁶

Consultation Paper

10. The current Guidelines first came into effect from 1 July 2021, and are currently voluntary. Following a review of retailers' self-assessed alignment with the Guidelines, the EA decided to consult on work to update and strengthen the Guidelines.¹⁷ The EA considered that some of the reasons for originally giving the Guidelines voluntary status no longer stand, including because the EA now has the additional objective and function.¹⁸
11. The Consultation Paper seeks to address any issues with the current Guidelines, and presents four options for advancing the Guidelines.¹⁹ These options include maintaining the status quo; keeping the Guidelines voluntary but clarifying certain interpretation issues; and codifying different parts of the Guidelines.²⁰
12. The EA acknowledges that the scope of the Consultation Paper is limited to the current content of the Guidelines, and that it will carry out further consultation on other issues in mid-2024, including on minimum standards for small business consumers.²¹
13. The Consultation Paper notes that its "policy objective is to deliver on the purpose and intended outcomes of the Guidelines."²² In this context, paragraph 4.3 of the Consultation Paper notes that:²³

The Guidelines' intended outcomes aim to balance domestic consumer and retailer interests. This acknowledges that while retailers should seek to keep

¹⁵ Electricity Industry Act 2010, s 32, which was amended by the Electricity Industry Amendment Act 2022 to "remove ambiguity in the Authority's ability to amend the Code for the purpose of protecting domestic and small business consumers", Electricity Industry Amendment Bill (63-1), Explanatory Note. As a result, the Code may contain provisions that are consistent with the objectives of the Authority and are necessary or desirable to promote any or all of the following: [...] the protection of the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers under s 32(1)(d) of the Electricity Industry Act 2010.

¹⁶ *Unison Networks Limited v Commerce Commission* [2007] NZSC 4, [2008] 1 NZLR 42 at [55]; Electricity Industry Act 2010, s 13. See also comments in *Major Electricity Users' Group Inc v Electricity Commission* [2008] NZCA 536 at [56] and in *New Era Energy Inc v Electricity Commission* [2010] NZRA 63 HC at [68] regarding the Authority's "expert" and "specialist" nature. See also *Unison Networks Limited v Commerce Commission* [2007] NZSC 4, [2008] 1 NZLR 42 at [53] citing *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, at p 1030 per Lord Reid, and at [55] regarding the exercise of the expert body's powers.

¹⁷ Consultation Paper at 2.

¹⁸ Consultation Paper at 2.

¹⁹ Consultation Paper at 2.

²⁰ Consultation paper at 3.

²¹ Consultation Paper at 2, [5.2(a)], [5.4].

²² Consultation Paper, at [4]: "Policy Objective".

²³ Electricity Authority, Options to update and strengthen the Consumer Care Guidelines, Consultation paper, 4 September 2023, at [4.3].

customers connected and provide help, they also have a right to be paid for electricity supplied.

14. We are not entirely sure what the EA means in the first sentence of this paragraph. However, on its face, the first sentence seems to mis-state the statutory test that should guide the EA in the policy objective and the Guidelines, and the substantive content of the Guidelines themselves. If the first sentence means that, as a starting point, the objective of the Guidelines is some kind of "balancing exercise" between retailer and consumer interests, this is in our view inconsistent with the new approach required by s 15(2). Paragraph 4.3 therefore, on its face, reflects an unduly constrained approach taken in the Consultation Paper. This includes a consultation process limited to the current content of the Guidelines.
15. We consider it would have been open to the EA, in light of the additional objective, to have revised the Guidelines, or that have suggested certain amendments to the Guidelines, before commencing the consultation process. For example, instead of (apparently) using the balancing of small consumer and retailers interests as the starting point for the Guidelines, it could have been open to the EA to start from the perspective of protecting domestic and small business consumers as permitted by the additional objective.

The two objectives

16. We note the EA's position in the Consultation Paper that:²⁴

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

17. This opinion does not address the interaction between the two objectives, which as the EA acknowledges, is untested. In light of this, we consider it is open to the Consumer Advocacy Council to contend that, as proposed at 15 above, the EA ought to have consulted on a revised version of the Guidelines, as opposed to the approach taken by the Consultation Paper (which focuses on the current content of the Guidelines) and that the substantive content of the Guidelines could have been different in some areas.

Conclusion

18. The additional objective applies to the EA's activities in relation to the dealings of industry participants with domestic consumers and small business consumers in relation to the supply of electricity to those consumers. The additional objective clarifies that the EA can take steps to protect domestic consumers and small business consumers in circumstances where the EA would otherwise risk compromising, or inconsistency with, its main objective.

²⁴ Electricity Authority, Options to update and strengthen the Consumer Care Guidelines, Consultation paper, 4 September 2023, at [4.13].

19. Where, as in aspects of the Consultation Paper, the EA appears to start from the basis of balancing domestic consumers²⁵ and retailer interests, the EA could be suggested to have:
- (a) failed to fully take into account its additional objective;
 - (b) from a process point of view, taken an unduly narrow approach to the consultation process in not consulting on a new or revised set of Guidelines; and
 - (c) not taken the opportunity provided by the consultation process (and ultimately the re-drafting of the Guidelines) to advance protective measures in the interests of domestic consumers (and small business consumers).

²⁵ Reflecting that, at this stage, the Guidelines only apply to domestic consumers and do not include small business consumers.