

10 September 2024

Submitted via: ccc@ea.govt.nz

Electricity Authority
Wellington

Re: Proposed Consumer Care Obligations Consultation Paper

Minimum standards for the assistance that electricity businesses offer to maintain access to essential energy services will contribute to the financial wellbeing of Aotearoa. The Electricity Authority should see this important step forward as only the start of the work that is needed on consumer protections and enforcement to facilitate energy wellbeing. Even where the changes proposed are implemented, the safety of too many whānau will be constantly put at risk by the disconnection of essential energy services due to an inability to pay. This is unacceptable and we must continue to work towards a future where no whānau is disconnected or is going without heating because they are unable to pay.

FinCap welcomes the opportunity to comment on the Electricity Authority's *Proposed Consumer Care Obligations Consultation Paper* (**Proposed Obligations**). We strongly support the minimum standards proposed as a baseline to build fit for purpose consumer protections that would see whānau and their financial mentors to confidently halt avoidable harm from energy hardship. Our *Put on hold?*¹ report relayed what was working and what was not with the Consumer Care Guidelines, for whānau and their financial mentors. It showed the need to mandate protections with improvements. We commend the Electricity Authority for its decisive decision to implement minimum standards from 1 January 2025 and the hard work of kaimahi to prepare for this.

However, aspects of the previous iteration of the consumer care guidelines were placeholders or compromises that need improvement to offer effective protection through minimum standards, from 1 January 2025. The introduction of minimum standards on 1 January will also only show the Electricity Authority starting to action its new consumer protection statutory objective. FinCap urges the Electricity Authority to adequately resource urgent action towards:

- Effective monitoring of energy hardship issues that arise in whānau dealings with electricity retailers and retailers compliance with the new obligations.
- Courageous enforcement where non-compliance by retailers has caused harm to whānau. This should include mechanisms for timely remedy to those harmed to prevent compounding issues.
- Work with any other relevant government bodies to ensure that all homes have the right, as well as an easy mechanism to, access electricity retail 'post pay' contracts at a fair price.
- Work to ensure prepay electricity arrangements with automatic disconnection are not seeing whānau without essential electricity services because of an inability to pay.
- Work towards a future without disconnection from an essential service for those who are unable to pay.

We expand further on these comments in the submission below.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the

¹ See: <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

umbrella organisation supporting the 185 local, free financial mentoring services across Aotearoa. These services supported over 69,000 whānau facing financial hardship in 2023. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

Responses to consultation questions

Q1 Do you have any feedback on our approach to making operational improvements to the Guidelines, to ensure the proposed Consumer Care Obligations are clear, and workable?

FinCap supports the Electricity Authority's outlined approach to having the obligations set at 1 January 2025. However, further to this plan there should be a more robust consumer protection enforcement regime established so that consumers can be confident that retailers are sufficiently deterred from non-compliance from 1 January.

We would expect to see work towards a clear requirement on Utilities Disputes to report any likely breaches it identifies and the retailers these relate to. This is on the basis that we believe it would be most pragmatic for whānau and their financial mentors to deal with the immediate issue they face at internal or external dispute resolution while the Electricity Authority monitors for systemic issues it should address through enforcement action.

FinCap also recommends the consideration of a super-complaint mechanism for the Consumer Care Obligations, similar to what has been established for the Financial Conduct Authority in the United Kingdom:

"The Financial Services and Markets Act 2000 (FSMA) provides that certain consumer bodies may complain to the Financial Conduct Authority (FCA) about a feature or a combination of features of a market for financial services in the UK that are or may be significantly damaging the interests of consumers. This process is intended to provide consumer bodies with a mechanism to raise issues with us about features of the market that may be affecting consumer interests. We must respond within 90 calendar days." FCA Guidance²

This super-complaint mechanism could be valuable for situations where an organisation such as FinCap holds significant evidence of a widespread breach but vulnerable consumers are hesitant to complain directly or go to dispute resolution.

We would also expect to see requirements on retailers to self-report breaches at a more urgent frequency than our reading of the Proposed Obligations. This would allow the Authority to have visibility over breaches causing harm or that might be a 'near miss' sooner, and thus allow timelier regulator work to address this. The Essential Services Commission's system for self-reporting might provide a standard that the Electricity Authority could consider within our context in Aotearoa.³

Given the potential or actual loss of essential electricity services due to payment difficulty, can cause significant monetary and non-monetary harm, we request more work to clearly define appropriate remedies and penalties for breaches. Ideally, Utilities Disputes should be able to require their member to remedy through a prescribed payment to a complainant that is sufficient to unwind the harm.

² See: <https://www.fca.org.uk/publication/finalised-guidance/fg13-01-designated-consumer-bodies.pdf>

³ See: https://www.esc.vic.gov.au/sites/default/files/documents/Annexure%20B%20-%20Compliance%20and%20Performance%20Reporting%20Guideline%20%28version%208%29%20-%2020230428_0.pdf

Penalty settings for non-compliance should also strongly but proportionately deter harmful breaches. These should be explicitly included in the code and any supporting compliance and enforcement framework.

Q2 Do you have any feedback on the proposals to clarify the application of the proposed Consumer Care Obligations?

Financial mentors have identified some energy hardship issues exacerbated by the reselling of electricity by landlords or property agents. For this reason, and on the basis that all should have protections regardless of the way essential electricity services reach them, FinCap strongly supports secondary networks being captured. We recommend a specific enforcement and compliance plan is developed and published for services supplied in this way given there currently seems to be little visibility despite the increased risk of consumer harm where rent arrears and electricity arrears may interact.

Financial mentors have also raised energy hardship issues with a solar power purchase arrangement where the response to assistance was a sales pitch for more technology. We request the Electricity Authority ensures the scope of the obligations can extend to new energy technology wherever these can increase the cost, or disconnect the supply, of essential energy services.

To our reading, the obligations would protect a whānau who lives at a property used for a home and business. Examples might be a farm or a childcare run from a residence. We recommend the Electricity Authority ensures drafting captures these scenarios and makes this clear.

The focus on retailers throughout the Proposed Obligations appears limited by comparison to the guidelines. If a distributor, metering provider or any other trader can make or facilitate a decision to disconnect a property then FinCap recommends they must consider all relevant Consumer Care Obligations that might apply.

Q3 Do you have any feedback on the purpose statement for the proposed Part 11A of the Code?

The current guidelines assert at vi. of the Explanatory note section on page 3 that *'If words and phrases in these guidelines can be interpreted in more than one way, the word or phrase should be read to favour an outcome that achieves the purpose of these guidelines.'* This inclusion was a vital backstop that could help rebalance information asymmetry and general power imbalances where a whānau with little resources disputes the actions of a well-resourced retailer.

FinCap recommends this overriding principles-based expectation is explicitly carried through to the Proposed Obligations.

Q4 Do you have any feedback on the compliance monitoring provisions in the proposed Part 11A of the Code, or on the Authority's new outcomes framework?

Financial mentors have progressed the resolution of harm from systemic non-compliance from lenders for years. One of the greatest improvements to regulator powers in that space was the presumption of non-compliance in the absence of records adequately demonstrating that the trader met its obligations. FinCap recommends 11A.6 of the Proposed Obligations is expanded with a clause stating a breach will be presumed in the absence of sufficient records.

Please also see our comments in relation to question one that are relevant to this question.

Q5 Do you have any feedback on the proposed improvements to terminology?

FinCap strongly supports the improvements as to how financial mentors are referred to throughout the Proposed Obligations. These reflect the current terminology and context of our sector.

The definition for ‘payment plan’ is logical but the name could be more distinct from other arrangements. We recommend the Authority considers whether a more distinct technical name can be created for this important mechanism for preventing harm from energy hardship.

Q6 Do you have any feedback on the proposal to align standards of behaviour in the proposed Consumer Care Obligations?

FinCap generally supports the approach taken. However, the expectations on retailers around contact should clearly capture what they know or should have known about the consumers circumstances in the context of reasonable endeavours. For example, a retail staffer who decides to disconnect a premises might not have seen an email from a customer stating they are in hospital and won’t be able to pay bills until out. If that customer loses substantial amounts of frozen food or cannot be discharged due to the disconnection, then the retailer should be liable to pay a remedy for not properly acting on what it should have known.

Q7. Do you have any feedback on Part 2 of the proposed Consumer Care Obligations relating to consumer care policies and related matters?

At times financial mentors have not easily found consumer care policies on retailer’s websites. The current requirements around these policies being ‘prominent’ may need further prescription. FinCap recommends the Authority adds further prescription. Requirements might be that the policy be found within ‘one click’ from the main page and is signposted in the same or greater font size to the otherwise largest font size used on the main web page for the retailer.

Some whānau end up stuck on pre-pay arrangements where they cannot maintain a constant supply of essential electricity services. Generally, financial mentors can negotiate to get someone moved onto post-pay in these circumstances through advocacy. However, such intervention should not be required or dependent on an expert support representative. For this reason, we recommend the Electricity Authority requires that retailers providing prepay include a commitment in the list at 3(2) to move someone onto post-pay where pre-pay is not suitable for keeping a sustainable essential electricity supply to the household. This protection would better enliven the purpose of the Consumer Care Obligations.

Some retailers have specific supports for those impacted by family harm. The issues that can arise from this are more broad than general consumer care provided for those facing payment difficulty. FinCap recommends the Electricity Authority consider adding minimum standards for such supports in a separate policy to consumer care. Regulators’ work in Australia might provide a helpful starting point.⁴

Q8. Do you have any feedback on Part 4 [3 of the proposed Consumer Care Obligations relating to information and records relating to consumer care?

No comments.

⁴ See for example: <https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-inquiries-studies-and-reviews/family-violence-resources-review-2018>

Q9. Do you have any feedback on Part 3 of the proposed Consumer Care Obligations relating to when a customer signs up or is denied a contract?

A major consumer protection gap remains in that whānau in Aotearoa do not have a right to connect to essential energy services. This needs urgent attention from the Electricity Authority or other policy makers, otherwise it will undermine the Consumer Care Obligations. We recommend the Electricity Authority improve the protections in the Proposed Obligations so that all whānau can access post-pay essential electricity services at a fair price. That or the drafting at 10 and 11 in the Proposed Obligations be understood as a placeholder for now and retailers be required to report how often this is triggered to help policy makers understand the limited choices and price discriminations faced by some whānau.

Q10 Do you have any feedback on Part 5 of the proposed Consumer Care Obligations relating to business-as-usual account management?

It is well known that the earlier a whānau facing payment difficulties accesses the assistance, the more harm from energy hardship can be avoided. On this basis and in bringing across principles from the guidelines, FinCap recommends the purpose at 18 of the Proposed Obligations include something to the effect of “avoid ongoing avoidable payment difficulty through early assistance opportunities”

When contacting customers for an ‘at least annual’ check, it would be in the spirit of early assistance that a check equivalent to 27(f) of the Proposed Obligations. ‘Right sizing’ people via expert advice on the most appropriate plan available from the same retailer for their usage pattern for essential services is in the spirit of good customer service. It is also a way of preventing unnecessary charges that could trigger payment difficulties.

Financial mentors increasingly report difficulties faced by whānau who seek their support around exiting bundled goods and services from their electricity retailer. The Proposed Obligations drafting at 22(c) is helpful but we recommend it be expanded to clearly signal where to find the fees for exiting any bundled services or exiting the electricity contract on the billing date. This may help whānau exit non-essential bundled services to avoid financial hardship without bill shock.

Q11 Do you have any feedback on Parts 6 and 7 of the proposed Consumer Care Obligations relating to customers experiencing payment difficulties and disconnections?

Requiring offers of assistance to all whānau who might need it is the best way to ensure those who need it are reached. The limitation in the purpose statement at 25(2)(b) in the Proposed Obligations should instead require Part 6 be actioned after one missed payment. While some customers may not appreciate offers for assistance when they have forgotten to pay but are not in hardship, this is a worthy trade-off for offers of assistance reaching those who could use it much sooner. We see no reason why a retailer could not halt offering support under Part 6 if someone clarified they were not experiencing difficulty paying.

We recommend the list at 25(2)(a) be expanded to not just include situations where the retailer is told by a customer but also when the retailer ‘should know.’ We also recommend that common reasons for seeking assistance from financial mentors such as missed payment arising from administrative barriers related to health or mental health challenges should be included in the list.

We strongly support the drafting in the Proposed Obligations at 26(3)(b) that payment plans discussed should appear suitable to customer’s circumstances. Unrealistic payment demands from creditors can end engagement from whānau in payment difficulty as they see no hope of finding a solution. That, or they might agree to a payment plan that is unaffordable and just wastes resources for both parties. At

times, essential electricity services will be unaffordable for whānau facing wider financial hardship and we recommend the Electricity Authority considers bolstering protections at 26(3)(b) and 27(i) to ensure this does not just give a retailer the ability to proceed to disconnection for non-payment where no repayment of arrears is currently feasible.

Information overload could result in missed opportunities when someone is being provided with energy efficiency information. In many situations energy efficiency advice could be irrelevant. An example is information on air conditioning thermostat ranges for a person who does not have one. Drafting of the Proposed Obligation at 27(d) could be improved to instruct retailers to provide information relevant to what they should know about the customer's ability to action it, not just a 'kitchen sink' pamphlet.

Financial mentors cannot always see whānau within seven days. Our sector is currently adjusting to funding changes while there is increased demand. We recommend the drafting at 27(h)(ii)&(iii) should not give retailers the expectation that financial mentors will be able to offer assistance within 14 days. At the very least, it should be clear that these pauses are 'at a minimum.' We also note that the MoneyTalks service and financial mentors may be constrained by the confidentiality of their work on sensitive financial matters and the Privacy Act 2020 from confirming a person's engagement with them, and drafting might need adjusting not to give the impression it will be provided to retailers.

Agreed payment arrangements changing could cause a financial mentor's work to make a budget balance to unravel. We strongly support the drafted Proposed Obligations requiring that retailers not unilaterally adjust payment plans at 29. We recommend the Electricity Authority monitor for the use of terms and conditions by retailers to change payment plans and consider the removal of any potential inappropriate loopholes.

Often optimism bias can see people commit to repayments that ultimately turn out to be unrealistic. The Proposed Obligations at 31(4) are critical for maintaining constructive communication between parties when this reality plays out. We recommend the Electricity Authority requires best endeavours for this contact if the current drafting does not already require that action or an even stronger standard.

Couriers are paid in a way that incentivises them to rush to doors and request a quick signature from anyone answering, without an open interaction. A message opened on an app does not reflect it having been read. A very brief phone call that is answered but quickly ended does not provide time for conversation around assistance to avoid a disconnection that could pose a safety risk. Having these as tick boxes that retailers can utilise to move to disconnection does not reflect drafting that adequately considers the challenges faced by whānau unable to make payments. FinCap recommends that 37 (3) & 43(1)(iii) remove courier letters and in app messages and also set a higher threshold for recorded phone calls where assistance under part 6 is clearly offered.

Pre-pay customers should not be disconnected on an estimated reading just like post-pay customers. We recommend the Proposed Obligation at 38 is extended to pre-pay customers too.

Protections against disconnection during a potential local emergency are vital to preventing harm. We strongly support the protections in Proposed Obligations at 45(c) and 51 to not disconnect during a severe weather event but further recommend this also prescribe no disconnections where an official severe weather warning is in place.

No one should be disconnected from their essential electricity supply as a debt collection tool for a previous account or for a different service. Financial mentors have reported that some retailers move

whānau to prepay and then recoup a proportion of each 'top up' as a repayment on a previous post-pay account. The drafting at Proposed Obligation 45 (e) and 51 (c) rightly prevent disconnection related to bundled services but we recommend they also prevent retailers enforcing a debt not related to the current electricity service pricing plan.

Q12. Do you have any feedback on Part 8 of the proposed Consumer Care Obligations relating to medically dependent consumers?

No comments.

Q13 Do you have any feedback on Part 9 of the Consumer Care Obligations relating to fees, bonds and conditional discounts?

Please refer to our comments in relation to a presumptive breach in response to question 4. The Proposed Obligations in this section should presume a breach where the retailer cannot evidence that charges are reasonable or to the standard set. If this is the case, then whānau should have clear remedy available of reversed charges as well as any monetary and non-monetary loss flowing from the breach at a minimum.

We also recommend the Electricity Authority considers how the requirements in this section could be undermined by fees charged for bundled services.

Q14 Do you have any feedback on the proposed Code obligations for distributors?

Please see our relevant comments in response to question two.

Q15 Do you agree that the benefits of the proposed Code amendment outweigh its costs?

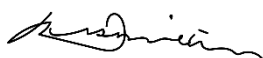
The benefits far outweigh the costs. Clearer requirements will also put less strain on financial mentors while enabling better outcomes in relation to health, wellbeing and social participation for the whānau facing payment difficulty.

Q16: Do you have any comments on the drafting of the proposed amendment?

This code amendment should be seen as a first iteration for regular review and improvement to ensure that consumers are adequately protected in their ongoing access to essential electricity services despite payment difficulty.

Please contact Jake Lilley, senior policy advisor at FinCap on 027 278 2672 or at jake@fincap.org.nz to discuss any aspect of this submission.

Ngā mihi,



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