



Submission on the Proposed Consumer Care Obligations Consultation paper Community Law Centres Aotearoa, 10 September 2024

Overview

Community Law Centres o Aotearoa (**CLCA**) welcomes the opportunity to comment on the proposed Consumer Care Obligations Consultation paper our submission answers the questions in the quick guide. The contact for this submission is Rupert O'Brien, Law Reform Coordinator (rupert@clca.co.nz).

CLCA is the national body that coordinates and advocates for the 24 Community Law Centres (**CLCs**) across Aotearoa. Our member CLCs work out of over 140 locations to provide free legal help to those who are unable to pay for a private lawyer and do not have access to legal aid. As well as around 300 staff, CLCs' services are supported by over 1,200 volunteer lawyers who run legal advice clinics and deliver free assistance. Each year, these CLCs provide free legal support to 43,000 clients and free law-related education to 24,000 people. In addition, we provide free legal information via the Community Law Manual (the digital version of which has 3,900 views per day on average) as well as an estimated 200,000 people who contact CLCs directly. Te Ara Ture is the nationwide clearinghouse for pro bono legal services, and it is a division of CLCA.

In the 2023-2024 financial year our CLCs assisted with 2255 consumer matters and 2350 financial matters. Our CLCs often assist people in enforcing their rights in the consumer and financial space, and energy bills and disconnection are a common cause of stress and financial burden for our clients. This submission was drafted with financial mentor consultation. We have answered the questions in Consultation Quick Guide.

The proposed Consumer Care Obligations

Energy is an essential service and access to it is an essential human need. We consider that given its links to adequate housing and health, access to energy should be treated as a human right. It is the most vulnerable people in our communities that have tenuous access due to the cost of electricity and the lack of clear and enforceable consumer protections. CLCA is heartened the Electricity Authority (**The Authority**) Te Mana Hiko will be mandating the Consumer Care Guidelines from the 1st of January 2025. This is an excellent first step in protecting our most vulnerable members of our community, and a small step towards removing the David and Goliath settings between energy retailers and consumers.

Q1. Do you agree with our approach to making operational improvements to the Guidelines?

CLCA fully supports the Authority making operational improvements to the Guidelines.

Changing the wording from "Guidelines" to "Obligations" should leave no confusion in the retail sector that these rules are compulsory. This is essential for strengthening consumer protection.

CLCA looks forward to seeing swift, concise and sharp consequences from the Authority to providers who do not adhere to the Obligations. The Obligations are not useful without strong enforcement. CLCA recommends that the Obligations include penalties that motivate retailers to comply with the Obligations, with a clear path for consumers for redress where there is non-

compliance. This appears to be missing in favour of self-reporting monitoring in the Obligations as drafted, and we comment on this further below.

We encourage the Authority to also mandate all energy retailers to clearly display on their websites, electronic and paper-based bills, simple and easy to read information about the Obligations, consumer rights, and what to do if they feel their rights haven't been met.

Using plain reo is an important and practical step in assisting the consumer to understand their own protections and should reduce retailers' using their own interpretations.

CLCA firmly believes the Authority should be including mandatory positive credit reporting in the Obligations. Many of the whānau we see have no credit history which becomes problematic for securing a new rental or their first credit contract. Often these clients have continually paid their power bills on time but only debts are recorded with credit reporting agencies. Having positive credit reporting may also be an incentive to pay on time.

Q2. Do you agree with the new outcomes we have developed?

CLCA supports these outcomes as they are common sense, align with human rights and are simply the right thing to do. It is unfortunate that a mandated code is required to ensure retailers do the right thing.

Q3 Do you have any concerns about retailers monitoring your electricity usage?

Yes, there may be privacy issues, but we feel these are outweighed by the intent of this clause – to ensure all power consumers are on the correct power plan for their needs and for the energy retailer to ensure a consumer is contacted before disconnection happens.

While we agree with the view that many consumers should be able to monitor their own usage through the use of online apps and by reading their bills, CLCA knows many whānau we work with are digitally excluded and or illiterate. Some other consumers may lack the understanding of what they are reading.

If consumers have their power usage monitored and then are contacted if there is an issue identified, this should assist in early interventions rather than disconnections for our most at risk members of our communities. Our CLCs report regularly seeing clients with \$1000 power bills (as high as \$5000). The stress and mental health this causes the customer can be severe. The lack of contact by the energy retailer to the customer in these situations is uncaring and dismissive at best. Power usage monitoring should help in assisting the customer avoid this situation.

CLCA would be interested in knowing how the energy retailer kaimahi help the whānau identify what is the best plan for them to be on, and whether independent and regular reviews of these decisions would be scheduled. Customers are guided by what they told is the best option for them by the retailer. Who monitors this? We think thought should be given to how this is monitored. Retailer reporting should be put in place to monitor why and when consumers are contacted by the retailer when the retailer has noticed something different in energy usage. Retailers may have to have a policy about this to ensure consistency across consumers.

There needs to be protections prohibiting energy retailers acting on additional information which inadvertently pops up through the collection of this information and ensuring that they retailers are abiding by the Privacy Act.

Once again, we reiterate our view of compulsory positive credit reporting, rewarding 'good' behaviour, so not just focusing on late payers.

Q4 Do you agree with the proposed operational improvements we have made to the area of the guidelines?

All fees including disconnection should be clearly displayed on all energy providers websites and comparison type sites such as Powerswitch, for ease of comparison by consumers.

CLCA supported Common Grace Aotearoa's petition calling for the banning of disconnection and reconnection fees referred to in the Quick Guide, and we look forward to the Authority's further work in this area. In the meantime, we look forward to learning what a reasonable disconnection fee looks like as referred to in the Quick Guide (page 3 says "The proposed Consumer Care Obligations will require retailers to ensure that any fee they charge does not exceed the costs the fee relates to and is otherwise reasonable").

We appreciate the referral pathway to a financial mentoring service in the case of customer hardship; however, this needs to be a referral to a local community service who can assist. If there is no local community service, then a referral to MoneyTalks needs to be made.

We support the change of terminology from budget advice to financial mentoring as this terminology has been the case for several years now. We also acknowledge the shift regarding referrals to Financial Mentoring services should not just be to MSD funded services, especially with the huge reduction in these services due to having had their funding cut or greatly reduced by MSD. This has seen a lengthy waiting list for the financial mentoring services.

Only referring to the MSD funded financial mentoring services, would put more stress on whānau by having to wait, while there are other non-MSD funded services who provide the equal or greater service.

Q5. Do you agree our proposed operational improvements for medically dependent customers?
CLCA agrees with the improvements for working with medically dependent whānau.

Q6. Do you agree with our proposed approach to improve monitoring and compliance?

CLCA is concerned with the self-reporting approach regarding compliance. We do not think this adequately protects consumers. In fact, this sector is arguably the biggest provider to the most diverse individuals in Aotearoa. Due to the large catchment of whānau, including the most vulnerable, and the nature of electricity as an essential services, greater protections need to be in place to ensure the consistent and high standard of service.



Regular and unscheduled auditing by the Authority would help safeguard against irregularities, interpretations, and failures in compliance. CLCA feels the naming and displaying of non-compliant providers on their own and the Authority's website, in conjunction with a penalties regime (potentially based on percentage of profit), could act as a catalyst to adhere to the Obligations.

Q7. Do you agree with our assessment that the benefits of mandating the Consumer Care Guidelines will outweigh the costs?

We refer to the profit take of the major retailers for the last financial year:

Meridian \$429 million net profit for 12 months ending June 2024¹

Genesis \$131 million net profit for 12 months ending June 2024²

Mercury \$290 million net profit for 12 months ending June 2024³

Contact \$235 million net profit for 12 months ending June 2024⁴

CLCA is firmly of the view that good consumer protection should be included in the cost of doing business well. Electricity is an essential service, and it must be accepted that there will be a cost to providing that to consumers.

Further comments:

Economic / family harm policy:

CLCA believes that each and every business operating in Aotearoa needs to have a robust economic harm policy in place and the associated training for kaimahi at regular intervals. There must be policies in place to ensure that victims of domestic violence are not further harmed by creditors.

Fixed term contracts:

The control energy retailers have over consumers by their use of contracts on a fixed term basis needs to be disestablished. It seems all retailers provide open term contracts as well as these somewhat oppressive fixed term contracts. CLCA sees this as another way of suppressing the whānau's right to choose.

Free items when signing up:

In our view the offers of free items when signing up to a fixed term contract is unethical and seems to be targeting many consumers who can least afford not to be shopping around for another open term contract. These incentives also need to be prohibited.

Please note in the links below how the energy provider states the RRP for the same product is \$500 more expensive than what can easily be found in major retailer chains. Let's call these incentives what they actually are, as they are not rewards, but bait with fishhooks already attached.

¹ <https://rnz.co.nz/news/business/526368/meridian-energy-429m-profit-four-times-higher-than-previous-year>

² <https://www.nzherald.co.nz/business/genesis-energys-profit-falls-by-33-after-challenging-year/PPGY3T44WRCTHMUQ6LALZXP62Y/>

³ <https://www.rnz.co.nz/news/business/525652/mercury-more-than-doubles-full-year-profit>

⁴ <https://www.rnz.co.nz/news/national/525546/contact-energy-announces-235m-full-year-profit>



Below are the links for Mercury Energy advertising their Samsung 8kg front loader, free when signing up to a bundled fixed term contract. With Mercury stating the RRP of \$1399.99 and the exact same model at Noel Leeming for sale at \$799 (link below) and at Harvey Norman for \$799 – a difference of \$600, ****which seems to be false advertising and misleading at best.

<https://www.mercury.co.nz/you-choose/browser#FibreClassic&WBBRewards>

https://www.noelleeming.co.nz/p/samsung-8.0kg-front-load-washer-with-hygiene-steam/N214402.html?gad_source=1&gclid=EAIaIQobChMlxaKr7cGliAMVd4tLBR3HAS7AEAQYAiABEgJLbfD_BwE&gclsrc=aw.ds

https://www.harveynorman.co.nz/whiteware/laundry/front-loaders/samsung-8kg-hygiene-steam-front-load-washing-machine-white.html?gad_source=1&gclid=EAIaIQobChMI7dXH48KliAMVvT2DAX383QF8EAQYAyABEgJIE_D_BwE&gclsrc=aw.ds

Bundling:

CLCA has seen multiple clients' bills with services bundled 'for convenience and cost reduction'. However, in our experience this is not the case. In many cases we see, whānau cannot manage their bill, being so large and in one amount. Bundling needs to go. This would provide transparency for bill reading for whanau, ease of comparison of services and greater competition.

Prepay:

We question where the protections for prepay customers are in all of this? We refer again to Common Good Aotearoa's call for an investigation into prepay contracts.

Each person in our motu should have the right to access electricity. We understand that energy retailers want to ensure they will be paid, and this is the main reason those providers supply prepay power to their consumers who have a bad credit history. However, CLCA feels these consumers are being charged more for pre-pay arrangements.

While post pay customers can be in arrears of hundreds or even thousands with their power bill and still have the lights on and keep their tamariki warm, prepay customers do not have that choice. CLCA looks forward to the Authority further analysing this issue to ensure that prepay power customers are treated fairly and equally, especially since this cohort may be the most vulnerable of electricity users in the motu.