

Utilities (Electricity Retail) Licence Conditions Direction 2009

Disallowable instrument DI2009- 21

made under the

Utilities Act 2000 section 19 (Ministerial directions)

EXPLANATORY STATEMENT

Legislative Provisions

Section 19 of the *Utilities Act 2000* (“the Act”) gives the Minister the power to direct the Independent Competition and Regulatory Commission (“the ICRC”) to exercise its powers under the Act to achieve the objects set out in section 3 (a) to (h) of the Act. The Minister may give a written direction to the ICRC about the results it must achieve by licence conditions, or industry codes. A direction under section 19 is a disallowable instrument.

Section 46 of the *Legislation Act 2001* provides that the power to make an instrument includes the power to amend or repeal the instrument. However, the power to amend or repeal the instrument must be exercised in the same way, and is subject to the same conditions, as the power to make the instrument.

Background

The *ACT Climate Change Strategy 2007-2025* has as one of its objectives, the need to design and build Canberra to become more sustainable. Increasing the Territory’s use of nil emission generated electricity is one means of promoting long-term sustainability.

In January 2008, the Minister for Environment, Water and Climate Change directed the ICRC to implement an ACT GreenPower Scheme through suitable licence variations. The scheme was to come into effect no later than 1 January 2009. In September 2008, the ICRC released an information paper and draft licence conditions for consultation. The submissions received raised a number of issues arising from the scheme set out in the Ministerial Direction.

This instrument revokes DI2008-10 and amends the ACT GreenPower Scheme set out in the Minister’s Direction of January 2008 in response to the submissions. The Government remains firmly committed to the intent of the scheme. Consistent with this intent, the amendments seek to ensure that consumers are properly informed in

making decisions about the purchase of electricity, that consumers cannot be supplied with a GreenPower product by default, that products having 10 per cent or more accredited GreenPower will be consistent with the scheme's offer requirements, and that customers who have accepted an offer of a GreenPower product and are being supplied under a standard customer contract can revoke acceptance of the offer without incurring any penalty or termination fee.

The amended scheme must commence no later than 1 April 2009.

Specific requirements of the ACT GreenPower Scheme

Schedule 1 to the instrument outlines the ACT GreenPower Scheme. Section 1 (Requirements) specifies the requirements of electricity suppliers, the rights of potential new or re-connecting customers, and the rights of existing customers of electricity suppliers. The offer of a GreenPower product must be made to all types of customer – residential and non-residential.

All suppliers of electricity licensed under the Utilities Act and offering to supply consumers in the ACT must have access to a 'GreenPower product' accredited under the rules and guidelines of the National GreenPower Accreditation Program ('the GreenPower Program'). The GreenPower Program is a joint initiative of the Australian Capital Territory, New South Wales, South Australian, Queensland, Victorian and Western Australian Governments.

All suppliers must offer a GreenPower product to each potential new or re-connecting customer of the supplier and at the same time must make each potential new and reconnecting customer of the supplier aware that other products are available to them.

The GreenPower product must have a minimum of 10 per cent accredited GreenPower calculated and applied as the equivalent percentage of the customer's electricity usage over a billing period, or in some other manner permitted under the GreenPower Program.

Suppliers must disclose all tariffs and charges associated with the products which are being offered.

The supplier must offer and make a GreenPower product available to all existing customers of the supplier at an existing customer's request.

Customers who have accepted an offer of a GreenPower product and are being supplied under a standard customer contract can revoke the acceptance without incurring any penalty or termination fee. If a customer accepts the offer of a GreenPower product and is being supplied with electricity under a negotiated customer contract, the customer may revoke the acceptance, but only if the contract provides for revocation and any applicable terms and conditions of the contract regarding a termination fee or penalty are satisfied

It is the scheme's intent that the offering of a GreenPower product, not the acceptance of the offer, is mandatory. To protect consumers (including those who are financially disadvantaged) from inadvertently selecting a product that does not suit their

circumstances, suppliers must assist consumers to make informed choices. Consumers are free to exercise their right to accept a GreenPower offer or seek alternative offerings from the supplier. To ensure that the offer of a GreenPower product does not become a default supply option, scheme provides that a “new or re-connecting customer” must both apply (orally or in writing) for supply of a GreenPower product, and accept the offer of supply.

The definition of “new or re-connecting customer” excludes customers who have had their electricity supply disconnected and re-connected under the same customer contract, customers on deemed contracts under sub-paragraph 92(1)(b)(ii) of the Utilities Act (for example, customers who, under retailer-of-last-resort arrangements, have been placed on a standard contract and made no election), and customers who are changing between standard and negotiated contracts.

Section 2 (Dictionary) of Schedule 1 provides definitions for key terms in the ACT GreenPower Scheme.