

2002

AUSTRALIAN CAPITAL TERRITORY

REVOCATION OF DETERMINED INDUSTRY CODE

EXPLANATORY STATEMENT

DI2002-215

On 21 December 1999 the Minister determined the Electricity Supplier of Last Resort Code as a first industry code. This was an exercise of power under the *Utilities Act 2000* ("the Act"), section 235 (now expired). The expiry of the section does not change its legal effect.

Because of the Act, section 235 (9), the Act applies to all first industry codes as if they had been determined or approved under the Act, part 4. Part 4 provides for the determination of codes by the ICRC (see section 59). The effect of section 235 (9) in this case is that for all purposes the Minister's determination of 21 December 1999 is treated as if it had been made by the ICRC.

The Act does not expressly provide for revoking industry codes, but the Legislation Act, section 180, makes clear that if an entity has power to do something, it also has power to undo it.

The Act, section 59 (Determined codes), provides for the determination of codes by the ICRC. Through the operation of the Legislation Act, section 180, the power to determine codes also includes the power to revoke a determination.

Therefore the ICRC can revoke determinations of first industry codes made by the Minister.

The Electricity Supplier of Last Resort Code sets out the Territory's supplier, or retailer, of last resort arrangements. These are the arrangements needed to ensure the continuity of electricity supply by another supplier of electricity to a customer whose original supplier of electricity ceases (either permanently or temporarily) to be lawfully able to supply electricity to the customer.

The ICRC has reviewed these arrangements in anticipation of the opening of the electricity market in March next year. In the ICRC's view the current arrangements are neither appropriate nor adequate to the Territory's needs.

The ICRC therefore proposes to revoke the determination of the Electricity Supplier of Last Resort Code and to replace the Code with a set of detailed guidelines with which the supplier of last resort will be required, as a condition of its utility licence,

to comply. The advantage of guidelines over a code of practice is that they are more flexible and easier to amend, while still having the force of law.

Copies of the Retailer of Last Resort Guidelines are available for inspection during ordinary office hours from the ICRC, Level 7 Eclipse House, 197 London Circuit, Canberra City. They are also available on the ICRC's website at [www.icrc.act.gov.au](http://www.icrc.act.gov.au).