

Australian Capital Territory

Utilities (Electricity Feed-in Code) Determination 2010 (No 1)

Disallowable instrument DI2010–268

made under the

Utilities Act 2000, s 59 (Determined codes) and s 63 (Public access)

EXPLANATORY STATEMENT

Purpose of Electricity Feed-in Code

The Electricity Feed-in Code is an industry code determined by the Independent Competition and Regulatory Commission (the Commission) under the *Utilities Act 2000* (the Utilities Act). Its purpose is to set out practices and standards for the operation of the scheme for feed-in from renewable energy generators to the electricity network established under the *Electricity Feed-in (Renewable Energy Premium) Act 2008* (the Electricity Feed-in Act).

Legislative Provisions — Industry Codes

The Utilities Act provides a regulatory framework for utilities in the ACT. Section 21 of the Utilities Act provides that a person must not provide a utility service except in accordance with a licence. Licences are subject to a number of conditions with which utilities are required to comply. Section 25 of the Utilities Act requires all licensees to comply with any relevant industry or technical codes.

Provisions relating to industry codes are set out in Part 4 of the Utilities Act. An industry code ‘may set out practices, standards and other matters about the provision of a utility service’.

Section 59 of the Utilities Act provides for industry codes to be determined by the Commission. The Commission may determine an industry code if it has consulted with the Minister and the Minister responsible for technical regulation and is satisfied that the code is not inconsistent in material respects with another industry code or a technical code; and it is necessary or convenient to determine the code.

Section 60 of the Utilities Act sets out the public consultation requirements for industry codes.

Under section 62 of the Utilities Act, an industry code determined under section 59 of the Act is a disallowable instrument.

Section 63 of the Utilities Act sets out a number of requirements relating to public access to industry codes.

Legislative Provisions — Electricity Feed-in Scheme

A scheme for feed-in from renewable energy generators to the electricity network has been established in the ACT under Electricity Feed-in Act.

The Electricity Feed-in Act provides for licence conditions for electricity distributors licensed to distribute electricity through an electricity network and electricity suppliers licensed to supply electricity from the network.

Section 6(2) of the Electricity Feed-in Act provides that:

It is a condition of the distributor's licence that the distributor must, on application by the occupier of premises at which there is an NEL compliant renewable energy generator—

- (a) connect the generator to the distributor's network to enable electricity generated by the generator to be supplied to the network; and
- (b) reimburse the utility that is the electricity supplier to the premises the difference between—
 - (i) the amount payable under subsection (3) for electricity generated by the generator; and
 - (ii) the normal cost of that electricity; and
- c) pass on to the occupier any additional metering costs in relation to electricity generated by the generator.

Section 6(3) of the Electricity Feed-in Act provides that:

For the electricity supplier mentioned in subsection (2), it is a condition of the supplier's licence that the supplier must, on application by the occupier of premises at which there is an NEL compliant renewable energy generator connected to the electricity network, pay the occupier at the applicable rate under section 8 (Payment for electricity from renewable energy generators) for the total amount of electricity generated by the generator.

Section 11(1) of the Electricity Feed-in Act provides that:

The premium rate for the financial year in which a renewable energy generator is connected to a distributor's network applies, if the generator remains connected to the network, in relation to electricity generated by the generator during the 20 years after the date of the connection.

Section 7 of the Electricity Feed-in Act provides that the action required by a distributor under section 6(2) and the action required by a supplier under section 6(3) are both utility services for the Utilities Act.

Revocation and re-determination of Electricity Feed-in Code

The Disallowable Instrument revokes the industry code determined by the Commission under the Utilities (Electricity Feed-in Code) Determination 2009, DI2009-23 and determines an industry code as set out in the Attachment to the Disallowable Instrument.

The variations between the industry code as determined under DI2009-23 and the re-determined industry code are set out below.

This revocation and re-determination process has been followed for this variation to the Electricity Feed-in Code so that an authorised version of the industry code is available through the Legislation Register.

Consultation on variations to Electricity Feed-in Code

In terms of section 60 of the Utilities Act, the Commission was satisfied that the variations set out in the re-determined industry code are unlikely to adversely affect anyone and would not materially alter the industry code. As a result, no public consultation has been conducted on the present variations. In accordance with the requirements of section 59(1) of Utilities Act, the Commission consulted with the Minister and the Minister responsible for technical regulation.

Outline of variations to Electricity Feed-in Code

The variations to the industry code incorporated into the re-determined industry code are detailed below. In summary, the changes:

- ensure consistency of the Electricity Feed-in Code with the Consumer Protection Code as amended by DI2009-275 and DI2010-108
- remove spent provisions relating to the commencement of reporting arrangements under the Electricity Feed-in Code
- make two minor changes relating to punctuation and bolding
- update Schedule 3 to the Electricity Feed-in Code, Code Amendment History.

Consistency of the Electricity Feed-in Code with the Consumer Protection Code

Clause 6.1 of the Electricity Feed-in Code clarifies that the application of the Consumer Protection Code in relation to matters other than the Feed-in Scheme is not affected. As an example, the Electricity Feed-in Code does not alter the provisions of the Consumer Protection Code that relate to electricity supply to customers.

Schedule 2 to the Electricity Feed-in Code sets out whether or not Consumer Protection Code provisions are applicable to the Feed-in Scheme.

There are two variations between Schedule 2 in the re-determined Electricity Feed-in Code and that of the previous Electricity Feed-in Code:

- The commentary on the applicability to the Feed-in Scheme of clause 11 of the Consumer Protection Code (the obligation of utilities to comply with service standards), is amended to read “only service standard 2 of Schedule 1 of the Consumer Protection Code applies”. The rewording ensures consistency with

the numbering of the provisions of Schedule 1 of the current version of Consumer Protection Code. There is no change to the applicability of the Consumer Protection Code to the Electricity Feed-in Scheme.

- DI2010-108 introduced a new clause 32A of the Consumer Protection Code “Transfer of supplier’s supply business” which clarifies that the requirements of clause 32 for the “informed consent” of a customer prior to the transfer of a customer’s gas or electricity supply do not apply when the transfer occurs as part of the sale of a company or its assets. The re-determined Electricity Feed-in Code amends Schedule 2 to recognise clause 32A and states that the Electricity Feed-in Scheme is not applicable to this provision. This is because clause 32A is entirely connected to the supply of electricity.

Removing spent reporting provisions

Clauses 4.5 and 5.4 of the Electricity Feed-in Code relate to reporting to the Commission by electricity distributors and suppliers respectively. The sentence “Arrangements for the commencement of reporting will be notified by the Commission” previously appeared in both clauses. The sentence has been deleted from the re-determined Code as reporting commenced in mid-2009.

Minor changes

A missing comma is added to the second line of clause 4.1(b) of the Electricity Feed-in Code after the words “chosen electricity supplier”.

Inappropriate bolding is removed from the word “is” in the second line of clause 5.1(a).

Public Access to the Electricity Feed-in Code

Copies of the Electricity Feed-in Code are available for inspection during ordinary office hours from the Commission, Level 2, 12 Moore Street, Canberra City ACT 2601. They are also available on the Commission’s website at www.icrc.act.gov.au. Electronic copies are available on request. No charge will apply.