

Australian Capital Territory

# Utilities (Consumer Protection Code) Determination 2020

Disallowable instrument DI2020–6

made under the

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

## EXPLANATORY STATEMENT

---

### *Purpose of Consumer Protection Code*

The Consumer Protection Code (Code) is an industry code determined by the Independent Competition and Regulatory Commission (ICRC) under the *Utilities Act 2000* (Utilities Act). The Code outlines the rights of customers, consumers and utilities with respect to access to, and provision of, utility services. Utilities are obliged to give effect to these rights. The Code also deals with the general conduct of utilities (and their agents) in the delivery of utility services.

The Code applies to utilities licensed under the Utilities Act, and to electricity and gas retailers authorised under the National Energy Retail Law.

The Code is enforceable under the Utilities Act. The ICRC is responsible for monitoring the compliance of utilities with industry codes.

### *Legislative provisions — industry 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 ICRC. The ICRC may determine an industry code if it has consulted with the Minister and the Minister responsible for technical regulation, as specified in section 59 of the Utilities Act, 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 to be followed.

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.

#### *Consultation on the new Code*

In accordance with the Utilities Act, the ICRC has consulted with relevant parties on the drafting of the new Code. A notice was published in the Canberra Times and on the ICRC's website inviting comments. The submissions received and the outcomes of the consultations are detailed in the Commission's draft and final decision on the Consumer Protection Code review; these reports are available on the Commission's website ([www.icrc.act.gov.au](http://www.icrc.act.gov.au)).

In accordance with the requirements of the Utilities Act, the ICRC 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 to determine the Code.

The ICRC has had due regard to the submissions received in response to the consultation process.

#### *Public access to the Code*

Copies of the Consumer Protection Code and the ICRC's decision to determine the code are available on the Commission's website ([www.icrc.act.gov.au](http://www.icrc.act.gov.au)). These documents are also available for inspection by members of the public between 9:00 am and 5:00 pm, Monday to Friday, at the ICRC's offices at Level 8, 221 London Circuit, Canberra City ACT. Hard copies can be made available on request.

#### *Revocation and remaking of Code*

This Disallowable Instrument revokes the Code determined by the Commission under the *Utilities (Consumer Protection Code) Determination 2012*, DI2012-149 and determines a new Code as set out in the Attachment to the Disallowable Instrument.

Details of the Consumer Protection Code, as set out in the Disallowable Instrument, are:

### **Part 1 - Preliminary**

Clauses 1, 2 and 3 give an introduction and deal with the application of the Code, purpose, format and relationship with other laws. Clause 2.2 defines consumers and customers of utility services, and notes that there is a difference between customers and consumers, and that not all consumers are customers. A distinction between the two has been made in parts of the code.

### **Part 2**

Part 2 outlines matters that relate to the protection of customers and consumers that utilities must comply with in providing utility services. The provisions in this part apply to all licensed utilities and, subject to Schedule 3, to National Energy Retail Law (NERL) retailers.

## **Part 2.1 – Obligations of the utility**

Clause 4 refers to utilities' obligations, including monitoring and reporting compliance, obligations under a utility licence and responsibility for conduct of agents. Clause 4.1 is a new clause and is intended to clarify that all utilities, including NERL retailers, are required to monitor and report compliance against the code to the Commission annually.

## **Part 2.2 – Protection of customers and consumers**

Part 2.2 outlines matters that apply to all customers and consumers. It differs to part 2.3 which applies to customers only.

Clause 5 outlines how utilities should behave towards all customers and consumers, including permissible contact times, timely attendance at appointments and requirements to identify themselves before entering premises. Utilities' obligations are subject, to the extent the information is relevant to the obligation, to customers and consumers:

- keeping the utility informed of any changes to their contact or account details; and
- notifying the utility of problems or faults in the utility service or changes to the installation that could affect the safety or quality of the utility service.

Clause 6 requires utilities to develop, implement and comply with complaints and dispute resolution procedures. The procedures must be in accordance with the current relevant Australian Standard and a utility must keep records for a minimum of 12 months. Clause 6 has been updated to outline matters that must be included in complaints procedures and to require a utility to address the substance of the complaint in its final decision or response.

Clause 7 specifies information that utilities must give customers, for example, information about the utility services provided, meter readings and account information. Subject to prior approval by the ICRC, a utility may charge the reasonable cost of providing the information and must publish these charges on its website. Clause 7.3 has been updated to allow a utility to only disclose personal information in accordance with the law.

Clause 8 addresses the serving of notice on customers or consumers. It spells out the requirements for effective notice, and when delivery is deemed. The clause has been updated to remove delivery by facsimile.

Clause 9 requires utilities to publish summaries of customer, consumer and utility rights. It requires utilities to make the summaries available in a number of specified formats and to provide customers and consumers with copies of the summary. The clause has been updated to require the summary to be published on its website and to include information on guaranteed service levels. The clause does not apply to non-franchise customers.

Clause 10 places obligations on utilities with respect to the registration, disconnection and interruption of drinking water utility services to premises occupied by persons using life support equipment. The clause has been updated to require the utility to notify customers or consumers that the address has been registered as a life support

address, and to ensure that the utility does not deregister a premises for failure to provide medical confirmation without making minimum contact attempts.

### **Part 2.3 Protection of customers**

Clause 11 obliges utilities to comply with guaranteed service levels (GSLs), pay rebates to customers when service performance has not met the GSL, and provide customers with information about the GSLs. The old Code required a customer to apply for a rebate when a minimum service standard was not met. Clause 11 has been updated to require a utility to monitor GSL compliance and to pay a customer the applicable rebate when the service level parameters have been exceeded. A customer is no longer required to apply for a rebate. The utility must advise the customer when they have made a GSL payment. Subclause 11.4(1) clarifies that rebates are not compensation.

Clause 12 deals with the charges that utilities apply for the supply or sale of utility services. Clause 12 requires utilities to make information about utility charges available to customers, as well as detailing how variations to charges are applied. Subclause 12.2(2) clarifies that a utility may calculate and allocate charges on a pro rata basis to effect a price variation when it falls within a billing period.

Clause 13 deals with a range of customer billing matters including billing periods, issuing and content of bills, historical billing information, payment and review of bills, overcharging, undercharging, final bills, difficulties in payment of accounts, and government rebates. Clause 13.2(2) clarifies that a water and sewerage utility may charge a service charge in circumstances where the customer is not consuming the service, for example on a vacant block. The requirements under clause 13.5 group similar items together and clarify content requirements.

Clause 14 specifies the requirements for utilities to develop and implement a hardship policy for customers in residential premises. The clause includes minimum requirements that must be covered in a hardship policy.

Clause 15 sets out interest payable on accounts and other charges.

Clause 16 specifies information that a utility must provide to a customer after entering a new contract.

### **Part 3 Protection of franchise customers**

Part 3 deals with protections for franchise customers. Franchise customers are defined under the Utilities Act.

#### **Part 3.1 Standard customer contracts**

Part 3.1 relates to standard customer contracts for franchise customers. Part 3.1 differs to part 3.2 (below), in that the latter covers requirements for both standard customer contracts and negotiated customer contracts.

Clause 17 is concerned with standard customer contracts. It explains when a utility is required to use a standard customer contract and what such contracts must contain.

Clause 18 sets out a utility's obligation to provide utility services to customers, the circumstances under which this obligation does not apply, and when a customer is deemed to have entered into a contract.

Clause 19 deals with the availability of standard customer contracts and variations to standard customer contracts.

### **Part 3.2 Standard customer contracts and negotiated customer contracts**

Part 3.2 sets out matters that apply to franchise customers on a standard customer contract or a negotiated customer contract.

Clause 20 deals with the disconnection of premises from a water or sewerage network and the restriction of water supply. It specifies the circumstances in which supply may be disconnected or restricted and the process to be followed by the utility before supply can be restricted after a customer has failed to pay their account. Clause 20.5 limits a utility's right to restrict water to a premises to a flow rate of no less than two litres per minute. This clause sets out that a utility cannot disconnect water supply for an outstanding debt.

Clause 21 provides that disconnections and restrictions of supply may also occur in emergencies or under restriction schemes, and that any restriction or rationing of supply must be in accordance with the utility's emergency plan or restriction scheme.

Clause 22 outlines the circumstances in which a utility may interrupt the supply of utility services, the notice a utility must give in the case of planned interruptions, and a utility's obligation to restore supply as soon as practicable.

Clause 23 deals with security deposits. It specifies the circumstances in which a utility may require a security deposit, the maximum amount that may be required, interest on, and repayment of, security deposits, and the purposes for which security deposits may be used.

### **Dictionary**

The dictionary forms part of the Code.

### **Schedule 1: Water and sewerage services guaranteed service levels**

Schedule 1 sets out GSLs for water and sewerage services. The schedule includes a table that includes GSL parameters, thresholds and rebates that must be paid to customers by a utility if the threshold is not met. The schedule includes information regarding GSL parameters and exclusions.

### **Schedule 2: NERL retailer, gas distributor and electricity distributor guaranteed service levels**

Schedule 2 sets out GSLs for NERL retailers, gas distributors and electricity distributors. The schedule includes a table that includes GSL parameters, thresholds and rebates that must be paid to customers by a utility if the threshold is not met. Some of the GSLs do not apply to NERL retailers as they relate to the performance of the distribution network. The schedule includes information regarding GSL parameters and exclusions.

**Schedule 3: Application to NERL retailers**

Schedule 3 sets out which clauses of the Code apply to NERL retailers.