

Utilities (Electricity Feed-in Code) Determination 2020

Disallowable instrument DI2020–86

made under the

***Utilities Act 2000* s59 (Determined codes), s63 (Public access) and
Legislation Act 2001 s46.**

1 Name of instrument

This instrument is the *Utilities (Electricity Feed-in Code) Determination 2020*.

2 Commencement

This instrument commences on 1 July 2020.

3 Revocation of code

The Commission revokes the *Utilities (Electricity Feed-in Code) Determination 2015*, DI2015-256.

4 Determination of code

The Commission determines the attached Electricity Feed-in Code under section 59 of the *Utilities Act 2000*.

5 Public access to documents

Copies of the Electricity Feed-in Code are available for inspection by members of the public between 9:00 am and 5:00 pm, Monday to Friday, at the Commission's offices at Level 8, 221 London Circuit, Canberra City ACT and on the Commission's website (www.icrc.act.gov.au). Copies of these documents can be made at the Commission's offices. Electronic copies are available on request. No charge will apply.

Joe Dimasi
Senior Commissioner
Independent Competition and Regulatory Commission
30 April 2020

Australian Capital Territory



ICRC

Independent Competition and Regulatory Commission

ELECTRICITY FEED-IN CODE 2020

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1. INTRODUCTION

1.1 Industry codes

The Electricity Feed-in Code is an industry code under Part 4 of the *Utilities Act 2000* (the **Utilities Act**) that has been determined by the Independent Competition and Regulatory Commission (the **Commission**).

Section 55(1) of the **Utilities Act** provides that 'an industry code may set out practices, standards and other matters about the provision of a utility service'.

Section 56(1) of the **Utilities Act** states that 'for this Act, an industry code applies to a utility if it applies to the provision of utility services of a kind that the utility is licensed to provide.'

The circumstances under which the Commission may determine an industry code and the processes to be followed are detailed in sections 59 and 60 of the **Utilities Act**.

1.2 Utility / NERL retailers to comply with industry codes

The **Utilities Act** provides, in section 25(2)(iii) that a utility licence is subject to the condition that the utility comply with each industry code that applies to the utility.

Section 56A of the **Utilities Act** allows the **Commission** to determine that an industry code applies to a **NERL retailer** if the **Commission** is satisfied on reasonable grounds that it is appropriate for the code to apply to the retailer.

The **Commission** has determined that the Electricity Feed-in Code applies to **NERL retailers** authorised to supply electricity.

The **Utilities Act** provides, in section 75H(1)(a) that a **NERL retailer** commits an offence if the retailer contravenes an industry code that applies to the retailer.

1.3 Effect of inconsistency of industry codes

Under section 56(3) of the **Utilities Act**, 'an industry code has no effect to the extent of any inconsistency with this Act, a related law or a technical code'.

1.4 Electricity Feed-in Scheme

A scheme (the **Electricity Feed-in Scheme**) for feed-in from renewable energy generators to the electricity network is established under the *Electricity Feed-in (Renewable Energy Premium) Act 2008* (the **Electricity Feed-in Act**).

The **Electricity Feed-in Act** provides in section 6(2) for a range of actions required of **Electricity distributors**, including connecting a renewable generator to the distributor's network (the **distributor actions**) and in section 6(3) for actions required of a **NERL retailer** (the **supplier actions**). Section 7 of the **Electricity Feed-in Act** provides that the **distributor actions** are a utility service.

2. PURPOSE AND APPLICATION OF THIS CODE

2.1 Purpose

The purpose of this Code 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 Act**.

2.2 Application

This Code applies to:

- (a) **Electricity distributors**
- (b) **NERL retailers.**

2.3 Other applicable laws

This Code is in addition to, and does not limit, the rights and obligations of **Electricity distributors** and **NERL retailers** under the **Utilities Act**, the **Electricity Feed-in Act** and any other applicable **law**.

3. DICTIONARY

3.1 Dictionary attached

The Dictionary at the end of the Electricity Feed-in Code is part of this Code.

4. DISTRIBUTOR OBLIGATIONS

4.1 Distributor to detail arrangements to NERL retailer

The **Electricity distributor** must,

- (a) upon request, provide to a **NERL retailer** a statement of the terms on which it will provide the relevant **distributor actions** to the **Occupier**. The **Network Use of System Agreement**, if any, will apply to the **distributor actions** so far as relevant.
- (b) upon application from an **Occupier**, which may be received via the **Occupier's** chosen **NERL retailer**, provide the relevant **distributor actions** in accordance with a contract with the **Occupier** either directly or via the **NERL retailer** as agent of the **Electricity distributor** for that purpose.

4.2 Distributor to alert NERL retailer and Occupier of start dates

The **Electricity distributor** must, as part of its response to an application for **distributor actions**, inform the **NERL retailer** and the **NERL retailer** must inform the **Occupier** of the date from which the 20-year period for the payment of a premium rate as provided for in section 11 of the **Electricity Feed-in Act** commenced.

4.3 Dispute resolution—NERL retailer disputes

Disputes between **Electricity distributors** and **NERL retailers** in relation to the **Electricity Feed-in Scheme** will be resolved in accordance with the arrangements set out in the **Network Use of System Agreement** in place between the parties, if any.

If no **Network Use of System Agreement** exists and either party gives the other a notice of dispute under this agreement, the following procedure will apply:

- (a) if the dispute comes within clause 8.2 of the *National Electricity Rules* - the dispute resolution procedure in those rules will apply; or
- (b) if the dispute is over a technical matter or in relation to a matter dealt with under clause 8.11 of the *National Electricity Rules* - the procedure in Schedule 1 (Expert Resolution) of this Code will apply; or
- (c) otherwise - the procedure in Schedule 2 (Mediation) of this Code will apply.

If there is a dispute over whether a matter is a technical matter or not, then the matter will be referred in accordance with the procedure in Schedule 1 for the relevant independent expert to determine whether the matter should be determined in accordance with Schedule 1 (Independent Expert) or Schedule 2 (Mediation).

No party may have recourse to litigation without first having complied with this clause 4.3.

This clause does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

All notices issued under this clause must be sent to the address of the relevant party notified in writing by the relevant party.

Notices are deemed to be received:

- (d) in the case of delivery by post, *2 business days* after the date of posting;
- (e) in the case of fax, on receipt by the sender of a transmission report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number and indicating that the transmission has been made without error, unless the recipient notifies the sender within 24 hours of the fax being sent that the fax was not received in its entirety in legible form; or
- (f) in the case of email, when the email is capable of being retrieved by the recipient at the address notified by the recipient to the sender

If a notice is received on a day which is not a *business day* or after 5.00 pm on a *business day*, it is taken to be received on the next *business day*.

4.4 Dispute resolution—Occupier disputes

- (1) Disputes between **Electricity distributors** and **Occupiers** of premises in relation to the **Electricity Feed-in Scheme** will be resolved in accordance with the **Utilities Act** and complaints procedures developed by the **Electricity distributor** in accordance with the **Consumer Protection Code**.

*Note: An **Occupier** may have rights to refer a dispute to the **ACAT** under Part 12 of the **Utilities Act** (Complaints to ACAT about Utilities)*

5. NERL RETAILER OBLIGATIONS

5.1 NERL retailer to detail arrangements to Occupiers

The **NERL retailer** must provide a statement of the terms on which it will provide the **supplier actions** to an **Occupier** from whom an application has been received. Items (a) to (c) are the minimum requirements for inclusion:

- (a) the information that will be provided to **Occupiers** when a payment for renewable energy is made, including the amount and value of any energy generated from the premises
- (b) the frequency of payments
- (c) the method and circumstances of payment to **Occupiers**.

The terms may provide that payments can be by way of an offset against the **Occupier's** electricity account.

5.2 Dispute resolution—distributor disputes

Disputes between **NERL retailers** and **Electricity distributors** in relation to the **Electricity Feed-in Scheme** will be resolved in accordance with the procedure in clause 4.3.

5.3 Dispute resolution—Occupier disputes

- (1) Disputes between **NERL retailers** and **Occupiers** of premises in relation to the **Electricity Feed-in Scheme** will be resolved in accordance with the **Utilities Act** and complaints procedures developed by the **NERL retailer** in accordance with the **Consumer Protection Code**.

*Note: An **Occupier** may have rights to refer a dispute to **ACAT** under Part 12 of the **Utilities Act** (Complaints to ACAT about Utilities)*

6. OCCUPIER PROTECTIONS AND OBLIGATIONS

6.1 Applicability of Consumer Protection Code provisions

Electricity distributors and **NERL retailers** must comply with the **Consumer Protection Code**.

6.2 Extended definition of 'utility service'

For the purpose of this Code, the definition of 'utility service' in the **Consumer Protection Code** is to be read to include the **distributor actions** and/or **supplier actions**.

6.3 Electricity supply debts and hardship provisions

Despite clause 6.1, a **NERL retailer** must not set terms that would require a payment owing to an **Occupier** under the **supplier actions** to be used (without the approval of the **Occupier**) to recover an **electricity supply debt**:

- (a) which is the subject of a hardship provisions under Part 2, Division 6 of the *National Energy Retail Law (ACT)*;

- (b) contrary to a direction of the ACT Civil and Administrative Tribunal under Part 12 of the **Utilities Act**; or
- (c) contrary to an arrangement for the repayment of an electricity supply debt agreed by the **Occupier** and **NERL retailer**.

6.4 Requirement for Occupier application

The **distributor actions** and **supplier actions** cannot be provided in the absence of an application from an **Occupier** of premises for such services. A person taking up occupancy of premises with an installed generation capacity is required to apply to the **NERL retailer** to participate in the **Electricity Feed-In Scheme**.

DICTIONARY

- (1) '**ACAT**' means the ACT Civil and Administrative Tribunal established under the *ACT Civil and Administrative Tribunal Act 2008* (ACT)
- (2) '**Commission**' means the Independent Competition and Regulatory Commission.
- (3) '**Consumer Protection Code**' means the **Consumer Protection Code** approved as *Utilities (Consumer Protection Code) Determination 2020* under Part 4 of the **Utilities Act**.
- (4) '**Distributor actions**' are the actions required by an **Electricity distributor** under section 6(2) of the **Electricity Feed-in Act**.
- (5) '**Electricity distributor**' means a person who holds a licence to distribute electricity under Part 3 of the **Utilities Act**.
- (6) '**Electricity Feed-in Act**' means the *Electricity Feed-in (Renewable Energy Premium) Act 2008*.
- (7) '**Electricity Feed-in Scheme**' means the scheme for the feed-in from renewable energy generators to the electricity network that is established under the **Electricity Feed-in Act**.
- (8) '**Electricity supply**' means the supply of electricity from an electricity network to premises for consumption.
- (9) '**Law**' means:
 - (a) an Act
 - (b) a subordinate law
 - (c) any other statutory instrument of a legislative nature
 - (d) the common law.
- (10) '**NERL retailer**' means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.
- (11) '**Network Use of System Agreement**' is the default or negotiated contract in place between an **Electricity distributor** and **NERL retailer** in accordance with the now revoked Electricity Network Use of System Code.
- (12) '**Occupier**' in relation to premises has the same meaning as in the **Electricity Feed-in Act**. It does not have the meaning of '**Occupier**' in the **Consumer Protection Code**.
- (13) '**Supplier actions**' are the actions required by a **NERL retailer** under section 6(3) of the **Electricity Feed-in Act**.
- (14) '**Utilities Act**' means the *Utilities Act 2000* (ACT).

Schedule 1: Dispute resolution procedure - Expert Resolution (non-National Electricity Rules disputes)

A. First stage dispute resolution

- A.1 This Schedule applies to a dispute between an **Electricity distributor** and a **NERL retailer**.
- A.2 The parties will use their reasonable endeavours to resolve the dispute within a period of 20 *business days* after a notice is given under clause 4.3.
- A.3 If the dispute remains unresolved at the end of the period referred to in clause A.2 then either party may require that the dispute be determined under clause B of this schedule.

B. Reference to and appointment of Independent Expert

- B.1 Where clause A.3 applies, either party may require that the dispute be determined by an independent expert appointed in accordance with clause B.2 of this schedule ("**Independent Expert**").
- B.2 The party wishing to have the dispute determined by an Independent Expert will give written notice to that effect to the other party specifying the nature of the dispute. The parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 5 *business days* of the date of receipt of the notice, then either party may refer the matter to the President for the time being of the Law Society of the Australian Capital Territory (or, if that body no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the Law Society of the Australian Capital Territory), to nominate a suitably qualified person to act as the Independent Expert to determine the dispute.

C. Role of Independent Expert

The Independent Expert will:

- a) act as an expert and not as an arbitrator;
- b) have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
- c) not be a former or current employee or representative of either party or of a related body corporate of either of them; and
- d) disclose fully to the parties, before being appointed, any interest or duty which may conflict with his or her position.

D. Representation and evidence

Each party:

- a) may be legally represented at any hearing before the Independent Expert;

- b) will be entitled to produce to the Independent Expert any materials or evidence which that party believes is relevant to the dispute; and
- c) will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.

E. Rules of evidence

The Independent Expert will not be bound by the rules of evidence.

F. Power of Independent Expert

The Independent Expert will have the power to inform himself or herself independently as to the facts to which the dispute relates and to take such measures as he or she thinks fit to expedite the determination of the dispute.

G. Determination

G.1 The Independent Expert will make a determination on the dispute and:

- a) will determine what, if any, adjustments may be necessary between the parties; or
- b) if relevant, determine the amendments required to the terms of this agreement.

G.2 The determination of the Independent Expert will be, in the absence of bias or manifest error, final and binding upon the parties.

H. Costs

The costs in relation to a determination by the Independent Expert will be dealt with as follows:

- a) the remuneration of the Independent Expert will be agreed by the parties;
- b) unless the parties otherwise agree, the Independent Expert will determine which party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that party was at fault or unreasonable in failing to agree to the matter under reference, and that party will bear those costs accordingly; and
- c) the parties will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the Independent Expert

Schedule 2: Dispute resolution procedure - mediation (non-National Electricity Rules disputes)

- 1.1 This Schedule applies to a dispute between an **Electricity distributor** and a **NERL retailer**
- 1.2 If the dispute is not resolved within 10 *business days* after a notice of dispute is given under section 4.3 ("**Notice Period**"), the dispute is by this clause submitted to mediation. The mediation must be conducted in Canberra. The Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes (in force as at the date of the notice) apply to the mediation, except to the extent they conflict with this Schedule.
- 1.3 If the parties have not agreed on the mediator and the mediator's remuneration within 7 days after the Notice Period, the mediator will be appointed by the President of the Australian Capital Territory Law Society or the President's nominee, at the request of either party, and that person will also determine the amount or rate of the mediator's remuneration.
- 1.4 The parties must share the costs of the mediator. Each party must pay its own costs of the mediation

Schedule 3: Code amendment history

The Electricity Feed-in Code was first determined on 27 February 2009 under the Utilities (Electricity Feed-in Code) Determination 2009 (DI2009-23).

The Code has been varied, revoked or re-determined by the following instruments. These are available on the ACT Legislation Register (www.legislation.act.gov.au/a/2000-65/default.asp).

Instrument name and number	Date of effect	Comment
Utilities (Electricity Feed-in Code) Determination 2010 (DI2010-268)	Effective from October 2010	Revoked the Code determined in 2009 and determined new Code
Utilities (Electricity Feed-in Code) Determination 2012 (DI2012-154)	Effective from July 2012	Revoked the Code determined in 2010 and determined new Code to incorporate the commencement of the NECF in the ACT
Utilities (Electricity Feed-in Code) Determination 2015 (DI2015-256)	Effective from September 2015	Made variations to the code determined in 2012 to omit reporting obligations under the Feed-in scheme. Removed clauses 4.5, 5.4 and 7 and schedule 3. Revoked DI2012-154.
Utilities (Electricity Feed-in Code) Determination 2020 (DI2020-TBA)	Effective from 1 July 2020	Revoked the Code determined in 2015 and determined a new Code to reflect commencement of a new Consumer Protection Code, (DI2020-6)