

# Utilities (Variation of industry code) Determination 2005 (No 2)

## Disallowable instrument DI2005–132

made under the

*Utilities Act 2000*, section 61

## EXPLANATORY STATEMENT

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The Independent Competition and Regulatory Commission ('the Commission') has determined the variations to the Consumer Protection Code ('the Code') detailed in the *Utilities (Variation of industry code) Determination 2005 (No 2)* under section 61 of the *Utilities Act 2000*.

These variations are intended to address identified difficulties in measuring and reporting compliance by licensed electricity, gas, water and sewerage utilities with the requirements of the Code, and in particular with the Minimum Service Standards prescribed in Schedule 1 of the Code.

### **Distinction between Customers and Consumers, Franchise and Non-Franchise Customers**

To ensure consistency between the Code and the *Utilities Act 2000*, the definitions of 'Customer', 'Consumer', 'Franchise Customer' and 'Non-Franchise Customer' in the Code have been replaced with a reference to the definitions provided by the *Utilities Act 2000* ('Utilities Act').

Previously, the Code used the term 'Consumer' to refer to both customers and consumers. Individual clauses of the Code have been varied to make it clear which provisions apply to both customers and consumers, and which provisions apply only to customers.

New provisions have been inserted to make it clear which Parts of the Code apply to all customers, and which apply only to franchise customers or to large or small non-franchise customers.

The provisions of Part 4 of the Code have been divided into three parts (Parts 4, 5 and 6) to clarify the application of those provisions.

### **Premises**

The Code in various provisions imposes requirements in relation to affected premises, or to the premises of a customer.

In recognition that the customer may not be the occupier of the premises to which utility services are supplied under a customer contract, and that multiple premises may be supplied under a single customer contract, the definition of ‘Premises’ in the Dictionary to the Code has been extended to clarify what will constitute separate premises for the purposes of the Code.

Individual provisions of the Code imposing requirements in relation to premises have been varied to make it clear that the relevant requirements apply to any premises supplied under a customer contract.

## **Notice**

Various provisions of the Code require utilities to issue notices to customers and/or consumers.

Clause 8.1 of the Code has been amended to allow customers and consumers to agree alternative arrangements for notice with utilities, except where the Code specifies a particular method of notification.

Clause 8.2 of the Code has been amended to address inconsistencies with section 250 of the *Legislation Act 2001*.

## **Obligation to comply with Minimum Service Standards**

Clause 11 of the Code requires utilities to comply with the Minimum Service Standards set in Schedule 1 of the Code, and on application by a customer or consumer to pay rebates for non-compliance.

Clause 11.3 of the Code has been amended to allow the payment of rebates by utilities to customers directly by cash, cheque or other agreed method, as an alternative to deducting the amount of the rebate from customer accounts.

A new clause 11.5 has been inserted to require utilities to inform customers and consumers of the Minimum Service Standards in Schedule 1 of the Code, and the entitlement to apply for rebates if those standards are not met.

A new clause 13.5(1)(u)(iii) has been inserted to require utilities to include a contact number for queries relating to rebates on all customer accounts.

## **Planned interruptions**

Clause 19.2(2) of the Code has been amended to require utilities to take all steps that are reasonable and practicable to ensure that the duration of any planned interruption does not exceed 12 hours.

A new clause 19.2(3) has been inserted to allow utilities to provide notice of planned interruptions by:

- issuing a broadcast on local radio or television networks, or
- placing an advertisement in a local newspaper, or
- where a planned interruption will affect multiple premises at a single site (for example all tenants in a complex of 100 units, or all stores within a shopping centre), giving notice of the premises that will be affected to the body corporate, centre management or equivalent,

where notice to individual premises is not reasonable or practicable in all the circumstances. This provision provides an alternative method for notification where the circumstances of the planned interruption do not allow utilities to issue the required 2 business days notice by other means.

A new clause 19.3(4) has been inserted to allow customers and consumers to waive their right to all or part of the minimum period of notice. Equivalent provision is currently made in relation to the notice requirements in Part 7 of the Utilities Act.

To provide clarity in the application of clause 19.2 and the associated Minimum Service Standard, a new definition of ‘Planned Interruption’ has been inserted in the Dictionary to the Code.

### **Unplanned interruptions**

Clause 19.3(2) of the Code has been amended to require utilities to take all steps that are reasonable and practicable to restore the supply of a utility service to affected premises within 12 hours of an unplanned interruption.

To provide clarity in the application of clause 19.3 and the associated Minimum Service Standard, a new definition of ‘Unplanned Interruption’ has been inserted in the Dictionary to the Code.

### **Minimum service standards**

To more accurately reflect their nature and purpose, and to distinguish more clearly between the standards set in the Code and more general performance indicators such as the national reporting requirements agreed by the Utility Regulator’s Forum, the Performance Standards set in the Schedule 1 of the Code have been redefined as ‘Minimum Service Standards’.

The variations to the standards do not, in most respects, represent substantive changes to the existing standards. Rather, by consolidating the current standards and inserting, in the Dictionary of the Code, clear definitions of terms within the standards, they provide a clear basis against which to measure the standard of service provided.

### **Customer connection times**

The rebate currently attached to this standard requires a utility, on application by the affected customer, to pay a rebate of \$60 to the customer for each day after the date the service should have been provided.

To remove the potential for rebates that are disproportionate to the inconvenience suffered, a ‘cap’ has been imposed on the total amount payable, so that a customer may apply for a rebate of \$60 per day to a maximum of \$300 (allowing 5 days). If the customer is still not connected after 5 days, they are entitled to restate their request with the utility. The standard, and the applicable rebates, will apply to the each subsequent request as though it were a new request.

### **Keeping agreed appointments**

The requirements that a utility attend an appointment with a customer or consumer within 30 minutes of the agreed time, unless at least one hour’s notice has been given that the utility will be late, and that 24 hours notice must be given if a utility cancels an appointment, have been relocated to the new clause 5(5) of the Code.

‘Appointment’ has been defined to clarify that appointments must be made by express agreement between a utility and a customer or consumer, and require attendance by both the utility and the customer and consumer. Clause 5(5) will not apply to attendance by a utility at premises where the presence of a customer or consumer is not required.

This requirement is now a substantive obligation rather than a Minimum Service Standard. Customers are no longer entitled to a rebate for non-compliance with this requirement, however, the Commission notes that compensation for loss or damage may, in appropriate cases, be available to complainants under section 209 of the Utilities Act.

### **Responding to complaints**

The application of this standard has been limited to complaints, and not queries. The standard has been extended to include verbal complaints as well as written complaints. The distinction between complaints requiring a visit to the complainant’s premises has been removed.

A new definition of ‘Complaint’ has been inserted, in the Dictionary to the Code, to ensure consistency with proposed national regulatory reporting requirements. New definitions of ‘Acknowledge’ and ‘Response’ have been inserted to clarify what action is required on the part of utilities.

Water quality complaints, which are addressed separately under clause 6 of the Water and Sewerage Service Standards Code, have been expressly excluded from this standard.

### **Response time to notification of problem or concern**

Standards 4 and 7 have been consolidated to remove unnecessary duplication of requirements.

The standard has been extended to expressly include notifications of faults or problems with the network in addition to damage caused by a person or machine.

To remove the potential for rebates that are disproportionate to the inconvenience suffered, a 'cap' has been imposed on the total amount payable, so that a customer or consumer may apply for a rebate of \$60 per day to a maximum of \$300 (allowing 5 days). If the customer or consumer has not received a response after 5 days, they are entitled to restate their notification to the utility. The standard, and the applicable rebates, will apply to each subsequent notification as though it were a new notification.

### **Planned interruptions**

This standard has been amended to ensure consistency with the variations to clause 19.2 discussed above.

### **Unplanned interruptions**

This standard has been amended to ensure consistency with the variations to clause 19.3 discussed above.

### **Water quality standards and Sewage overflows**

Standards 8 and 9 have been omitted to remove the potential for duplication of compliance and reporting requirements between the Code and the Water and Sewerage Service Standards Code.