

# Utilities (Electricity Feed-in Code) Determination 2009

## Disallowable instrument DI2009–23

made under the

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

## EXPLANATORY STATEMENT

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### *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 (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 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. For example, section 25 of the Act requires all licensees to comply with:

- any requirements under the Act or a related law
- any requirements under any other Territory law that apply to the utility in relation to the provision of a utility service
- any relevant industry or technical codes, and
- any directions given by the Commission or by the chief executive under part 5 of the Act.

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, which include newspaper advertising and a period of at least 30 days for interested people to make submission. .

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 new 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 Act:

*Consultation on the Draft Electricity Feed-in Code*

The Commission has consulted with relevant parties on the Code, in accordance with the Act. Submissions received and the outcome of consultation is detailed on the Commission's website.

*Outline of Electricity Feed-in Code*

Distributor obligations (Part 4)

Throughout the Electricity Feed-in Code the provisions of section 6(2) of the Electricity Feed-in Act are referred to as the 'distributor actions'.

Distributor to detail arrangements to supplier (clause 4.1)

The Electricity Feed-in Code provides that the distributor must, upon request, provide to an electricity supplier a statement of the terms on which it will provide the distributor actions relevant to electricity suppliers. The Network Use of System Agreement will apply to this so far as relevant. This Agreement is the contract in place between a distributor or supplier in accordance with the Electricity Network Use of System Code.

The Electricity Feed-in Code also provides that the distributor must, upon application from an occupier of premises, provide the relevant distributor actions. This provision parallels a similar obligation placed on other utility service providers in the Utilities Act. Provision would be by way of a negotiated contract with the occupier for distributor actions relevant to the occupier. The Electricity Feed-in Code recognises that, following usual electricity industry practice, such an application may be received via the occupier's chosen electricity supplier and that the negotiated contract can be either direct between the parties or via the electricity supplier as agent of the distributor.

Distributor to alert supplier and occupier of start date (clause 4.2)

The Electricity Feed-in Code provides that an electricity distributor, as part of its response to an application for connection, should inform the electricity supplier and the occupier of the date on which the 20-year period provided for in the Electricity Feed-in Act commenced.

Suppliers and occupiers of premises should therefore be aware of when the 20-year period will end, a fact particularly relevant to occupiers moving into premises where a renewable generator has already attracted premium payments. The distributor is the party best equipped to provide such information.

#### Dispute resolution (clause s 4.3 and 4.4)

The opportunity has been taken to clarify in the Electricity Feed-in Code that disputes between the distributor and the parties to which it has obligations should be handled under existing arrangements. For disputes between distributors and suppliers, the existing arrangements are those set out in the Network Use of System Agreement between the parties. For disputes between distributors and occupiers, the provisions are the Utilities Act and the requirements of the Consumer Protection Code. This is primarily clause 6 of the Consumer Protection Code.

#### Reporting to Commission (clause 4.5)

The Electricity Feed-in Code also sets up a requirement for the distributor to report to the Commission on the matters set out in Schedule 1 of the Electricity Feed-in Code. Reports are to be provided quarterly. The date for the commencement of the reporting arrangements is not stated. This will be notified to distributors by the Commission.

Utility reports will assist the Commission in assessing how the scheme is developing and what, if any, problems have emerged. The reports will also be important for the ACT Government in determining the extent to which the Feed-in Scheme is achieving its environmental objectives. The quarterly timeframe is consistent with reporting obligations under the ACT Climate Change Strategy.

#### Supplier obligations (Part 5)

Throughout the Electricity Feed-in Code, the provisions of section 6(3) of the Electricity Feed-in Act are referred to as the ‘supplier actions’.

#### Supplier to detail arrangements to occupiers (clause 5.1)

The Electricity Feed-in Code provides that the supplier must provide a statement of the terms on which it will provide its required actions to occupiers. A minimum set of matters to be covered is: the information that will be provided to occupiers of premises when a payment is made; the frequency of payments; and the method and circumstances of payment of occupiers. The statement is to be by way of a separate negotiated contract or through amendment of an existing contract.

The clause also confirms that a contract may provide that payment can be by way of an offset against an occupier’s electricity account, an arrangement that is expected to be the most usual and convenient arrangement for both electricity suppliers and occupiers.

#### Dispute resolution (clauses 5.2 and 5.3)

The provisions mirror those contained in the Distributor Obligations (Part 4, clauses 4.3 and 4.4).

#### Reporting to Commission (clause 5.4)

The provisions mirror those contained in the Distributor Obligations (Part 4, clause 4.5).

## Occupier protections and obligations (Part 6)

### Applicability of Consumer Protection Code provisions and extended definition of ‘utility service’ (clauses 6.1 and 6.2)

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.

Some provisions of the Consumer Protection Code are not applicable to the Feed-in Scheme. For example, provisions relating to standard customer contracts (Clause 3.1 of the Consumer Protection Code) are not applicable as the Electricity Feed-in Code provides that negotiated contracts are to be used to set out terms and conditions for the Feed-in Scheme (clauses 4.1 and 5.1). Provisions relating to disconnection of supply are not relevant to the Feed-in Scheme as they relate to distribution services, not the ‘distributor actions’ or the ‘supplier actions’ associated with the Feed-in Scheme.

Some Consumer Protection Code provisions are applicable to the Feed-in Scheme. As examples, provisions relating to the conduct of utilities (e.g. that a utility must act ‘ethically, fairly and honestly’ in clause 5 of the Consumer Protection Code) and the service standard for responding to customer complaints (Schedule 1 to the Consumer Protection Code) are clearly applicable to the Feed-in Scheme.

A few provisions would be applicable to the Feed-in Scheme if the term ‘utility service’ as defined in the Consumer Protection Code covered the utility services (the obligations on distributors and suppliers) set up under section 11 of the Electricity Feed-in Act. The intent of the extended definition of ‘utility service’ in clause 6.2 of the Electricity Feed-in Code is to ensure that Consumer Protection Code provisions such the obligations under utility licences set out in clause 4 of the Consumer Protection Code apply to the Feed-in Scheme.

### Electricity supply debts and hardship provisions (clause 6.3)

Clause 5.1 of the Electricity Feed-in Code requires the supplier to detail arrangements to occupiers of premises. The Electricity Feed-in Code states that, despite this, a supplier must not set terms that would require a payment owing to an occupier of premises for renewable generation to be used to recover (without the approval of the occupier) an electricity supply debt:

- which is the subject of a hardship application under Part 12 of the Utilities Act
- contrary to a direction of the ACT Civil and Administrative Tribunal (ACAT) under Part 12 of the Utilities Act, or
- contrary to an arrangement for the repayment of an electricity supply debt agreed by the occupier and electricity supplier.

The intention is to make clear that ACAT directions and repayment arrangements cannot be overridden by contract provisions and that occupiers’ feed-in tariff payments taken without their knowledge.

### Requirement for occupier application (clause 6.4)

The Electricity Feed-in Code clarifies that 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 electricity supplier to participate in the scheme.

### Review of Code (clause 7)

In clause 7, the Electricity Feed-in Code provides for the Commission to review the Code in the light of experience with the Feed-in Scheme within two years of the commencement of the Feed-in Act. Matters to be included in the first review include whether scheme-specific minimum service standards (similar to the minimum service standards for other utility services that are set out in the Schedule to the Consumer Protection Code) and the continuing appropriateness of all provisions relating to reporting to the Commission.

### Applicability of Consumer Protection Code provisions to the Feed-in Scheme (Schedule 2)

<b>Part or clause</b>	<b>Provision</b>	<b>Applicability to Feed-in Scheme</b>	<b>Comment</b>
4	Obligations under licence	Applicable (reading 'utility service' to include distributor actions and supplier actions)	
5	Conduct of utilities	Applicable	
6	Complaints	Applicable	
7	Provision of information	Applicable	
8	Notice	Applicable	
9	Summary of Consumer and Utility Rights	Applicable	
10	Special needs	Not applicable	Provision relates to supply to a premises
11	Obligation to comply with service standards	Only service standard 3 of Schedule 2 of the Consumer Protection Code applies.	No service standards specific to the Feed-in Scheme have yet been defined
12	Charges	Applicable	
13	Customer accounts	Only applicable to the extent that information relating to the Feed-in Scheme appears on a customer account	
14	Interest and other charges	Not applicable	
Part 3.1 (Clauses 15-16 and 18-19)	Matters that must be addressed in standard customer contracts	Not applicable	Relevant negotiated contract provisions will apply
Part 3.1 (Clauses 17 and 20)	Matters that must be addressed in standard customer contracts	Not applicable	
Part 3.2 (Clause 21)	Standard customer contracts	Not applicable.	

Part or clause	Provision	Applicability to Feed-in Scheme	Comment
22	Negotiated contract provisions	Applicable	
23	Disconnection of supply	Not applicable	Provision relates to failure to pay account for supply
24	Cooling off period	Not applicable	
25	Recession under Negotiated Customer Contract	Not applicable	
26	Notice where Negotiated Customer Contract Ends	Not applicable	
27	Security deposit	Not applicable	
28	Utility to Make Contract available to customers	Applicable	
Part 5 (Clauses 29 and 30)	Marketing of electricity and gas supply services	Not applicable	Provision relates to electricity and gas supply services
31	Contract information	Applicable	
32	Informed consent	Not applicable	Provision relates to the transfer of electricity of gas supply
33	New occupants	Not applicable	See section 6.4 of the Information paper – an application is required for participation in the Feed-in Scheme

### *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](http://www.icrc.act.gov.au). Electronic copies are available on request. No charge will apply.