

Australian Capital Territory

# Utilities (Consumer Protection Code) Determination 2009

Disallowable instrument DI2009–75

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

The Code applies to all utilities licensed under the Utilities Act to provide utility services to customers and consumers. It is divided into a number of parts:

- Part 1 addresses formal matters of the Code.
- Part 2 contains generic provisions that apply to all utilities, including utilities that provide services to large non-franchise customers. However, these utilities may agree with customers terms and conditions other than those specified in the Code.
- Part 3 applies only to utilities in the provision of utility services to franchise customers, that is network services and gas and electricity supply to customers on standard customer contracts.
- Part 4 applies to suppliers of electricity and gas supply services to small non-franchise customers.
- Part 5 deals with marketing of electricity and gas to franchise customers and small non-franchise customers.
- Part 6 deals with customer transfers and new supply arrangements.

The Code is enforceable under the Utilities Act. The Commission is responsible for monitoring the compliance of utilities with this and other industry codes.

### *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.

### *Revocation and remaking of Code*

The Disallowable Instrument revokes the Code determined by the Commission under the Utilities (Consumer Protection Code) (Industry Code) Determination 2006 (No 1), DI2006–267, as notified on 21 December 2006 and determines a new Code as set out in the Attachment to the Disallowable Instrument.

This process ensures that an authorised version of the Code is available through the Legislation Register.

### *Consultation on variations to Code*

In accordance with the Utilities Act, the Commission has consulted with relevant parties on the variations between the new and previous Codes. The submissions received and the outcome of consultation is detailed on the Commission’s website.

### *Outline of variations to Code*

The variations to the Code incorporated into the new Code are as detailed below.

#### Telemarketing

The Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth) establishes a minimum set of requirements for telemarketing and research calls. These cover calls relating to utility services. Provisions of the Standard and the Code do not always align.

Clause 2 provides that the Code supplements and does not limit any rights a customer or a consumer under other laws. It has been amended to add a reference to the *Do Not Call Register Act 2006* (Cth) and the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth).

In addition, the following note has been added after subclauses 5(2) and 30.1(2) which deal with the times during which customers or consumers may be contacted:

Note: When contact is made by way of a telephone call subject to the requirements of the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (Cth), the permissible times for contact may be different.

#### Note concerning the meaning of “customer” and “consumer”

Subclause 3.2(2) of the Code includes a note that details circumstances in which a consumer of a utility service is not also a customer. The note that appeared in the previous version of the Code stated that “in a household of four people, there may be one Customer and three Consumers”. This was incorrect; four consumers would be present. The note has been varied to correct this error and includes the following:

A Customer may not be the only occupant of the Premises supplied under the Customer Contract. For example, in a household of four people, there may be one Customer and four Consumers one of whom is a Customer.

#### Special needs

Clause 10 of the Code sets out provisions relating to premises as which a person requires a life support machine, the operation of which requires a utility service. Clause 10.1 deals with disconnection and interruption to services at such premises.

The following note has been inserted after clause 10 of the Code to clarify that the obligations in clause 10.1 still allows disruption in certain situations to a utility to safely carry out necessary work on the network and for emergency situations beyond the utility’s control:

Note: There is a deliberate distinction made in clause 10.1 between disconnection and disruption of services to allow a utility to safely carry out work on the utility’s network and for emergency situations beyond the utility’s control.

To provide further clarification, the heading of clause 10.1 has been changed from “Utility must not disconnect” to “Disconnection and interruption to services”

### Additional note concerning the definition of “complaint”

Clause 13.5 deals with matters that must be contained in a customer account. Subclause 13.5(1)(u) requires the inclusion of a telephone number for the customer to call for any queries relating to a number of matters. These include how to make a hardship complaint to the ACAT.

The Code has been varied to add an additional note in the following terms:

Note: Complaints (including ‘hardship complaints’) to the ACAT as provided in s 172 of the Utilities Act are not covered by the definition of ‘Complaint’ in the Dictionary to this Code.

The variation ensures consistency with the definition of “complaint” in the Dictionary.

### Customer notice period – disconnection or vacating

Clause 13.11 deals with final customer accounts on disconnection or on vacating premises.

Subclause 13.11(2) of the Code has been varied to change the notice period required from a customer to disconnect utility services from their premises or to vacate premises to “at least 3 business days”. The wording in the previous Code was “up to 3 business days”.

The previous formulation was very unclear. It had been argued that it could be taken to prevent a customer from giving more than 3 days advance notice.

### Hardship information requirements

Clause 13.14 contains provisions relating to customers who have informed a utility that they are experiencing difficulty in paying a customer account or require payment assistance. Subclause 13.14(1) sets out what a utility must offer such customers. This includes information about, and referral to, any Territory Government assistance program and information about independent financial counselling services.

The Code has been varied to add a new subclause 13.15(1)(b) to require the utility to provide to such customers information about, and referral to, any hardship program offered by the Utility.

### Default rate

The Dictionary to the Code includes a definition of “default rate”. The term is relevant to clause 14.1 of the Code (the interest that may be charged on the overdue account of a customer in certain circumstances).

The previous definition made reference to the repealed section 70 of the *Supreme Court Act 1933*.

The Dictionary has been varied to update the definition of “default rate”:

“Default rate” means the Supreme Court after-judgment rate of interest that is fixed from time to time in Schedule 2 of the Court Procedures Rules 2006.

### Minimum service standards – complaint acknowledgement

Schedule 1 to the Code sets out a number of minimum service standards. Under clause 11 of the Code, there is an obligation for utilities to comply with minimum service standards.

Included in Schedule 1 to the Code is a standard relating to the acknowledgement of complaints from a customer or consumer.

The standard in the previous Code required acknowledgement of the Complaint within 10 business days. This standard was numbered as 3 in the previous Code; the Code has now been varied to correct the numbering to 2.

The 10-day standard was not consistent with clause 6.2 of the Code which requires that “the procedures implemented by a utility under clause 6.1(1) [Complaints Procedures] must provide for the handling of a Complaint in accordance with the relevant Australian Standard on Complaints Handling”. The relevant Australian Standard, AS ISO 10002-2006 *Customer satisfaction - Guidelines for complaints handling in organizations*, calls for immediate acknowledgement. Standards Australia Handbook HB 229-2006 *The why and how of complaints handling* provides additional guidance.

The standard has been varied to require an acknowledgement “immediately or as soon as practicable”. This will provide for consistency with clause 6.2 of the Code by linking the minimum service standard with the terms of the Australian Standard and Handbook HB 229-2006.

The variation recognises the relevance of matters such as the type of complaint to be acknowledged and the volume of complaints being received, as opposed to setting an arbitrary limit that could be reasonable for some cases (e.g. written complaints during a period of high workloads) but excessive for other cases (e.g. oral or emailed complaints).

### Formation of ACT Civil and Administrative Tribunal

The Code has been varied to update references to the former Essential Services Consumer Council (ESCC).

On 29 July 2008, the *Justice and Community Safety Legislation Amendment Act 2008 (No 2)* amended the Utilities Act to rename ESCC as the Energy and Water Consumer Council (EWCC). On 2 February 2009, the *Act Civil and Administrative Tribunal (Legislative Amendment) Act 2008 (No.2)* amended the Utilities Act to change references to the EWCC to the ACT Civil and Administrative Tribunal (ACAT) and change the functions of the former EWCC.

A definition of ACAT has been inserted into the Dictionary of the Code.

#### NEMMCO and AEMO

References in the Code to the National Electricity Market Management Company Ltd (NEMMCO) have been updated to the Australian Energy Market Operator (AEMO). AEMO is the new national energy market operator that will commence operations on 1 July 2009.

A definition of AEMO has been inserted into the Dictionary of the Code.

#### Emergency management legislation

The Dictionary to the Code includes a definition of “declared emergency”. The definition has been updated to state that “declared emergency” has the same meaning as in the *Emergency Act 2004* (ACT). This replaces a reference to the repealed *Emergency Management Act 1999*.

#### Other changes

In addition, the new Code incorporates a number of corrections to formatting (principally capitalisation) and grammar. These represent no substantive change to the previous provisions.

#### *Public access to the Code*

Copies of the 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.