

Utilities (Consumer Protection Code) Determination 2012

Disallowable instrument DI2012–149

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 (the Code) is an industry code determined by the Independent Competition and Regulatory Commission (the Commission) under the *Utilities Act 2000* (the Utilities Act). 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 generally applies to Utilities licensed under the Utilities Act to provide Water and Sewerage Utility Services to Customers and Consumers. Electricity and Gas Distribution and Retail customers are provided protection under the National Energy Customer Framework. However, the Minimum Service Standards set out in clause 11 and schedule 1 of the Code also apply to Electricity and Gas Retailers authorised under the National Energy Retail Law and Electricity and Gas Distributors.

The Minimum Service Standards set out in clause 11 and schedule 1 of the Code that apply to Electricity and Gas Retailers authorised under the National Energy Retail Law and Electricity and Gas Distributors will be reviewed in the near future to assess their effectiveness under the National Energy Customer Framework.

The Code is enforceable under the Utilities Act. The Commission is responsible for monitoring the compliance of utilities with 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 relevant industry or technical 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 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 to be followed unless the Commission is satisfied under section 61 that “the variation is unlikely to adversely affect anyone and would not materially alter the code”.

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.

The *National Energy Retail Law (Consequential Amendments) Act 2012* amendment of the Utilities Act allows the Commission to determine which Industry Codes apply to retailers authorised under the National Energy Retail Law. The Commission has made a determination making the Minimum Service Standards set out in clause 11 and schedule 1 of the Code also apply to Electricity and Gas Retailers authorised under the National Energy Retail Law.

Revocation and remaking of Code

This Disallowable Instrument revokes the Code determined by the Commission under the *Utilities (Consumer Protection Code) Determination 2010 (No 2)*, DI2010-178 and determines a new Code as set out in the Attachment to the Disallowable Instrument.

The variations between the Code as determined under DI2010-178 and the new Code are set out below. This revocation and remaking process ensures that an authorised version of the Code is available through the Legislation Register.

Outline of variations to Code

The variations to the Code incorporated into the new Code implement policy objectives of the National Energy Customer Framework.

The Code now generally only applies to Utilities licensed under the Utilities Act to provide Water and Sewerage Utility Services to Customers and Consumers. Electricity and Gas Distribution and Retail customers are provided protection under the National Energy Customer Framework.

The exception is that the Minimum Service Standards set out in clause 11 and schedule 1 of the Code also apply to Electricity and Gas Retailers authorised under the National Energy Retail Law and Electricity and Gas Distributors.

There have been no substantive changes to any of the obligations contained in the Code, section numbers have remained the same to minimise required consequential changes to standard customer contracts at short notice. The Code will be reviewed in the near future to allow for a more substantive consultation process.

Consultation on variations to Code

In accordance with the Utilities Act, the Commission has consulted with relevant parties on the variation to the Code. A notice was also published in the Canberra Times and on the Commission's website inviting comments. The submissions received and the outcome of consultation is detailed on the Commission's website.

In accordance with the requirements of the Utilities Act, the Commission 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.

The Commission 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 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.