

Australian Capital Territory

Utilities (Consumer Protection Code) 2003 (No 1)

Disallowable Instrument DI2003-147

EXPLANATORY STATEMENT

The Consumer Protection Code outlines the basic rights of consumers and utilities with respect to access to, and provision of, utility services. The code was determined by the Minister on 21 December 2000 as a first industry code. This was an exercise of power under the *Utilities Act 2000* (“the Act”), section 235 (now expired). The expiry of the section does not change its legal effect.

Because of the Act, section 235 (9), the Act applies to all first industry codes as if they had been determined or approved under part 4 of the Act. Part 4 provides for the determination of codes by the ICRC (see section 59). The effect of section 235 (9) in this case is that for all purposes the Minister’s determination of 21 December 2000 is treated as if it had been made by the ICRC.

Amendments to the Consumer Protection Code are necessary to accommodate changes in the energy market, in particular the opening of the electricity retail market, and to remedy a number of other problems that have been identified with the code.

The Act provides for variations to be made to industry codes. However, given the extent of the amendments required, the ICRC proposes to revoke the determination of the Consumer Protection Code and to remake the code in its amended form.

The majority of the rights and obligations contained in the old code have been preserved in the new code. The code also contains a number of new obligations and amendments of a house-keeping nature.

The Act does not expressly provide for revoking industry codes, but the Legislation Act, section 180, makes clear that if an entity has power to do something, it also has power to undo it.

The Act, section 59 (Determined codes), provides for the determination of codes by the ICRC. Through the operation of the Legislation Act, section 180, the power to determine codes also includes the power to revoke a determination.

Therefore the ICRC can revoke determinations of first industry codes made by the Minister.

Details of the Consumer Protection Code, as remade, are:

Part 1 - Preliminary

Clauses 1, 2 and 3 deal with the purpose, relationship with other laws, and format and application of the code. Clause 3 also defines consumers and customers of utility services. It makes the point that whilst all customers are consumers, not all consumers are customers. A distinction between the two has therefore had to be made in some parts of the code.

Part 2 – Protection of Customers and Consumers

This part outlines matters that relate to the protection of consumers and customers and that utilities must comply with in the provision of utility services. The provisions in this part apply to all licensed utilities. This part has been expanded to include a number of generic provisions that previously applied only to utilities in the provision of services to franchise customers, namely provisions that deal with the giving of notice, charges and customer accounts. On reviewing the code it was felt that there was no reason why these provisions should not apply to all utilities. Likewise this part previously contained provisions specific to franchise customers. These have been transferred to the appropriate part of the code.

Part 2.1 concerns utilities' obligations under law. The provisions in Part 2.2 relate to consumers of utility services as a whole. Part 2.3 contains provisions that relate specifically to customers.

Part 2.1 – Obligations of the Utility under Law

Clause 4 refers to utilities' obligations under their licences to comply with the law, applicable industry and technical codes under the Act, and any directions and guidelines issued by the ICRC or the technical regulator.

A new clause has been added to clarify utilities' responsibilities for the conduct of their agents. Utility licences provide that, despite contracting out an aspect of the provision of a utility service, a utility is not relieved of its responsibility to comply with the conditions of its licence. The new clause is intended to make it clear that utilities are responsible for the activities of, and representations made by, any agents employed by the utility in the provision of utility services, in particular the marketing of utility services.

Part 2.2 – Protection of Consumers

Clause 5 outlines how utilities should behave towards consumers, including when they must not call or contact consumers. A new provision has been added requiring utility staff and/or agents to attempt to identify themselves, as a matter of courtesy, to a consumer before entering a consumer's property unless they are reading or checking a meter or responding to an emergency. Consumers continue to have an obligation to keep their contact and account details with utilities up-to-date.

Clause 6 requires utilities to have in place internal procedures for handling consumer complaints and for these procedures to be in accordance with the

relevant Australian Standard. Other than the inclusion of a requirement to retain complaint records for at least a year after a complaint is resolved, the provision is unchanged.

Clause 7 specifies information that utilities must give consumers and customers, for example, information about the utility services provided, meter readings and customers' accounts. Utilities must now also provide information about efficient energy consumption. A utility may charge the reasonable cost of providing the information and must publish these charges on its website. Under the old code utilities were not allowed to disclose personal information about a consumer to a third party except under certain specified conditions. This provision mirrored the provisions of the *Privacy Act 1988 (Cth)*. As this Act now applies to private companies it is no longer necessary to replicate those provision in the Consumer Protection Code and the code now only makes reference to that Act's provisions.

Clause 8 is a standard provision that addresses the serving of notice on consumers. It spells out the requirements for effective notice, and when delivery is deemed. Under the old code this provision applied only to utilities in the provision of services to franchise customers. As this is a standard provision it was felt that it should apply to all utilities.

Clause 9 requires utilities to develop summaries of consumer and utility rights. It further requires utilities to make the summaries available in a number of specified formats and to provide consumers with copies of the summary. Utilities do not need to prepare summaries for non-franchise customers. The clause has been carried over to the new code largely unchanged.

Clause 10 places obligations on utilities with respect to the disconnection and interruption of utility services to premises occupied by persons using life support equipment that relies on the supply of utility services. Aside from some minor drafting amendments the clause is substantially unchanged.

Clause 11 obliges utilities to comply with specified performance standards. If a utility does not meet a specified performance standard a consumer may apply for a rebate for the non-compliance. The old code also included this obligation but the clause has been amended to make it clear that the rebate payable is limited to the affected household of a premises, not each member of the household.

Part 2.3 – Protection of Customers

Clause 12 deals with the charges that utilities make for the supply or sale of utility services. In addition to the requirement for utilities to make information about utility charges available to customers, this clause now also prohibits retrospective increases in charges, unless the ICRC has given prior approval.

Clause 13 deals with a range of customer account matters. This clause previously applied only to utilities in the provision of services to franchise customers but because the individual clauses are fairly standard it was felt that, with a few minor exceptions, it should apply to all utilities. The provisions that deal with billing periods, the issuing and content of accounts, historical billing information, payment and review of customer accounts, final accounts, difficulties in payment of accounts, and government rebates have been carried over to the new code

largely unchanged. There are also a number of significant additions. In the sub-clause dealing with account contents there is now a requirement for electricity and gas suppliers to disclose information about customers' greenhouse gas emissions and, if available, about the contribution of Green Power to the customer's electricity consumption. This sub-clause now also requires utilities to differentiate fixed and variable utility charges, and utility charges from charges for other goods and services.

The old code made provision for customer accounts to be adjusted if a utility overcharged or undercharged only in the context of a review of the customer account. The provision has been expanded to provide for account adjustments where overcharging or undercharging has been detected through means other than a review of a customer account. In addition a hierarchy has been established for the application of payments where the utility provides more than one utility service, or goods and services in addition to utility services.

Clause 14 concerns interest payable on accounts and other charges. The clause has been carried over to the new code largely unchanged. Whereas previously it applied only to utilities in the provision of services to franchise customers it was felt that it is a standard clause and should apply to all utilities.

Part 3 – Protection of Franchise Customers

This part outlines the obligations of utilities with respect to franchise customers, that is, customers on standard customer contracts. The utilities to which this part applies are gas and electricity distributors, the water and sewerage utility, and gas and electricity suppliers (in the supply of gas and electricity to franchise customers only). Part 3.1 specifies matters that utilities must address in standard customer contracts. Part 3.2 concerns the availability of standard customer contracts and the dissemination of information contained in the contracts.

Part 3.1 – Matters that must be addressed in standard customer contracts

Clause 15 is concerned with standard customer contracts. It explains when a utility is required to use a standard customer contract and what such contracts must contain.

Clause 16 concerns the utility's obligation to provide utility services to customers and the circumstances under which this obligation does not apply. Although this provision only applies to utilities in the provision of utility services to franchise customers it was previously included in part 2 as a generic provision. Given its limited application it has been transferred to the part that deals specifically with franchise customers. The provisions contained in the clause have themselves not changed.

Clause 17 deals with the disconnection of premises from utility networks and the restriction of water supply. It specifies the circumstances in which supply may be disconnected or restricted and the process to be followed before supply can be disconnected or restricted after a customer has failed to pay their account. The clause has been redrafted to clarify the respective obligations of electricity and gas distributors and of electricity and gas suppliers with respect to the disconnection of utility services. In addition, the number of days between first and

second disconnection notices has been reduced from 14 days to 7 days, bringing this provision in line with the disconnection procedures in force in New South Wales. Utilities have now also been given a time limit of six weeks from the second disconnection notice in which to disconnect supply. If the utility still intends to disconnect after the six weeks has elapsed it must issue another notice.

Clause 18 provides that disconnections and restrictions of supply may also occur in emergencies or under restriction schemes and that any restriction or rationing of supply must be in accordance with the utility's emergency plan or restriction scheme. These provisions have been carried across from the old code.

Clause 19 outlines the circumstances in which a utility may interrupt the supply of utility services, the notice a utility must give in the case of planned interruptions and load shedding, and a utility's obligation to restore supply as soon as practicable. These provisions are substantially unchanged.

Clause 20 deals with security deposits. It specifies the circumstances in which a utility may require a security deposit, the maximum amount that may be required, interest on, and repayment of, security deposits, and the purposes for which security deposits may be used. Under the old code a utility could require a deposit if it believed that the customer had, in the previous 2 years, committed an offence under the Act with respect to the theft of supply or network damage. Theft of supply and network damage are network issues. Given that security deposits relate to customer billing and are therefore only relevant to suppliers that clause has been deleted from the new code. A new provision that restricts the use of security deposits to the recovery of charges related to the supply or sale of utility services has been added. Provision has also been made for the Essential Services Consumer Commission (ESCC) to set an upper limit for security deposits for individual customers or classes of customers, such as pensioners.

Part 3.2 – Standard Customer Contracts

Clause 21 deals with the availability of standard customer contracts and variations to standard customer contracts. Although this clause only applies to utilities in the provision of utility services to franchise customers it was previously included in part 2 as a generic provision. Given its limited application it has been transferred to the part that deals specifically with franchise customers. The clause has also been expanded to require utilities to publish summaries of any variations to the standard customer contract in the press.

Part 4 – Protection of Small, Non-Franchise Customers

Part 4 is a new part that applies to utilities in the provision of utility services to small non-franchise customers. Small customers are customers that use less than 100Mwh of electricity, and less than 1 Tj of gas per annum. The provisions contained in this part mirror the provisions in part 3, but are less restrictive. Part 4.1 specifies matters that utilities must address in negotiated customer contracts. Part 4.2 concerns the availability of the contracts. Part 4.3 deals with the marketing of electricity and gas supply services.

Part 4.1 – Matters that must be addressed in negotiated customer contracts

Clause 22 is concerned with negotiated customer contracts. It explains when a utility is required to use a negotiated customer contract and what negotiated customer contracts must contain.

Clause 23 deals with the disconnection of premises from utility networks for failure by a customer to pay their account. The clause outlines the process to be followed before supply can be disconnected and substantially mirrors the disconnection provision contained in part 3 for franchise customers.

Clause 24 requires a utility to advise a customer when their supply contract is due to come to an end and what their options are after the contract ends.

Clause 25 deals with security deposits. It is less restrictive than the equivalent clause for franchise customers and only addresses the repayment of security deposits and the purposes for which security deposits may be used.

Part 4.2 – Negotiated customer contracts

Clause 26 deals with the availability of negotiated customer contracts.

Part 4.3 – Marketing of Electricity and Gas Supply Services

Clauses 27 – 29 concern consumers. Clause 30 applies to customers.

Clause 27 outlines the marketing obligations of marketers and utilities that employ marketers.

Clause 28 establishes parameters for marketers contacting consumers, including conduct, times that consumers may be contacted, marketer identification, and the information that marketers and utilities must make available to consumers.

Clause 29 requires utilities to have the informed consent of a consumer before transferring the supply of electricity or gas. Informed consent is taken to have been given if the consumer has been fully and accurately informed of what they consent to, understands what they are consenting to, and has affirmed their consent in writing.

Clause 30 requires utilities to make provision in their negotiated customer contracts for a cooling off period and for the customer to rescind their contract in certain circumstances.

Dictionary

The Dictionary forms part of the code by virtue of the operation sub-clause 3.3.

Schedule: Performance Standards

The schedule lists performance standards that deal with customer connection times, keeping agreed appointments, responding to written customer account enquiries and consumer complaints, and to notification of complaints, and planned and unplanned interruptions to supply. The schedule also specifies the level of rebate that a consumer is eligible for if a utility fails to meet a specified performance standard. Some of the standards only apply to network operators and have been redrafted to make this clear. Otherwise the standards have been carried across unchanged from the old code.

The old code also specified a number of performance standards that did not attract rebates. As these standards were industry-specific they have been deleted from the code and are to be incorporated into the licences of the respective utilities.

The Consumer Protection Code is available for inspection during ordinary office hours from the ICRC, Level 7 Eclipse House, 197 London Circuit, Canberra City. It is also available on the ICRC's website at www.icrc.act.gov.au.