ACT Civil and Administrative Tribunal

Mr Richard Owens
Senior Commissioner
Independent Competition and Regulatory Commission
By email: icrc@act.gov.au

Dear Senior Commissioner Owens,

ACAT Submission – Review of Consumer Protection Code

The following submission is made by the ACT Civil and Administrative Tribunal (**ACAT**) in response to the Independent Competition & Regulatory Commission (**ICRC**) June 2026 document titled *Issues Paper, Review of Consumer Protection Code* (the **Issues Paper**).

ACAT's energy and water jurisdiction

Under Part 12 of the *Utilities Act 2000* (the **Utilities Act**), ACAT is responsible for determining certain types of complaints made by consumers and customers of ACT energy and water utilities.

Section 172 of the Utilities Act gives the ACAT power to determine complaints about:

1. Contravention of a customer contract;
2. Contravention of an industry code dealing with service standards;
3. Failure (or potential failure) to provide a utility service, or the withdrawal (or potential withdrawal) of a utility service, where the failure or withdrawal causes (or would cause) substantial hardship to the consumer;
4. Contravention of a utility's obligations relating to the protection of personal information, including in relation to credit reporting;
5. Contravention of a utility's obligations in relation to network operations;
6. Acts or omissions by an authorised person in relation to network operations; and
7. the amount of a capital contribution charge imposed by a utility.

In addition, the ACAT is:

1. Prescribed as the ACT energy ombudsman under section 5 of the *National Energy Retail Regulations*; and

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2. Recognised under section 35A of the *Privacy Act 1988* (Cth) as the External Dispute Resolution (**EDR**) scheme for privacy-related complaints (including credit reporting) about energy and water utilities operating in the ACT.

The ACAT is a quasi-judicial tribunal established under the *ACT Civil and Administrative Tribunal Act 2008* (the **ACAT Act**). The ACAT's role as ACT energy ombudsman and EDR scheme must be exercised within the powers conferred on it by authorising legislation - in this case, the Utilities Act. The ACAT also applies relevant common law principles and has regard to judicial and tribunal precedents when interpreting provisions of the Utilities Act and subordinate legislation.

While the ACAT cannot comment on the powers and functions of other energy ombudsman schemes, the ACAT's statutory identity as a Tribunal distinguishes it from other schemes in how complaints are determined if they cannot be resolved by informal conciliation.

The comments in this submission are made in the context of ACAT's role, responsibilities and experience as outlined above.

Response to Consultation Questions in Review of the Code

1. Are the purpose and scope of the Code clear, including what matters are intended to be addressed through the Code and what matters sit outside its scope (for example, under the NECF or other ACT utility codes)? If not, how could it be clarified?

The purpose of the Code is described in section 5 of the *Utilities (Consumer Protection Code) Determination 2000*, as follows:

> *The purpose of the Consumer Protection Code is to outline the rights of a Customer or a Consumer in relation to the supply of utility services, including information requirements, billing and debt collection, connection and disconnection, life support, complaint handling and guaranteed service levels.*

Overall, this statement is clear and purposeful.

However, the Code remains structured much like the previous version that existed before the National Energy Customer Framework (**NECF**) was introduced. As a result:

1. Certain sections of the Code need extra explanatory wording to make clear which rules apply in which situations.

2. The reader may need to look across multiple sections of the Code, the Utilities Act, or the national regulatory framework (for electricity and gas) to identify whether and how a particular requirement applies to a utility and/or what is the customer/consumer's rights in relation to a particular issue.

This makes the Code less straightforward and user-friendly to navigate, making it more difficult for consumers to understand their rights and the utility's obligations, and what action they can take if they believe those rights or obligations have been breached. This creates a risk that the objectives of the Code will not be fully achieved.

One example is determining which sections of the Code apply to a NERL utility. For instance, Part 2 of the Code refers to 'Utility'.

'Utility' is defined by the Code as:

> *"(52) 'Utility' means a Person licensed to provide a Utility service under Part 3 of the Utilities Act. Subject to Schedule 3, it may also include a NERL Retailer."*

The reader must then refer to Schedule 3 to assess what applies to a NERL Retailer.

To improve clarity and accessibility, it may be useful to remove provisions that are already effectively regulated under the National Law, and to restructure the Code into clearly delineated sections. For example:

- a section that applies to all utilities operating in the ACT;
- specific sections for each sector where required, such as water utilities, distributors, and NERL retailers.

In addition, and separately to the Code, it may be useful to develop a fact sheet for consumers that identifies the key protections set out in the different legislative frameworks, and the avenue/s for complaint if a consumer believes there has been a breach of a particular protection. For example:

- a complaint about *price* would need to be made to the Australian Energy Regulator (**AER**) whereas a complaint about *billing* could be made to the ACAT;
- a complaint about the *content* of a utility's hardship policy would need to be made to the AER, whereas a complaint that the consumer would experience *substantial hardship* if their utility service was disconnected due to non-payment could be made to the ACAT.

It goes without saying that any changes to the Code should be in plain English and meet accessibility requirements.

2. Are any parts of the Code difficult to understand interpret or navigate? If so, which provisions present challenges and why? What improvements to the drafting and structure should be considered?

See comments above at Item 1.

3. *Do the current GSL categories, exclusions and payment amounts provide the right balance between recognising consumer inconvenience and incentivising service performance? If not, what adjustments should be considered?*

Section 11.4 of the Code states that:

> *Rebates are not intended to compensate customers for loss or damage suffered as a result of a failure to meet a Guaranteed Service Level. Rebates are intended to acknowledge a failure to meet a Guaranteed Service Level and act as an incentive for the Utility to maintain the Guaranteed Service Level.*

General comment on GSL thresholds – expectations should be clear and enforceable

Concepts such as "as soon as practicable", used in current GSL provisions, necessarily involve a degree of subjective interpretation. This can create uncertainty for both consumers and utilities and may result in inconsistent approaches to the practical application of the Code. This can be managed by inserting clear maximum timeframes for responding to each GSL parameter, perhaps in terms of a number of "business days". An example is provided below in relation to GSL-W2/GSL-E3 "responding to complaints".

Further, in the ACT, if a complaint cannot be resolved via informal conciliation facilitated by the ACAT registry team, it will proceed to formal dispute resolution by the Tribunal in a hearing.

In determining the complaint, the Tribunal must apply the standards set out in the regulatory framework and make a decision according to law. Concepts that may be used during the complaints resolution process conducted by other energy ombudsman, such as "best practice" and acting "fairly and reasonably"[1], can only be consistently or routinely relied upon in the Tribunal if expressly provided in the ACT regulatory framework.

General comments on rebate levels

For the GSL framework to be effective, the value of the rebate must operate as a meaningful incentive for utilities to meet the standards expected by the community with minimal reliance by consumers on external dispute resolution mechanisms.

As noted in our 2019 submission to the previous Code review, the ACAT considers that rebates should be periodically reviewed to ensure they remain aligned with inflation and continue to provide an effective incentive for compliance with the relevant service standards.

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[1] EWOV, Our fair and reasonable investigation framework, <https://www.ewov.com.au/about-us/fair-and-reasonable-investigation-framework>

Rebate levels should also be reviewed:

- to achieve consistency between energy and water, as appropriate; and
- for consistency with other States and Territories where the ACT framework provides less protection to consumers compared with other jurisdictions.

Whilst the ACT has some GSL payments that do not apply in other jurisdictions, a number of the ACT GSL payments are comparatively low. As noted in the *Issues Paper* (p. 15), one example is unplanned interruptions, for which the ACT rebate is $80—equal to the lowest rebate available in any Australian jurisdiction.

These rebates should be reviewed so that ACT consumers receive a comparable level of protection to interstate consumers, and to ensure that the ACT framework continues to provide meaningful and consistent incentives for compliance with the prescribed service standards.

Example - failure to respond to a complaint

The current GSL threshold and rebate for failing to respond complaints is identical for water and sewerage, and energy, customers.

Below is a table showing the current requirement and the ACAT's suggested changes:

Parameter	Current GSL Threshold	Current Rebate	Suggested changes
Responding to Complaints GSL-W2 GSL-E3	Upon receiving a Complaint, Utility does not: (a) Acknowledge the complaint immediately or as soon as practicable; and (b) Provide a response addressing the matters in the complaint within 20 business days	$20	1. Amend GSL threshold to read along the following lines: (a) acknowledge the complaint as soon as practicable and in any event within 2 business days [*or other maximum timeframe the ICRC considers appropriate*]; (b) provide a substantive response to the complaint within 20 business days. 2. Increase rebate level to $100

In relation to the GSL threshold:

- Best practice indicates that *"early resolution leads to improved customer experience and more efficient complaint handling"*[2] and complainants are more likely to be satisfied with a complaint management process when their matter is addressed and

[2] Page 14, Commonwealth Ombudsman *'Better Practice Complaint Handling Guide' 2023*

resolved promptly, and when the organisation demonstrates responsiveness and respect for their time[3].

- This objective is best achieved when maximum timeframes are set for each action required. The requirement to acknowledge a complaint "as soon as practicable" is vague and does not set a clear minimum expectation for utilities or their customers.

In relation to the amount of the rebate:

- While an increase to $100 may appear significant, the current rebate has not been reviewed for a considerable period and has not kept pace with inflation.

- In this context, the proposed increase to $100 is broadly consistent with the position advanced by ACAT in 2019, when it submitted that a rebate of $50 would be appropriate.

- Given that rebates are intended both to acknowledge a failure and to incentivise compliance with required service levels, the value of the GSL rebate must be sufficient to influence behaviour. A higher rebate for failure to respond within 20 business days would encourage utilities to prioritise timely and substantive engagement with consumers, invest appropriately in complaint handling processes, and deliver more consumer-focused outcomes.

- In the ACT, the GSL rebate framework is the only financial mechanism that directly incentivises utilities to resolve complaints promptly and informally. Unlike some other energy ombudsman schemes, utilities are not required to pay a fee when a complaint is made to the ACAT, whether for non-compliance with the Code or any other matter within ACAT's jurisdiction under the Utilities Act.

  While the ACAT does not comment on government policy, and acknowledging that this is a simplified characterisation of a more complex issue, this distinction is noted as a key difference between the ACT and some other jurisdictions and highlights the importance of setting the "failure to respond" rebate at an appropriate level, to encourage early resolution and reduce the number of complaints ultimately made to ACAT.

<u>Example – wrongful disconnection or restriction</u>

The current rebate level for wrongful disconnection of an energy customer is $100.

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[3] NSW Ombudsman, 'Principles for Effective Complaint Management – Principle 5 – Timeliness', <https://www.ombo.nsw.gov.au/guidance-for-organisations/resources/6-principles-for-effective-complaint-management-principle-5-timeliness>

Currently, there is no GSL for wrongful restriction or disconnection of water/sewerage supply. However, the rebate for a water utility's failure to remove a flow restrictor is current set at $60 per day (up to a maximum of $300).

The ACAT's 2019 submission recommended that the GSL for wrongful disconnection (or restriction) of an energy customer should be increased to $200. The ACAT reiterates that position.

The rebate level for energy supply should reflect the community expectation that wrongful disconnection or restriction of an electricity or gas service is not a mere inconvenience. Access to energy is an essential service and is critical for health, safety and wellbeing, particularly during Canberra's winter months.

At a minimum, GSL payments for wrongful disconnection should be calibrated to provide meaningful redress to affected consumers and create a stronger incentive for improved service performance and reliability.

There should also be a corresponding GSL and rebate for wrongful disconnection and restriction of water and sewerage services.

Page 19 of the Issues Paper refers to Victoria's GSL on this issue. Given the essential nature of water services, it is in the interests of consumers for a similar mechanism to be adopted in the ACT—in a manner consistent with the wrongful disconnection GSLs that already apply to NERL retailers and energy distributors.

4. ***Are the current protections for vulnerable and hardship customers, particularly water customers, adequate? If not, what additional improvements should be considered? Are there examples from other jurisdictions you believe should be adopted in the ACT?***

The requirements of the Code should be reviewed:

- for consistency with the national regulatory framework; and
- to set consistent standards between energy and water/sewerage.

In some instances, this would require introducing or enhancing protections for water/sewerage consumers to align with the national energy regulatory regime.

This may assist to prevent unintended regulatory gaps, simplify protections, ensure consumers have a better understanding of their rights, and support consistent implementation by industry.

Particular areas for consideration are outlined below.

<u>Recovering undercharges</u>

One area of inconsistency is the differing time periods within which utilities may recover undercharges. ACAT notes the ICRC's comment, at page 18 of the Issues Paper, that the *"ACT approach sits at the less protective end of the spectrum, potentially exposing customers to larger backdated bills".* This review presents an opportunity to address this inconsistency.

The Code, at Clause 13.10(4), allows a water utility to:

> *...recover an undercharge (single event or ongoing undercharge) that has occurred over, or within, the past 12 months prior of the Utility becoming aware of the undercharge.*

In contrast, the National Energy Retail Rules, Section 30(2)(a) requires the utility to:

> *...limit the amount to be recovered to the amount undercharged in the 9 months before the date the customer is notified of the undercharging...*

Reducing the ability of water utilities to recover undercharges to a 9-month period would be a relatively straightforward way to improve consistency with national frameworks, while also strengthening consumer protections.

<u>General comment about the Tribunal's hardship jurisdiction</u>

The ACAT's jurisdiction in relation to hardship can be summarised as follows:

- The ACAT can make an order requiring a utility to not disconnect, to reconnect, or to restore a utility service if satisfied that the disconnection or withdrawal of supply would cause substantial hardship to the consumer: Utilities Act, s 179

- The ACAT can make an order declaring that some or all of a customer's debt to the utility (up to a maximum amount of $10,000) is discharged if it is satisfied that the customer is facing disconnection and that payment of the debt would cause substantial hardship for the customer.

- The ACAT can determine that an energy retailer or water/sewerage utility has failed to comply with its obligations under the Code in relation to its hardship policy. This may include:

    - a failure to "offer a range of flexible payment options in accordance with an assessment of the Customer's capacity to pay" (Code, s 14.2(3)(c)); or

    - a failure to apply the utility's hardship policy to a customer who has identified to the utility that they have an intention to pay but "not the financial capacity to make the required payments in accordance with the utility's payment terms" (Code, s 14.2(4)).

Importantly, the ACAT has no jurisdiction to determine whether a utility's hardship policy is effective and/or appropriate to address the underlying regulatory objective. The content of utility hardship policies in the retail energy sector is currently governed by the NERL and regulated by the AER. While it would be possible for the ACT Code to prescribe content of the hardship policy, in the event of inconsistency the federal regime would prevail.

Hardship for water consumers

Another area where protections could be strengthened is in relation to hardship policies for water customers. ACAT notes the Issues Paper (page 18) observes that:

> *The ACT Code requires the water utility to develop and implement a hardship policy but places limited requirements on regulatory approval or performance monitoring...*
>
> *...The ACT approach places relatively greater reliance on utility discretion, with less direct regulatory oversight.*

Clause 14.2 of the Code requires water utilities to develop and implement a customer hardship policy. However, as noted above, the current framework largely leaves the content and implementation of those policies to the discretion of the utility. And unlike the situation in the energy space, there is no national code or rules filling this gap.

ACAT considers that additional guidance and clearer minimum expectations from the regulator would be beneficial for consumers and would promote greater consistency in the assistance available to water customers experiencing hardship.

In particular, ACAT notes that section 72 of the National Energy Retail Rules prescribes matters that must be considered when establishing payment plans for hardship customers:

> *(1) A payment plan for a hardship customer must:*
> *(a) be established having regard to:*
> *(i) the customer's capacity to pay; and*
> *(ii) any arrears owing by the customer; and*
> *(iii) the customer's expected energy consumption needs over the following 12 month period; and*

The ICRC may wish to consider whether a similar approach should be adopted for water utilities in the ACT.

The ICRC may also wish to consider incorporating additional principles and requirements drawn from the AER Customer Hardship Policy Guideline. This could provide water utilities with a clearer framework for identifying and supporting customers experiencing payment difficulties, while promoting more consistent and effective consumer outcomes.

For reference, the AER Customer Hardship Policy Guideline (March, 2019) states that:

37. A retailer's hardship policy must not include unreasonable conditions that exclude a customer experiencing payment difficulties due to hardship from entry or re-entry to a retailer's hardship program Specifically, a retailer's hardship policy must not include unreasonable conditions:

a) to entry to the retailer's hardship program that are reliant on a customer meeting an obligation set by the retailer or a third party, in addition to experiencing payment difficulties due to hardship, and

b) to re-entry to the retailer's hardship program that are reliant on a customer meeting an obligation set by the retailer or a third party, in addition to experiencing payment difficulties due to hardship.

38 For the purposes of clause 37, an unreasonable condition may include, but is not limited to, the following examples:

a) that the customer must attend financial counselling

b) that the customer must be represented by a third party such as a financial counsellor

c) that the customer must submit to an energy audit

d) that the customer must make a one off payment or make a certain number of instalments towards their debt

e) that the customer accepts a payment extension or extensions before being placed on a hardship program, or

f) that the customer must pay their bills on time.

ACAT considers that the inclusion of more prescriptive requirements in the Code for hardship programs related to water customers, would strengthen protections for vulnerable customers.

Establishing clearer minimum requirements could provide greater certainty for both consumers and utilities, while ensuring that assistance is tailored to individual circumstances and needs.

Domestic and Family Violence

As noted in the Issues Paper (pages 17–18), the Code does not contain any provisions specifically addressing water customers affected by family or domestic violence.

ACAT considers that this gap should be addressed as a priority through the current review.

In doing so, the ICRC may wish to have regard to Part 3A of the National Energy Retail Rules, which establishes requirements for retailer family violence policies and sets out minimum standards for identifying and supporting affected customers. Reviewing these provisions may assist in developing appropriate and consistent protections within the Code.

As mentioned earlier, it may also be helpful for the Code to identify (in simple terms) where an energy customer can find information about protections that are available to them under the NERR in relation to family or domestic violence.

5. ***Is the interaction between the Code's conduct obligations and the consumer protection requirements under the national energy laws and rules clear for electricity and gas retailers and distributors sufficient to ensure clarity and appropriate protection for consumers? If not, what changes or clarifications should be considered?***

As noted:

- changes could be made to clarify which provisions of the Code apply to particular types of utilities;
- consumer protections and obligations should be consistent between energy and water/sewerage utilities.

It is important that the Code's protections apply equally to customers of energy and water utilities. In particular, ACAT supports continuing the overarching obligation that all energy and water utilities must act ethically, fairly and honestly in all dealings with a customer or consumer (Clause 5.1, the Code).

In addition, ACAT would encourage the expansion of the conduct obligations to operate alongside the national energy laws and further strengthen consumer protections. One aspect of this would be confirming that utilities remain responsible for the actions, conduct and representations of agents and contractors engaged on their behalf.

This would promote accountability and help ensure consumers are not disadvantaged by outsourcing arrangements or the complex structure of the energy market.

As an example, billing complaints made by energy customers often include questions about meter installation, performance and/or reads. In those situations, the energy retailer relies on advice and/or services provided to it by the metering coordinator, with which the customer has no direct relationship. The services provided by the metering coordinator to the energy retailer are regulated by the national energy framework and the AER.

For example, section 20 of the National Energy Retail Rules provides that:

20 Basis for bills (SRC and MRC)

> *(1) A retailer must base a small customer's bill for the customer's consumption of:*
> *(a) electricity:*
> *(i) on metering data provided for the relevant meter at the customer's premises provided by the metering coordinator and determined in accordance with the metering rules ...*

Whilst the ACAT has jurisdiction to determine whether the *energy retailer* has complied with its obligations under the customer contract (which include an obligation to comply with the national energy laws), the ACAT has no jurisdiction in relation to the metering coordinator or other entities providing services to the retailer under the Utilities legislation. This can cause considerable confusion for the customer and contribute to delays in the dispute resolution process at ACAT.

The Code currently states that:

> ***4.3 Responsibility for conduct of agents***
> *A licence issued to a Utility under the Utilities Act allows the Utility to contract out to an Agent the provision, construction, operation, management or maintenance of any of the systems or services that are the subject of the licence of the Utility. Despite contracting out a system or service the Utility remains bound by its licence conditions and, as such, is responsible for the activities of, and the representations made by any Agent, including for the purposes of Marketing.*

A possible way to deal with the issue is to reword, expand and/or relocate clause 4.3 to sit within section 5 of the Code (Conduct of utilities), so that it is clear that a utility's responsibility for the conduct of its contractors and agents applies to all utilities and expressly extends to any outsourced function or service.

Such an amendment would reinforce existing regulatory principles and provide greater clarity that utilities remain responsible for the actions, conduct and representations of parties engaged by them.

Care would need to be taken to ensure any rewording of the obligation on utilities does not create an inconsistency with the national energy law.

At a national level, concerns about accountability for solar installations and the home energy battery scheme are a current focus for energy & water ombudsman, some of which may extend their jurisdiction to provide a 'one-stop' forum for consumers for resolution. Where ACAT is be able to determine such disputes in its civil and consumer law jurisdiction, this provides a similar and accessible pathway for energy consumers in the ACT. However, the cost of such installations now regularly exceeds the $25,000 civil claims limit in the ACAT, requiring that part of the complaint to be brought in the Magistrates Court. It is the interests of the parties and the efficient conduct of legal process for such splitting of proceedings to be avoided.

6. ***What aspects of the Code could better reflect the ways utilities now interact with customers (for example, digital communication, automated processes, or new technology) while remaining clear and enforceable?***

Regulation should not stifle innovation, and there may be opportunities to review the timeframes and contact methods prescribed in section 5 of the Code to better reflect contemporary communication practices.

Retaining clause 5.1, together with the expansion and reinforcement of Clause 4.3 as outlined above, would help ensure consumers continue to receive an appropriate level of protection while enabling innovation and service improvement.

In relation to use of technology, use of email and text messages to communicate with consumers can be more time and cost effective but need appropriate guardrails in place and provision for consumers who do not use these modes of communication.

Similarly, communication via an online customer portal requires minimum protections to ensure communications are fair, secure, transparent and accessible. A key example is whether critical notices and information should be provided through more traditional channels, regardless of a customer's preferred method of communication. This issue has become evident in the residential tenancies context, where specific requirements govern the service of termination notices to ensure important and time critical communications are effectively brought to the recipient's attention.

Whilst some of these protections may be built into the Privacy Act and the national energy law, an audit of consumer protections would need to be undertaken to identify any regulatory gaps and how the Code (or Utilities Act) should deal with any gaps affecting consumers in the ACT.

7. ***Are there any provisions of the Code that should not apply to electricity or gas distributors because similar or equivalent obligations already exist under the national energy laws? Are there any gaps in these consumer protections that should be considered in this review?***

Where equivalent obligations already exist under the national energy law and apply to energy distributors, ACAT would support the removal or clarification of overlapping provisions in the Code where this would not be detrimental to consumers. Doing so may improve the readability and accessibility of the Code. ACAT is not well placed to identify specific examples of overlap in this regard.

Also see comments above in relation to clarifying the scope of the Code vs national regulatory frameworks.

8. ***Are there emerging consumer issues or risks that should be considered in this review?***

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While this issue may fall more appropriately within the scope of residential tenancy law than the Code itself, ACAT notes an emerging trend of lessors seeking endorsement of residential tenancy agreement terms that require electricity accounts to remain in the lessor's name in order to retain the benefit of solar feed-in tariff arrangements or related rebates.

The power imbalance between lessor and tenant, coupled with tight rental market, can This practice can have unintended consequences for tenants, including limiting their ability to choose a retailer, access to energy concessions, access to the utility's hardship program, ability to make a complaint to the ACAT about non-compliance with the customer contract or an industry code (including in relation to seeking a debt discharge or reconnection/maintenance order) and other consumer protections that are typically only available to the account holder.

This is a significant emerging issue and with potential to have a disproportionate impact on vulnerable consumers in the ACT, particularly those experiencing financial hardship.

The ACAT acknowledges that broader policy consideration is required, in addition to the Code review process.

9. Is there anything else the Commission should prioritise as part of this review?

As a general comment, the review should prioritise measures that simplify the readability and accessibility of the Code, improve consistency with national laws, improve consistency between energy and water/sewerage protections, and provide enhanced ongoing safeguards for vulnerable consumers, including those experiencing financial hardship or family violence.

Thank you for the opportunity to provide this submission. Should any further information be required, ACAT would welcome the opportunity to assist.

Yours sincerely,

[redacted]

Mary-Therese Daniel
President

20 July 2026