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TRANSCRIPT OF PROCEEDINGS

INDEPENDENT COMPETITION AND REGULATORY COMMISSION

PUBLIC FORUM: CONSUMER PROTECTION CODE REVIEW – DRAFT DECISION AND DRAFT CODE

CANBERRA MUSEUM AND GALLERY, AUSTRALIAN CAPITAL TERRITORY

2.06 PM, WEDNESDAY, 11 SEPTEMBER 2019

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5 SENIOR COMMISSIONER DIMASI: Good afternoon, all. My name is Joe Dimasi, I'm the Senior Commissioner of the ICRC and I'd like to welcome you all to today's public forum on our review of the Consumer Protection Code. Next to me is Cath Collins from the Commission, and Cath has been the lead author and doing the majority of the work on the review of the Code.

10 Can I first of all welcome you all here. The point of today is to get feedback on our draft report and the proposed draft changes. Before that though can I just make a couple of announcements or housekeeping. We've got a – we want to sign the book so that we know who's turned up, that would be great. I think I saw that people had signed.

15 If you have a mobile on you, if you wouldn't mind turning it on quiet, that would be good, so that would be great. We would appreciate it if you speak and/or ask questions, if you tell us who you are, just for the transcript so that the transcript can pick up who it is that's making the point. Our plan is pretty simple, we'll run through just the – fairly quickly, the main outcomes of the draft report, the main changes, and then
20 we'll have a question and answer time where we can discuss some issues if you like.

25 By all means jump in with questions if you need any clarification on the way. But we will have the opportunity to discuss fully some of the proposals and why we're going where we're going, if there are any queries there, or disagreements or different suggestions.

30 So that's the plan for the day, and hopefully as a result we will give you an opportunity to, if you feel that there is further feedback that we ought to have before we finalise the draft of the final, you can provide that to us, and there is still plenty of time for that, because I think we're – it's 25 October that the closing date for submissions before we finalise this.

35 So with those housekeeping matters, can I first of all just – I'll just touch on a couple of things then hand over to Cath. So Cath will present the outcomes. But just on a couple of broad matters, why are we doing this? I think we're doing this for a couple of reasons. We had a sense that the Code needed to be updated, it was last reviewed in 2012 and a lot of things have happened since 2012.
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45 There has been a lot of changes in the energy market and so we felt that we needed to ensure that it was reflective of what's going on, and as we looked across at other jurisdictions, there were one or two things that in particular we noted that we thought needed attention and we'll talk about those, so we felt that that was a good idea. On top of that, we had the

legislative assembly, one of the committees had asked us to review aspects of this.

5 So all of those things meant that we thought it was a good idea, and it was timely. I should add also that we are reviewing sequentially all of our regulatory instruments. We've been doing that just as a matter of good regulatory practice, and so the Code was part of that.

10 I won't go through our conclusions, because Cath will do that, but in terms of the some of the priority issues, we had to balance whether we'd have one code or more than one code; one code per sector or just have one code for the jurisdiction, and we also had to think about harmonising our energy code with what's happening nationally.

15 Those two things, you know, provided a couple of challenges for us as well, so we had to think about that and where we gave priority. So that's one of the issues that was important, and we tried to balance that, but clearly we did want to harmonise with the national arrangements where possible, try to keep one code only, but if that turns out to be impossible,
20 over time we'll see how we go.

There's a question about whether the Code should continue – [person enters the room] – it's all right, you can put – it's okay, you haven't disturbed anything, we're not drawing attention to you or anything.

25 There's a question about whether it should apply to energy retailers, given the national electricity framework, and we gave that a fair bit of thought. We now have what's – the Guaranteed Service Level, which is consistent with the national approach, so there's a bit of a change in terminology and
30 a few changes there as well. Cath will talk about those.

They're all significant, but one that I particularly think is significant is a rebate payment process where we did have the rebate payment system on the books, but there were hardly any regulatory payments made, because
35 there were applications that needed to be made. That was not necessarily consistent with what was happening elsewhere, so we wanted to have a look at that, and we also wanted to have a look at the values and see how they compared with other jurisdictions.

40 In the course of the review, the question came up about hardship policies and whether they needed to be there, particularly in water where there wasn't a hardship policy. So we dealt with that.

45 So they were some of the key issues that we thought about. There were lots of other issues that we could have spent a lot of time over, our

5 approach is that we wanted to review the Code, get a reviewed Code or an upgraded Code out as soon as possible which has benefits to consumers and not take forever reviewing every possible nook and cranny if you like. That doesn't mean that we won't review further things as they arise in the past, but we want to focus on the things that were important and came up now. So that's why these, I think, became the main issues for us.

10 So with that broad overview from me, Cath, you tell us what we did, why we did it and where we ended up.

MS COLLINS: Okay, thank you, Joe.

SENIOR COMMISSIONER DIMASI: In, sorry, 20 minutes or less.

15 MS COLLINS: Twenty minutes or less, yes. Yes, hopefully this won't take too long, but if you have lots of questions then we'll go through those. I'm going to talk to you a little bit today about the – just the approach that we've had in relation to how we've gone about the code review and the draft decisions that we've made, and then an opportunity to open questions at the end, so that's sort of how we're progressing.

20 I just thought I'd start with the purpose of what the actual Code is for, and it is just to outline the basic rights of customers and consumers and obligations on utilities with respect to access to and provision of utility services. It applies to energy and water and sewerage utilities and it operates in addition to the requirements of the national energy framework and deals with the specific requirements of the ACT. The protections that are in here are, in addition to the general Australian consumer law protections, and it's just very specific to utility service delivery in the ACT.

25 This is the timeline that we've had so far; we're in the middle, but actually more close to the end in terms of timing. We've had a significant amount of pre-work that has happened so far. We did a lot of engagement last year – I did put a wrong date in here, that should be 29 November last year, not this year - - -

30 SENIOR COMMISSIONER DIMASI: We all picked that up.

40 MS COLLINS: But we released an issues paper last year which raised quite a few questions that we'd had which we had asked for feedback on. So the issues paper brought up issues where we had received feedback and we had undertaken some stakeholder engagement prior to the issues paper being released, and we're now at the point where we've released our draft decision, we're at a public forum today, and we'll be closing the

5 submissions in a bit over a month and then we hope to have the Code finalised by the end of the year with it coming into place mid next year, which will be, for anybody that's in a licensed utility, is the next reporting cycle. So it gives people plenty of time for introduction and getting things ready.

10 So I thought I'd just go a little bit over the approach to the review that we've taken. So our objectives that we have, everything is driven by our objectives under the Utilities Act, and our objectives under the Utilities Act are: To encourage provision of safe, reliable, efficient and high quality utility services at reasonable prices; to minimise potential for misuse of monopoly power in the provision of utility services; promote competition in the provision of utility services; protect the interests of customers; and, ensure that advice given by the ACAT is properly considered. So these are things that are quite relevant to the review that we're doing today.

20 As I mentioned before, that prior to developing our issues paper the Commission undertook targeted consultation with stakeholders to gauge potential issues. The stakeholders included community welfare groups, utilities and other Government entities, including technical regulation, the ACAT and Government policy areas.

25 A desk review and a gap analysis of consumer protections in other jurisdictions, including the National Energy Customer Framework, was undertaken. This review highlighted potential areas of consistency across jurisdictions and potential areas for improvement.

30 Stakeholders and interested party views on priority areas were provided in the issues paper and the Utility Licence Annual Report, which is a performance report that we do, provided data on performance of the licensed utilities, and this is all available on the Commission's website.

35 So as Joe mentioned before, we had some themes arising, but we also – we had priority issues which were identified, but we also had themes arising. So from the issues paper, which was released last year, the matters that came to the attention of the Commission through stakeholder engagement – well, the issues paper had 17 specific questions, and nine submissions were received with supplementary additional submissions received from Evoenergy and Icon Water in April this year, all of this information is published on our website and we encourage people to have a read of it if they haven't.

45 The themes and priority issues identified from the submissions was that there was limited knowledge of the guaranteed service levels and

availability of rebates to consumers. Several submissions noted customers should not have to apply for a rebate when service levels were not met. Application of the Code to energy retailers was still viewed as important by the majority of submitters. General support for the inclusion of energy reliability Guaranteed Service Levels, which were previously called Minimum Service Standards, as well as requests for other new Guaranteed Service Levels.

Support for requiring water utilities to have a hardship policy. We must note there that Icon Water did have a policy, it just wasn't required under the Code. So general submissions for harmonisation – general support for harmonisation to the National Energy Framework, however, several submitters sought additional measures for energy retailers. And consistent service levels across all utility services was viewed by many submitters as beneficial to raising awareness of and an understanding of the Code, and several submitters stated that the Code rebate values required review.

So they were sort of the main big things that came out. And there were a couple of additional matters that the Commission noted. We identified other areas that we believe required addressing, which was improvements to the life support equipment registration for water customers on life support, and reporting to ensure that the Commission could get a full picture of Code compliance from all utilities. And that's because we currently don't get a view of how the energy retailers are complying with the Code.

So I'll just move onto the draft decisions. In relation to energy retailers, despite protections offered in the national legislation and the AER's enforcement measures, the majority of submissions showed that application to retailers was still valued by stakeholders. The proposed changes for energy retailers addressed gaps between the national framework and ACT regulations, recognition of customers for inadequate service and incentives to meet those services. So basically we'll be having the energy retailers will remain subject to the Code.

We've made some decisions in relation to – draft decisions in relation to new Guaranteed Service Levels. Which include – yes, we were asked to consider the addition of new Guaranteed Service Levels, not all requests have been included in the draft code and the reasons for this is explained in the draft decision.

Wrongful disconnection. The Commission believes that including a service level for wrongful disconnection complements the AER's civil penalties and ensures that customers receive recognition when the rules have not been followed. This will apply to both retailers and distributors.

And the energy reliability service levels have been reviewed and aligned with the AER's service target performance incentive scheme, which is called the STPIS, and the reasons and anticipated costs for each of the new Guaranteed Service Levels is explained in the draft decision. We've also included a reliability standard for one of the water indicators as well, which is similar to the AER's one for energy.

Draft decisions, we've a few decisions in relation to rebates. As Joe mentioned before, one of the big areas that we looked at was the payment processes. So the current Code requires customers to apply for a rebate, and the Commission noted that customers had very little knowledge of their rights to a rebate and that few rebates were ever claimed and only a few were paid.

The draft decision requires utilities to monitor performance and pay rebates to customers when the Guaranteed Service Levels are not met. The Commission reviewed the rebate values and made adjustments to one current rebate; the reasons for this is explained in the draft decision. The Commission considered how rebates should be adjusted in the future and the current position is to review as required.

The Commission will review performance and whether the rebates are providing the correct incentives through the Utility Licence Annual Report and the retailer report against the Code.

Hardship policies, so the introduction of hardship policies for water utilities was supported by all submissions on this topic. The draft code requirements have been informed by other jurisdictions and the Commission expects the utilities will consult with their customers in developing their policies. So the requirement is that water utilities will be required to have a hardship policy, and Icon Water has supported that.

Life support. The draft decision that we've made in relation to life support applies to water only, and this is because electricity has very explicit requirements under the national framework. The new requirements that we have placed for water have been informed by the requirements that are in place for energy. The main components of this is that it's actually just to require the utility to confirm the registration of the property and to go through a process of ensuring contact with the customer before removing them. There are some – there's less customers for water that require life support, but it's for things like kidney dialysis machines and things like that.

We made a decision in relation to reporting, which I've already spoken about before, is that we currently have very limited visibility of energy

retailer compliance or the number of rebates paid against the Code, even though they're currently required to comply with the Code. So we've added in a new clause into the Code to require retailers to actually just report on their compliance with the Code.

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So that's sort of a very high level overview of the decisions that we've made. So the next steps that we'll be going through is that we're seeking comments and feedback from stakeholders, and that we really would like feedback on the draft decision from everybody, if they support or don't support the things that we're doing.

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The draft decision and the draft code is available on our website, as well as the issues paper and all of the submissions so far. Submissions for this paper close on 25 October, submissions can be emailed or mailed to the Commission and we also have a short form feedback form available on the website on our projects site. The final decision is expected to be published before the end of the year, with the new Code implementation date from 1 July 2020, so that's from mid next year.

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We will now move on to if anybody has any questions.

SENIOR COMMISSIONER DIMASI: Thanks, Cath. Any questions, comments or general feedback for the Commission on any of that?

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MS COLLINS: Perhaps if anybody has a question, hand up.

SENIOR COMMISSIONER DIMASI: If not.

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MR SUTHERLAND: Peter Sutherland from ACAT. Hello, welcome back. A number of things: you mentioned utilities in relation to water and waste water; is there any potential for any other organisations to ever be covered by the Code in relation to water and waste water? Like resellers or anything of that nature.

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SENIOR COMMISSIONER DIMASI: Look, that's something that hasn't arisen, but we'd certainly – as long as it fits within the legislation, and doing the legislation, we're open to any suggestion. But that's not an issue that's arisen. But were you thinking of anything in particular, Peter?

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MR SUTHERLAND: Well, I'm just wondering, because you mentioned – you used the word "utilities", and – like for example it's possible – I think in Sydney we now have people who are in the market reselling water.

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SENIOR COMMISSIONER DIMASI: Yes.

MR SUTHERLAND: Reselling waste water.

SENIOR COMMISSIONER DIMASI: Reselling waste water, yes.

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MR SUTHERLAND: Is that a possibility here, by somebody other than Icon?

10 SENIOR COMMISSIONER DIMASI: Look, I think there's – well, as far as I'm aware, there's no one doing that here in the ACT, so the question doesn't arise. But if there were – I mean, we've got the – in our electricity we've got the retailers who are covered. If the structure of the market was to change, we'd review accordingly. So I wouldn't rule that out. But that would need some significant policy changes though before that would
15 happen.

MS COLLINS: Yes. It would depend on if their service – a straight definition at the moment would depend on if what they're doing is captured as a service under the Utilities Act. And if it's beyond that, it's a
20 policy discussion with Government.

MR SUTHERLAND: If they were providing a utility service then the CPC would simply apply, there would be no more work needed to be
25 done.

SENIOR COMMISSIONER DIMASI: We would probably make that explicit, if we felt that – that's probably right, but we wouldn't leave it in
30 ambiguous way. If there were changes and we felt that we needed to be – that that needed to be made clear to everybody, we would be explicit about that.

MR SUTHERLAND: Is there a licensing requirement for water and waste water utilities?

35 SENIOR COMMISSIONER DIMASI: Yes, they're licensed.

MR SUTHERLAND: So that might arise that way.

MS COLLINS: Yes.

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SENIOR COMMISSIONER DIMASI: Yes, I would imagine they would need to be licensed, yes.

MS COLLINS: Yes. And we currently have a few provisions within the
45 Code that are different between different water customers, so there's

customers under a standard customer contract. So the Code can apply in different ways, and if we needed to do something like that, in a hypothetical situation, we would have to review it based upon those things.

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MR SUTHERLAND: Does your CPC in any way bring in resellers in water, similar say for example to the exempt framework for the energy suppliers, which is mostly retirement villages and caravan parks, where they're actually reselling using their own meters, essentially?

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MS COLLINS: The Utilities Act, there's an explicit exemption for anybody that's in an embedded network under the – from the Utilities Act. So therefore embedded networks under the National Energy - - -

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MR SUTHERLAND: No, I'm thinking of water.

MS COLLINS: For water? I'm not sure. That would need further investigation.

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MR SUTHERLAND: Because it arises, like we've got a site of about a hundred customers who are buying water from a caravan park owner.

MS COLLINS: Yes. The specifics of that would need to be looked at separately, Peter, and we'd have to take that on - - -

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SENIOR COMMISSIONER DIMASI: That's a good question, we'll take that on notice.

MS COLLINS: Yes.

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MR SUTHERLAND: They are of course essentially tenants or occupants under the Residential Tenancies Act, so that it may be they're simply uncovered, just like private tenants are.

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SENIOR COMMISSIONER DIMASI: That might be right.

MR SUTHERLAND: But I'm aware the Utilities Act does poke its nose into this area, because of some sort of prohibition on profiting from on-sale. I can't remember the clause or the section, but - - -

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SENIOR COMMISSIONER DIMASI: Yes. Look, that's a good point to raise and that's one that I'm not sure that - - -

MS COLLINS: Yes, it's not something that – it hasn't come up in the context of the current review, and we would need to look at that as a separate issue, if it is an issue.

5 MR SUTHERLAND: I simply mention it because the electricity area is a – or energy area is a complete mess at the moment.

SENIOR COMMISSIONER DIMASI: Yes, yes.

10 MS COLLINS: Yes.

SENIOR COMMISSIONER DIMASI: Yes, we understand.

MR SUTHERLAND: The regulatory framework is in big trouble.

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MS COLLINS: Yes, we may need to keep a watch on that and see what's happening, but it's not considered in this particular aspect.

20 MR SUTHERLAND: You mentioned that at one point you did a desk audit and a gap analysis, is that available? This is I presume of the NECF and the other states.

25 MS COLLINS: Part of that is in the issues paper. So when we showed the protections that were available in some of the states and how things were – some of the rebates and some of the way that things were paid or processed, they were raised in the issues paper.

MR SUTHERLAND: Is the research available as a bulk though?

30 MS COLLINS: No.

35 SENIOR COMMISSIONER DIMASI: Not really. It wasn't that formal, it was really – as part of the process of setting up the review, we looked at – we did look at what was happening in other jurisdictions obviously to see what was different. But there wasn't – there isn't a report that says here is – correct me if I'm wrong on this, Annette – but my recollection is that the feedback that was provided was provided in a less formal way than that, and reported – the most formal report that we have of it is what's actually in the issues paper.

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MR SUTHERLAND: Okay, I will have seen that, yes. It's just any analysis of the gaps in the NEC Framework is quite interesting, because I think our experience is that there are quite important gaps in the regulatory and protective framework.

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MS COLLINS: Ours was more about comparing what's currently available and not available across different jurisdictions.

5 SENIOR COMMISSIONER DIMASI: Yes.

MR SUTHERLAND: You mentioned the wrongful disconnection GSL, and I think it's really important and I think you've probably picked it at the right sort of level rather than going as high as Victoria, where I think it's created some problems in the marketplace at the level it's at. But
10 wrongful disconnections, it's sometimes difficult to pin down whether it is specifically the retailer or specifically the distributor or both, and there is a tendency of course to say it's the other, not me. So what are you going to do about that, what is essentially a fairly sort of objective scheme, I did it, I paid?

15 SENIOR COMMISSIONER DIMASI: Yes.

MR SUTHERLAND: And who should pay. I would suggest both, of course, with joint responsibility.

20 SENIOR COMMISSIONER DIMASI: Look, if there's any ambiguity, or if there's any dispute between the parties, we'll have a process to determine who pays it.

25 MS COLLINS: Yes. There are provisions under the NECF to require agreement between – like consultation between both parties.

MR SUTHERLAND: But those are completely impenetrable to customers, or the ombudsman, those business to business arrangements.

30 SENIOR COMMISSIONER DIMASI: Yes, yes. Look, we don't – call me optimistic, we don't anticipate that there will be those sorts of issues here, because of - - -

35 MR SUTHERLAND: No, they exist. In electricity, not in water, obviously.

40 SENIOR COMMISSIONER DIMASI: No, I do understand. I'm not saying – I'm just saying in the ACT, if we find that we are – we expect that the retailers and the network will take responsibility as appropriate. If they don't, we'll resolve it.

MS COLLINS: We'll review.

45 SENIOR COMMISSIONER DIMASI: We'll review it and resolve it.

MR SUTHERLAND: But I need to keep going with this, that it's usually one party, but it can be both, it can be a distributor and a retailer, or it's not uncommon for it to actually be a distributor and two retailers, and it's
5 because the churn's gone wrong or there's been an unintended churn of some sort and all three parties are sort of saying it's not us, it's a (indistinct), you know.

10 SENIOR COMMISSIONER DIMASI: Yes.

MR SUTHERLAND: And so who pays? Each of them pay a hundred or do they pay \$33.30 each?

15 SENIOR COMMISSIONER DIMASI: Look, that's not something that we've – we haven't gone into that level of detail, but these are the sort of issues that if they do arise, we will be explicit about the process for dealing with that. So yes, good point. It's something that we'll have to keep in mind.

20 MS COLLINS: And we would accept submissions on if there's particular areas of that that need to be clarified. But also the process that we would expect is if there are issues that are being – if it comes up as an issue at ACAT where there's responsibility issues, we would expect to receive that advice as well.

25 MR SUTHERLAND: We wouldn't necessarily see the big run of cases though, because what you've got is a system where the retailer and the distributor are supposed to self-identify to the customer and to you in reports. We only see a tip of the iceberg really.

30 SENIOR COMMISSIONER DIMASI: Yes. And we have the ability to ask, and if there's any suggestion that anything has happened, we will ask, as we have done. So yes, look I'm not ruling out the possibility of those sorts of issues becoming important. I guess because nothing has been –
35 pretty much nothing has been paid up until now, we just want to get this cranked up and happening, and as the mechanism of it unfolds, if we see problems or if we see that responsibility hasn't been taken, we'll deal with it.

40 MS COLLINS: Yes. And we can take from what is occurring in other jurisdiction or how they're dealing with that particular issue as well. We can review that.

45 SENIOR COMMISSIONER DIMASI: Yes.

MS COLLINS: If it's required. Any others, Peter?

SENIOR COMMISSIONER DIMASI: Thanks for those, thanks, Peter, that was very useful, thank you. Anyone else?

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MS COLLINS: No.

SENIOR COMMISSIONER DIMASI: No. Well, in that case we take it that the utilities present fully agree with our – I won't verbal anybody. We'll wait for the submissions in response to our draft report and we'll think a bit further about some of the issues that have been raised, and we certainly believe that we will be able to stick to the timetable and get this code updated and in place. Of course, that won't be the end of it, because as things change we'll continue monitoring and improving it if we need to as times goes by.

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So with that, can I thank you all for coming, and we look forward to your written responses to our draft report. With that, thanks, Cath.

20 MS COLLINS: Yes, thank you.

SENIOR COMMISSIONER DIMASI: I'll declare the forum closed. Thank you.

25 MS COLLINS: Thank you.

Closed

[2.39 pm]