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ACAT Submission to the Draft Decision Consumer Protection Code Review Report 11 of 2019, 23 August 2019

The following submission is made on behalf of the ACT Civil and Administrative Tribunal (ACAT) in response to the Independent Competition and Regulatory Commission (ICRC) *Draft Decision, Consumer Protection Code Review, Report 11 of 2019, 23 August 2019* (the Report) and the proposed *Utilities (Consumer Protection Code) Determination 2019* (the draft Code).

As outlined in ACAT's previous submission to the Review, under Part 12 of the *Utilities Act 2000* (the Act) the ACAT is responsible for determining hardship assistance applications and resolving complaints made by consumers and customers of ACT energy and water utilities.

This submission refers to some of the matters covered by the Report, and deals with them in the order they appear in the Report.

1. Overview

The Report addresses four priority issues, which were guided by the submissions and views provided in targeted consultation:

- harmonisation of the Code with NECF requirements and continued application of the Code to NERL retailers;
- review of guaranteed service levels (including wrongful disconnection and reliability);
- review of rebate payment processes and values; and
- hardship policy requirements for water utilities. (Report, 1.3)

1.5 A single Consumer Protection Code for utility services

The ACAT supports a single code for energy services and water and sewerage services. This might require reconsideration if the Utility Act undergoes a thorough review, or if further major changes occur in energy regulation.

2. Harmonising the Code with the NECF and application to NERL retailers

The current Code applies primarily to water and sewerage services because elements of the Code covering electricity and gas services were removed under NECF changes in July 2012. At present, only section 11 of the Code and the schedule of minimum service standards in Schedule 2 apply to all energy and water utilities in the ACT.

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In the ACAT's submission dated 31 January 2019, the ACAT recommended that both energy and water utilities should be required to comply with existing section 5(1) of the Code which provides:

- (1) A Utility must act ethically, fairly and honestly in all dealings with a Customer or Consumer.

The ACAT notes that the Commission has adopted this recommendation (Schedule 3, draft Code) and strongly supports its implementation. This will permit the ACAT, as the jurisdictional energy ombudsman for the ACT, to make decisions based on the "fair and reasonable" test which other Energy Ombudsman schemes apply.

The ACAT notes that there are some areas where the Code is not in harmony with the *National Energy Retail Rules*, for example, under section 13.10(4) of the Code, water utilities are able to recover an undercharge going back 12 months whereas under rule 30(2)(a) of the *National Energy Retail Rules* energy retailers are only able to recover undercharged amounts going back 9 months. As stated in our previous Submission, the ACAT would prefer some of these discordant requirements to be addressed, but notes the Commission's preference to avoid significant jurisdictional changes that would affect the energy sector at this time. (Report, 2.3.4)

Disconnection of water and sewerage services for debt

Before 1 July 2012, the Consumer Protection Code did not authorise disconnection of a water service for debt. While section 17.1 authorised disconnection of water and sewerage services in specified circumstances, section 17.4 explicitly did not authorise disconnection of water for debt. Section 17.4.1 then stated:

- (1) Subject to clause 10.1, a **Utility** may take action to disconnect the supply of electricity or gas or to restrict the supply of water to **Residential Premises** for failure by a **Customer** to pay an outstanding **Customer Account** only if:
 - (a) ...

In July 2012, the redrafting of the Code introduced a power of disconnection of water for debt. New section 17.4.1 stated:

- (1) Subject to clause 10.1, a **Utility** may take action to disconnect the supply or to restrict the supply of water to **Residential Premises** for failure by a **Customer** to pay an outstanding **Customer Account** only if:
 - (a) ...

The ACAT considers that this was an unintentional drafting error as the 2012 amendments were not meant to change policy in relation to water services. Unfortunately the ACAT did not pick up this change at the time.

The ACAT recommends that section 20.4 of the draft Code be amended so that Icon Water has no power to disconnect a water service. For example, section 20.4(1) might be recast as:

- (1) Subject to clause 10.1, a **Utility** may take action to restrict the supply of water to **Residential Premises** for failure by a **Customer** to pay an outstanding **Customer Account** only if:

(a) ...

At present there is no agreed amount for water under section 17.4(1)(a). ACAT will raise this with Icon Water to seek agreement on an amount for the purposes of current section 17.4(1)(a) and proposed section 20.4(1)(a).

3. Guaranteed service levels

Section 11 in Part 2.3 of the current Code imposes an obligation on utilities to comply with minimum service standards. Schedule 1 to the Code sets out the subject of each standard, the service standard required, and the rebate payable for failure to meet a standard.

3.1 Changing terminology

The ACAT supports renaming the minimum service standards as “guaranteed service levels” (GSLs).

3.5 – 3.7 Matters covered by GSLs

At Schedule 1 of the draft Code there are six GSLs which apply to water and sewerage services, they are:

GSL-W1: Customer connection times

GSL W2: Responding to Complaints

GSL-W3: Notice of planned interruption

GSL-W4: Duration of interruptions (single event)

GSL-W5: Frequency of interruptions

GSL-W6: Response time to notification of a fault, problem or concern that affects the premises of the Customer

At Schedule 2 of the draft Code there are eight GSLs which apply to NERL retailers and energy utilities. They are:

GSL-E1: Customer connection times

GSL-E2: Wrongful disconnection

GSL-E3: Responding to Complaints

GSL-E4: Notice of planned interruption

GSLs applying to electricity and gas distributors only:

GSL-E5: Duration of interruptions (single event)

GSL-E6: Total duration of interruptions (cumulative)

GSL-E7: Frequency of interruptions

GSL-E8: Response time to notification of a fault problem or concern that affects the premises of the Customer

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GSL-E2: Wrongful disconnection

A GSL in relation to wrongful disconnection of energy is proposed (GSL-E2).

The current Code and the draft Code authorise disconnection and restriction of water and sewerage services in specified circumstances, including in 20.4 (current 17.4) disconnection or restriction of water and sewerage services for debt. The ACAT has recommended (above) removal of the power to disconnect water and sewerage, however, it does support restriction of water and sewerage supply for debt and disconnection of water and sewerage supply in other specified circumstances. Accordingly, a GSL and rebate should be available for wrongful restriction or disconnection of water or sewerage.

In relation to wrongful disconnection of energy (GSL-E2), there needs to be a mechanism whereby disputes regarding who caused the wrongful disconnection (ie the retailer or the distributor) can be resolved quickly and without burden to the customer or consumer. The ACAT notes that at the public meeting of 10 September 2019 it was suggested that the ICRC may have a role in deciding whether the GSL is paid by the distributor or the retailer.

The ACAT recommends that the distributor should be the default payer of the GSL for wrongful disconnection of energy, with provision for recovery of the amount of payment from the retailer where the retailer was responsible for the disconnection, or payment directly by the retailer where they (or their meter coordinator) was at fault. This deeming arrangement is sensible for several reasons:

- in most cases, the distributor physically undertakes the disconnection (often under instruction from a retailer);
- disconnections often occur in the context of a failed transfer, where the responsible retailer may be identified only after substantial investigation by ACAT.

Where two or more utilities are responsible for the wrongful disconnection, is the full GSL rebate payable by each contravening utility?

GSL-E6: Total duration of interruptions (cumulative)

The ACAT notes that the energy GSL for “Total duration of interruptions (cumulative)” (GSL-E6) is not included in the GSLs which apply to water and sewerage services.

We recommend that GSL-E6 should cover all energy distributors and water/sewerage services.

Embedded networks

An issue which needs further consideration is the application of the GSLs in the draft Code to embedded networks. In particular:

- Should embedded network providers be required to apply GSLs?
- If so, how will the ICRC monitor this and enforce compliance with the Code?

4. Rebate payment and values

4.2.2 Water GSLs and private tenants

In the ACT, lessors are the water/sewerage customer of rental premises, but they are entitled to recover water consumption costs from their tenants under the standard terms of residential tenancy agreements. It is, however, usually the tenant who suffers from the inconvenience of interruption of water/sewerage supply.

Under proposed section 11.2, lessors will receive the GSL payment not the affected tenants. There needs to be consideration for the tenant who is affected by an interruption or other failure in relation to a water/sewerage GSL.

One possible way of achieving a fair outcome is to require the utility to offset the GSL rebate against the amount shown as consumption charges on its next bill to the customer. In this way, the tenant would receive the benefit of the GSL if the lessor seeks recovery of water consumption charges. The ACAT notes that the configuration of a water bill is directly within the scope of the ICRC and the water utilities and does not raise issues of privity of contract

4.2.3 Automatic payment of GSL rebates

The ACAT agrees with the proposed amendments to section 11.2 of the Code which will make the obligation to detect whether a GSL has not been met and assess eligibility for a GSL rebate the responsibility of the utility and not the customer as at present.

Unplanned interruption of supply

In the ACAT's submission to the Review, a request was made to increase the rebate for an unplanned interruption to Utility Services from \$20 to \$80. The ICRC has deleted the provision of a GSL rebate for an unplanned interruption, and instead will apply rebates for duration and frequency of interruptions. The table below outlines the hours of interruption before a rebate is due:

Water or Sewerage	Duration of interruption (single event)	12 hours or longer	\$80
Water or Sewerage	Frequency of interruptions	More than 9 unplanned interruptions per annum	\$80
Electricity or Gas distributor	Unplanned sustained interruption	12 hours or longer	\$80
Electricity or Gas distributor	Total cumulative hours of unplanned sustained interruption	Level 1 equals or exceeds 20 hours Level 2 equals or exceeds 30 hours Level 3 equals or exceeds 60 hours	\$100 \$150 \$300
Electricity or Gas distributor	Frequency of interruptions	Customer experiences more than 9 sustained interruptions per annum	\$80

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The ACAT acknowledges that under section 11.4(1) rebates are not intended to compensate the customer for loss or damage suffered as a result of poor service. Even so, the hours set out in the draft Code and the rebates payable do not appear to be in proportion to the inconvenience suffered by the customer, particularly where an interruption for less than 12 hours causes substantial inconvenience.

5. Hardship policies

Section 14 of the draft Code requires water utilities to develop and implement a customer hardship policy.

Section 14.2(3) refers to section 13.16(1) and (2) but these sections do not exist in the proposed code. It appears that a reference to section 13.6(1) and (2) was intended.

At a number of points the Hardship Policy requirement at 14.2(3) mentions “flexible payment” options but does not define this. It is important that “flexible payment” options are appropriate for customers with low and/or varying income, for example from casual work.

14.2(3)(i) Review mechanism

Section 14.2(3)(i) provides that a hardship policy and its associated procedures must be reviewed at least every four years. The ACAT would be very interested in playing a role in relation to such reviews.

14.2(3)(j) Promotion of hardship policies

The ACAT suggests, in relation to this section:

- i. communication with customers with low English literacy should also include customers with low numeracy;
- ii. “without access to the internet” should include not only scope for mail communication but also allow for the time that this takes; and
- iii. “with a disability” - websites should meet the Web Content Accessibility Guideline (WCAG) 2.1 guideline, in order to ensure that content is directly accessible to as many people as possible, and capable of being re-presented in different forms to match different peoples' sensory, physical and cognitive abilities.

14.2(4) Identification of hardship customers

The ACAT should be included as one of the identifiers of a water hardship customer. This would allow the ACAT to refer people who are stabilised in ACAT’s energy and water hardship process (that is, people who are consistently paying above their consumption) back to the water utility for ongoing hardship management.

Further, under section 9.2, the summary of customers and consumers rights should include information about access to a utility’s hardship program for eligible consumers.

Review of the Code

The ACAT would appreciate being advised whether the ICRC intends to revise the Code and the amounts set as rebates periodically.

Please contact me if you have any questions in relation to this submission.



Graeme Neate AM

President

29 October 2019

