



# ICRC

independent competition and regulatory commission

Consultation paper  
**Draft Electricity Feed-in  
Code**



The Independent Competition and Regulatory Commission is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act). The Commission is constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the Commission and takes direct responsibility for delivery of the outcomes of the Commission.

The Commission has responsibilities for a broad range of regulatory and utility administrative matters. The Commission has responsibility under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. The Commission also has responsibility for arbitrating infrastructure access disputes under the ICRC Act. In discharging its objectives and functions, the Commission provides independent robust analysis and advice.

The Commission's objectives are set out in section 7 and 19L of the ICRC Act and section 3 of the *Utilities Act 2000*.

Correspondence or other inquiries may be directed to the Commission at the following address:

Independent Competition and Regulatory Commission  
PO Box 161  
Civic Square ACT 2608

The Commission may be contacted at the above address, by telephone on (02) 6205 0799, or by fax on (02) 6207 5887. The Commission's website is at [www.icrc.act.gov.au](http://www.icrc.act.gov.au) and our email address is [icrc@act.gov.au](mailto:icrc@act.gov.au).



# How to make a submission

Closing date for submissions: **5 April 2020**

This consultation paper provides an opportunity for stakeholders to provide feedback on the Commission's proposed changes to the Electricity Feed-in Tariff Code. It will also ensure that relevant information and views are made public and brought to the Commission's attention.

The Commission will consider all submissions received by the closing date. Submissions, comments or inquiries regarding this paper should be sent to:

Independent Competition and Regulatory Commission  
PO Box 161  
CIVIC SQUARE ACT 2608

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The Commission encourages stakeholders to make submissions in either Microsoft Word format or PDF (OCR readable text format – that is, they should be direct conversions from the word-processing program, rather than scanned copies in which the text cannot be searched).

Submissions should be sent to the Commission with a completed submission cover sheet, which is available on the Commission's website at <http://www.icrc.act.gov.au/submissions/>.

The Commission is guided by the principles of openness, transparency, consistency and accountability. Public consultation is a crucial element of the Commission's processes. The Commission's preference is that all submissions it receives be treated as public and be published on the Commission's website unless the author of the submission indicates clearly that all or part of the submission is confidential and not to be made available publicly. Where confidential material is claimed, the Commission prefers that this be under a separate cover and clearly marked 'In Confidence'. The Commission will assess the author's claim and discuss appropriate steps to ensure that confidential material is protected while maintaining the principles of openness, transparency, consistency and accountability.

For submissions received from individuals, all personal details (for example, home and email addresses, telephone and fax numbers) will be removed for privacy reasons before the submissions are published on the website.



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## Abbreviations and acronyms

Commission	Independent Competition and Regulatory Commission
FIT Code	Electricity Feed-in Code
ICRC	Independent Competition and Regulatory Commission
ICRC Act	<i>Independent Competition and Regulatory Commission Act 1997 (ACT)</i>
NECF (National energy customer framework)	The national framework that regulates the connection, supply and sale of energy comprising National Energy Retail Law, the National Energy Retail Regulations and the National Energy Retail Rules
NERL (National Electricity Retail Law)	<i>National Electricity Retail Law (South Australia) Act 2011 (SA)</i>
Utilities Act	<i>Utilities Act 2000 (ACT)</i>

# 1 Electricity Feed-in Code

The Electricity Feed-in Code (FiT Code) is an industry code made under Part 4 of the *Utilities Act 2000* (Utilities Act). The purpose of the Code is to set out practices and standards for the operation of the scheme for feed-in from renewable energy generators to the electricity network established under the *Electricity Feed-in (Renewable Energy Premium) Act 2008* (Feed-in Act). The Code establishes dispute resolution procedures between energy distributors and NERL retailers, as well as setting out specific consumer protections relating to the Feed-in Act. The FiT Code applies only to premises accessing the premium feed-in tariff, through the Feed-in Act.<sup>1</sup>

The current FiT Code includes schedule 3, which quotes sections of the Consumer Protection Code. After a period of significant public consultation, in December 2019 the Commission determined a new Consumer Protection Code, which comes into effect on 1 July 2020. Information on the Consumer Protection Code review can be found here: <https://www.icrc.act.gov.au/projects/current-projects/consumer-protection-code-review>.

As a consequence, the FiT Code requires updating to ensure it reflects the new<sup>2</sup> Consumer Protection Code. Other minor technical amendments to the FiT Code are also required to reflect the National Energy Customer Framework (NECF).

The Commission has prepared a draft FiT Code for consultation and welcomes submissions on the proposed amendments. A marked-up version of the draft code, showing all proposed changes to the code is attached at Appendix 1. Chapter 2 summarises each of the proposed changes.

The Commission is not conducting a full review of the FiT Code. The focus of these amendments is to ensure that the FiT Code reflects the Consumer Protection Code that will come into effect on 1 July 2020 and to ensure there is no direct conflict with national energy legislation.

## The Commission's role

The Commission is established under the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act) to regulate pricing, access and other matters in relation to declared regulated industries and to independently investigate competitive neutrality complaints and government regulated activities.

<sup>1</sup> The premium feed-in scheme opened on 1 March 2009 and was closed to new entrants on 13 July 2011. Premises receive premium feed-in payments for a maximum of 20 years from the date of connection.

<sup>2</sup> For the purposes of this paper, the new Consumer Protection Code means the version of the code that will come into effect from 1 July 2020. The new Consumer Protection Code can be viewed on the ACT Legislation website at <https://www.legislation.act.gov.au/di/2020-6/>.

Section 7 of the ICRC Act sets the Commission's objectives as:

- (a) To promote effective competition in the interests of consumers;
- (b) To facilitate an appropriate balance between efficiency and environmental and social considerations;
- (c) To ensure non-discriminatory access to monopoly and near-monopoly infrastructure.

The ICRC Act establishes that the Commission's functions include those given under the Utilities Act.<sup>3</sup>

Under the Utilities Act, the Commission is responsible for managing the licensing framework for non-NERL utility service providers in the ACT, including issuing licences and monitoring licence compliance. The Commission has responsibility for industry codes of practice and approving standard customer contracts. The Commission also determines licence fees paid by utilities in the Territory in respect of the regulatory functions undertaken by the Commission and other Territory bodies.

The Commission's role in determining industry codes is set out in Part 4 of the Utilities Act and is explained in section 1.2 below.

## Industry codes and their role

The Utilities Act provides a regulatory framework for utilities in the ACT.

Provisions relating to industry codes are set out in Part 4 of the Utilities Act. An industry code '*may set out practices, standards and other matters about the provision of a utility service*' including connections to a network, the development of a network and the provision of utility services generally.<sup>4</sup>

An industry code sets out specific rules and practices to be followed by a utility when certain activities are being undertaken. By extension, an industry code can place obligations and requirements on persons wanting to utilise, or have access to, a utility service.

An industry code can be used to outline the requirements for utility service delivery under the Utilities Act. This assists customers and businesses requiring access to utility services, as they can be assured of the process, obligations and their rights prior to requesting services.

Under Section 56A of the Utilities Act the Commission may determine that an industry code applies to a NERL retailer.

Industry codes differ from technical codes. Technical codes are made under the *Utilities (Technical Regulation) Act 2014*, and whilst similar in form, their focus is on the operational aspects of the network and its performance.

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<sup>3</sup> Section 8 (1) (g) *Independent Competition and Regulatory Commission Act 1997*

<sup>4</sup> S55(2) *Utilities Act 2000*.

The Commission's role in determining industry codes is set out in Part 4 of the Utilities Act:

- the scope of an industry code (section 55);
- to whom it applies (section 56), including NERL retailers (56A);
- who can develop them (section 57);
- the consultation process (section 58, 59 and 60);
- the Commission's role in approving or determining an industry code (the former in section 58 where the code is submitted by a utility and the latter in section 59 where the Commission itself determines a code);
- the arrangements for varying a code (section 61); and
- the procedural requirements for making a code a disallowable instrument (section 62).

## Timeline of the update

Table 1-1 below outlines the Commission's indicative timeline for the update of the FiT Code.

**Table 1-1 Indicative review timeline**

<b>Release of draft FiT Code</b>	<b>27 February 2020</b>
Public Notice (Canberra Times)	4 March 2020
Submissions on draft FiT Code close	5 April 2020
Release of FiT Code determination	May 2020
Commencement date of the new FiT Code	1 July 2020



## 2 FiT Code changes

Table 2-1 outlines the changes the Commission is proposing to make to the FiT Code. The complete code with the changes in mark-up is attached at Appendix 1.

The proposed changes will ensure that FiT Customers will have access to the same general consumer protection rights and obligations as non-FiT customers when accessing utility services.

**Table 2-1 Proposed changes to the FiT Code**

	Clause	Outline of proposed changes
1.	4.1(b) Distributor to detail arrangements to NERL retailer	Removal of the word 'negotiated' before contract. The term 'negotiated' stems from Utilities Act terminology relating to negotiated customer contracts (currently only relevant to water and sewerage services). Electricity contracts are regulated under the National Energy Customer Framework.
2.	4.4 Dispute resolution -occupier disputes	Deleted subsections that quoted complaints provisions that are outlined in the Consumer Protection Code. The provision has been updated to require occupier disputes to be handled in accordance with the new Consumer Protection Code.
3.	5.1 NERL retailer to detail arrangements with occupier	Deleted references to contracts. Electricity contracts are regulated under the National Energy Customer Framework. The requirement has been updated to reflect that NERL retailers must provide occupiers with a statement of the terms upon which it will perform the supplier actions under the Feed-in Act.
4.	5.3 Dispute resolution – occupier disputes	Deleted subsections that quoted complaints provisions that are outlined in the Consumer Protection Code. The provision has been updated to require occupier disputes to be

	Clause	Outline of proposed changes
		handled in accordance with the new Consumer Protection Code.
5.	6.1 Applicability of consumer protection code	Removed reference to schedule 3 and referred directly to the new Consumer Protection Code
6.	6.2 Extended definition of utility service	Removed reference to schedule and referred directly to the new Consumer Protection Code
7.	Schedule 3: Applicability of Consumer Protection Code	Removed Schedule. The schedule quotes a previous version of the Consumer Protection Code. Clause 6.1 and 6.2 have been updated to refer directly to the new Consumer Protection Code. This ensures that all NERL retailer customers receive the same protections under the new Consumer Protection Code.

# Appendix 1 Draft Electricity Feed-in Tariff Code



Australian Capital Territory



**ICRC**

Independent Competition and Regulatory Commission

# ELECTRICITY FEED-IN CODE 2020

ELECTRICITY FEED-IN CODE | SEPTEMBER ~~2015~~ 2020



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# 1. INTRODUCTION

## 1.1 Industry codes

The Electricity Feed-in Code is an industry code under Part 4 of the *Utilities Act 2000* (the **Utilities Act**) that has been determined by the Independent Competition and Regulatory Commission (the **Commission**).

Section 55(1) of the **Utilities Act** provides that ‘an industry code may set out practices, standards and other matters about the provision of a utility service’.

Section 56(1) of the **Utilities Act** states that ‘for this Act, an industry code applies to a utility if it applies to the provision of utility services of a kind that the utility is licensed to provide.’

The circumstances under which the Commission may determine an industry code and the processes to be followed are detailed in sections 59 and 60 of the **Utilities Act**.

## 1.2 Utility / NERL retailers to comply with industry codes

The **Utilities Act** provides, in section 25(2)(iii) that a utility licence is subject to the condition that the utility comply with each industry code that applies to the utility.

Section 56A of the **Utilities Act** allows the **Commission** to determine that an industry code applies to a **NERL retailer** if the **Commission** is satisfied on reasonable grounds that it is appropriate for the code to apply to the retailer.

The **Commission** has determined that the Electricity Feed-in Code applies to **NERL retailers** authorised to supply electricity.

The **Utilities Act** provides, in section 75H(1)(a) that a **NERL retailer** commits an offence if the retailer contravenes an industry code that applies to the retailer.

## 1.3 Effect of inconsistency of industry codes

Under section 56(3) of the **Utilities Act**, ‘an industry code has no effect to the extent of any inconsistency with this Act, a related law or a technical code’.

## 1.4 Electricity Feed-in Scheme

A scheme (the **Electricity Feed-in Scheme**) for feed-in from renewable energy generators to the electricity network is established under the *Electricity Feed-in (Renewable Energy Premium) Act 2008* (the **Electricity Feed-in Act**).

The **Electricity Feed-in Act** provides in section 6(2) for a range of actions required of **Electricity distributors**, including connecting a renewable generator to the distributor’s network (the **distributor actions**) and in section 6(3) for actions required of a **NERL retailer** (the **supplier actions**). Section 7 of the **Electricity Feed-in Act** provides that the **distributor actions** are a utility service.

## 2. PURPOSE AND APPLICATION OF THIS CODE

### 2.1 Purpose

The purpose of this Code is to set out practices and standards for the operation of the scheme for feed-in from renewable energy generators to the electricity network established under the **Electricity Feed-in Act**.

### 2.2 Application

This Code applies to:

- (a) **Electricity distributors**
- (b) **NERL retailers.**

### 2.3 Other applicable laws

This Code is in addition to, and does not limit, the rights and obligations of **Electricity distributors** and **NERL retailers** under the **Utilities Act**, the **Electricity Feed-in Act** and any other applicable law.

## 3. DICTIONARY

### 3.1 Dictionary attached

The Dictionary at the end of the Electricity Feed-in Code is part of this Code.

## 4. DISTRIBUTOR OBLIGATIONS

### 4.1 Distributor to detail arrangements to NERL retailer

The **Electricity distributor** must,

- (a) upon request, provide to a **NERL retailer** a statement of the terms on which it will provide the relevant **distributor actions** to the **Occupier**. The **Network Use of System Agreement**, if any, will apply to the **distributor actions** so far as relevant.
- (b) upon application from an **Occupier**, which may be received via the **Occupier's** chosen **NERL retailer**, provide the relevant **distributor actions** in accordance with a ~~negotiated~~ contract with the **Occupier** either directly or via the **NERL retailer** as agent of the **Electricity distributor** for that purpose.

### 4.2 Distributor to alert NERL retailer and Occupier of start dates

The **Electricity distributor** must, as part of its response to an application for **distributor actions**, inform the **NERL retailer** and the **NERL retailer** must inform the **Occupier** of the date from which the 20-year period for the payment of a premium rate as provided for in section 11 of the **Electricity Feed-in Act** commenced.

### 4.3 Dispute resolution—NERL retailer disputes

Disputes between **Electricity distributors** and **NERL retailers** in relation to the **Electricity Feed-in Scheme** will be resolved in accordance with the arrangements set out in the **Network Use of System Agreement** in place between the parties, if any.

If no **Network Use of System Agreement** exists and either party gives the other a notice of dispute under this agreement, the following procedure will apply:

- (a) if the dispute comes within clause 8.2 of the *National Electricity Rules* - the dispute resolution procedure in those rules will apply; or
- (b) if the dispute is over a technical matter or in relation to a matter dealt with under clause 8.11 of the *National Electricity Rules* - the procedure in Schedule 1 (Expert Resolution) of this Code will apply; or
- (c) otherwise - the procedure in Schedule 2 (Mediation) of this Code will apply.

If there is a dispute over whether a matter is a technical matter or not, then the matter will be referred in accordance with the procedure in Schedule 1 for the relevant independent expert to determine whether the matter should be determined in accordance with Schedule 1 (Independent Expert) or Schedule 2 (Mediation).

No party may have recourse to litigation without first having complied with this clause 4.3.

This clause does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

All notices issued under this clause must be sent to the address of the relevant party notified in writing by the relevant party.

Notices are deemed to be received:

- (d) in the case of delivery by post, 2 *business days* after the date of posting;
- (e) in the case of fax, on receipt by the sender of a transmission report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number and indicating that the transmission has been made without error, unless the recipient notifies the sender within 24 hours of the fax being sent that the fax was not received in its entirety in legible form; or
- (f) in the case of email, when the email is capable of being retrieved by the recipient at the address notified by the recipient to the sender

If a notice is received on a day which is not a *business day* or after 5.00 pm on a *business day*, it is taken to be received on the next *business day*.

### 4.4 Dispute resolution—Occupier disputes

~~(1)~~ Disputes between **Electricity distributors** and **Occupiers** of premises in relation to the **Electricity Feed-in Scheme** will be resolved in accordance with the **Utilities Act** and **Complaints** procedures developed by the **Electricity distributor** in accordance with the Consumer Protection Code.

~~(1)~~—

~~(2)~~—An **Electricity distributor** must develop, maintain and implement procedures to deal with **Complaint of an Occupier**, including:

- ~~(3) a right to have the **Complaint** considered by a senior employee within the **Electricity distributor** if the **Occupier** is not satisfied with the manner in which the **Electricity distributor** is handling the **Complaint**; and~~
- ~~(4) a **Complaint** by an **Occupier** against an **Agent** of the **Electricity distributor**; and~~
- ~~(5) the resolution of a dispute between the **Electricity distributor** and an **Occupier**.~~
- ~~(6) The procedures implemented by an **Electricity distributor** must provide for the handling of a **Complaint** in accordance with the relevant Australian Standard on complaints handling.~~
- ~~(7) An **Electricity distributor** that receives a **Complaint** from an **Occupier** must advise the **Occupier** of the following matters:~~
- ~~(8) in its initial response to the **Occupier** — the **Electricity distributor's** complaint handling practices and procedures; and~~
- ~~(9) in a response giving its final decision on a **Complaint** — any right the **Occupier** may have to refer their **Complaint** to the ACT Civil and Administrative Tribunal (**ACAT**).~~
- ~~(10)(2) An **Electricity distributor** must keep its records of a **Complaint** made by an **Occupier** for not less than 12 months after the **Complaint** is resolved.~~

## 5. NERL RETAILER OBLIGATIONS

### 5.1 NERL retailer to detail arrangements to Occupiers

The **NERL retailer** must, ~~by a separate negotiated contract or through amendment of an existing contract,~~ provide a statement of the terms on which it will provide the **supplier actions** to an **Occupier** from whom an application has been received. Items (a) to (c) are the minimum requirements for inclusion:

- (a) the information that will be provided to **Occupiers** when a payment for renewable energy is made, including the amount and value of any energy generated from the premises
- (b) the frequency of payments
- (c) the method and circumstances of payment to **Occupiers**.

~~The terms **A contract**~~ may provide that payments can be by way of an offset against the **Occupier's** electricity account.

### 5.2 Dispute resolution—distributor disputes

Disputes between **NERL retailers** and **Electricity distributors** in relation to the **Electricity Feed-in Scheme** will be resolved in accordance with the procedure in clause 4.3.

### 5.3 Dispute resolution—Occupier disputes

- (1) Disputes between **NERL retailers** and **Occupiers** of premises in relation to the **Electricity Feed-in Scheme** will be resolved in accordance with the **Utilities Act** and ~~€~~complaints procedures developed by the **NERL retailer** in accordance with the **Consumer Protection Code**.
- ~~(2) A **NERL retailer** must develop, maintain and implement procedures to deal with Complaint of an **Occupier**, including:~~

~~a right to have the **Complaint** considered by a senior employee within the **NERL retailer** if the **Occupier** is not satisfied with the manner in which the **NERL retailer** is handling the **Complaint**; and a **Complaint** by an **Occupier** against an **Agent** of the **NERL retailer**; and the resolution of a dispute between the **NERL retailer** and an **Occupier**.~~

## 6. OCCUPIER PROTECTIONS AND OBLIGATIONS

### 6.1 Applicability of Consumer Protection Code provisions

Electricity distributors and NERL retailers must comply with the ~~listed provisions of the Consumer Protection Code which are set out in Schedule 4 to this Code.~~

### 6.2 Extended definition of 'utility service'

For the purpose of this Code, the definition of 'utility service' in the ~~listed provisions of the Consumer Protection Code which are set out in Schedule 4 to this Code~~ is to be read to include the **distributor actions** and/or **supplier actions**.

### 6.3 Electricity supply debts and hardship provisions

Despite clause 6.1, a **NERL retailer** must not set terms that would require a payment owing to an **Occupier** under the **supplier actions** to be used (without the approval of the **Occupier**) to recover an **electricity supply debt**:

- (a) which is the subject of a hardship provisions under Part 2, Division 6 of the *National Energy Retail Law (ACT)*;
- (b) contrary to a direction of the ACT Civil and Administrative Tribunal under Part 12 of the **Utilities Act**; or
- (c) contrary to an arrangement for the repayment of an electricity supply debt agreed by the **Occupier** and **NERL retailer**.

### 6.4 Requirement for Occupier application

The **distributor actions** and **supplier actions** cannot be provided in the absence of an application from an **Occupier** of premises for such services. A person taking up occupancy of premises with an installed generation capacity is required to apply to the **NERL retailer** to participate in the **Electricity Feed-In Scheme**.

### 3 DICTIONARY

- (1) **'Commission'** means the Independent Competition and Regulatory Commission.
- (2) **'Consumer Protection Code'** means the **Consumer Protection Code** approved as *Utilities (Consumer Protection Code) Determination 2012-2020* under Part 4 of the **Utilities Act**.
- (3) **'Distributor actions'** are the actions required by an **Electricity distributor** under section 6(2) of the **Electricity Feed-in Act**.
- (4) **'Electricity distributor'** means a person who holds a licence to distribute electricity under Part 3 of the **Utilities Act**.
- (5) **'Electricity Feed-in Act'** means the *Electricity Feed-in (Renewable Energy Premium) Act 2008*.
- (6) **'Electricity Feed-in Scheme'** means the scheme for the feed-in from renewable energy generators to the electricity network that is established under the **Electricity Feed-in Act**.
- (7) **'Electricity supply'** means the supply of electricity from an electricity network to premises for consumption.
- (8) **'Law'** means:
  - (a) an Act
  - (b) a subordinate law
  - (c) any other statutory instrument of a legislative nature
  - (d) the common law.
- (9) **'NERL retailer'** means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.
- (10) **'Network Use of System Agreement'** is the default or negotiated contract in place between an **Electricity distributor** and **NERL retailer** in accordance with the now revoked Electricity Network Use of System Code.
- (11) **'Occupier'** in relation to premises has the same meaning as in the **Electricity Feed-in Act**—~~'the retail electricity customer for the premises'~~. It does not have the meaning of **'Occupier'** in the **Consumer Protection Code**.
- (12) **'Supplier actions'** are the actions required by a **NERL retailer** under section 6(3) of the **Electricity Feed-in Act**.
- (13) **'Utilities Act'** means the *Utilities Act 2000 (ACT)*.

## Schedule 1: Dispute resolution procedure - Expert Resolution (non-National Electricity Rules disputes)

### A. First stage dispute resolution

- A.1 This Schedule applies to a dispute between an **Electricity distributor** and a **NERL retailer**.
- A.2 The parties will use their reasonable endeavours to resolve the dispute within a period of 20 *business days* after a notice is given under clause 4.3.
- A.3 If the dispute remains unresolved at the end of the period referred to in clause A.2 then either party may require that the dispute be determined under clause B of this schedule.

### B. Reference to and appointment of Independent Expert

- B.1 Where clause A.3 applies, either party may require that the dispute be determined by an independent expert appointed in accordance with clause B.2 of this schedule ("**Independent Expert**").
- B.2 The party wishing to have the dispute determined by an Independent Expert will give written notice to that effect to the other party specifying the nature of the dispute. The parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 5 *business days* of the date of receipt of the notice, then either party may refer the matter to the President for the time being of the Law Society of the Australian Capital Territory (or, if that body no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the Law Society of the Australian Capital Territory), to nominate a suitably qualified person to act as the Independent Expert to determine the dispute.

### C. Role of Independent Expert

The Independent Expert will:

- a) act as an expert and not as an arbitrator;
- b) have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
- c) not be a former or current employee or representative of either party or of a related body corporate of either of them; and
- d) disclose fully to the parties, before being appointed, any interest or duty which may conflict with his or her position.

### D. Representation and evidence

Each party:

- a) may be legally represented at any hearing before the Independent Expert;
- b) will be entitled to produce to the Independent Expert any materials or evidence which that party believes is relevant to the dispute; and
- c) will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.

**E. Rules of evidence**

The Independent Expert will not be bound by the rules of evidence.

**F. Power of Independent Expert**

The Independent Expert will have the power to inform himself or herself independently as to the facts to which the dispute relates and to take such measures as he or she thinks fit to expedite the determination of the dispute.

**G. Determination**

G.1 The Independent Expert will make a determination on the dispute and:

- a) will determine what, if any, adjustments may be necessary between the parties;  
or
- b) if relevant, determine the amendments required to the terms of this agreement.

G.2 The determination of the Independent Expert will be, in the absence of bias or manifest error, final and binding upon the parties.

**H. Costs**

The costs in relation to a determination by the Independent Expert will be dealt with as follows:

- a) the remuneration of the Independent Expert will be agreed by the parties;
- b) unless the parties otherwise agree, the Independent Expert will determine which party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that party was at fault or unreasonable in failing to agree to the matter under reference, and that party will bear those costs accordingly; and
- c) the parties will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the Independent Expert

## Schedule 2: Dispute resolution procedure - mediation (non-National Electricity Rules disputes)

- 1.1 This Schedule applies to a dispute between an **Electricity distributor** and a **NERL retailer**
- 1.2 If the dispute is not resolved within 10 *business days* after a notice of dispute is given under section 4.3 ("**Notice Period**"), the dispute is by this clause submitted to mediation. The mediation must be conducted in Canberra. The Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes (in force as at the date of the notice) apply to the mediation, except to the extent they conflict with this Schedule.
- 1.3 If the parties have not agreed on the mediator and the mediator's remuneration within 7 days after the Notice Period, the mediator will be appointed by the President of the Australian Capital Territory Law Society or the President's nominee, at the request of either party, and that person will also determine the amount or rate of the mediator's remuneration.
- 1.4 The parties must share the costs of the mediator. Each party must pay its own costs of the mediation

## ~~Schedule 3: Applicability of Consumer Protection Code 2012 to Feed-in Scheme~~

### ~~5—Conduct of Electricity distributors and NERL retailers~~

- (1) ~~An **electricity distributor** or **NERL retailer** must act ethically, fairly and honestly in all its dealings with an **Occupier**.~~
- (2) ~~An **Electricity distributor** or **NERL retailer** must not call or contact an **Occupier**:~~
- ~~(a) during a public holiday in the **Territory**;~~
  - ~~(b) on a Saturday or Sunday, between midnight and 9:00am or between 5:00pm and midnight; or~~
  - ~~(c) on any other day, between midnight and 8:00am or between 8:00pm and midnight,~~
- ~~unless it is during an emergency or the **Occupier** has given express approval.~~
- ~~Note: When contact is made by way of a telephone call subject to the requirements of the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth), the permissible times for contact may be different.~~
- (3) ~~The staff of an **Electricity distributor** or **NERL retailer** must attempt to identify themselves to an **Occupier** before entering the **Premises** of the an **Occupier** unless:~~
- ~~(a) the **Electricity distributor** or **NERL retailer** staff are entering the Premises to read, or check the accuracy, of a meter; or~~
  - ~~(b) the **Electricity distributor** or **NERL retailer** staff are responding to an emergency.~~
- (4) ~~The obligations of an **Electricity distributor** or **NERL retailer** under this Code are subject to an **Occupier** informing the **Electricity distributors** and **NERL retailer**, to the extent that such information is relevant to that obligation, of the following events as soon as possible after each relevant occurrence:~~
- ~~(a) any change in the **Person** or body responsible for the payment of an **Account**;~~
  - ~~(b) any change to the contact details of an **Occupier**;~~
  - ~~(c) any change or proposed change to the **Premises** or the **Installation** of the **Occupier** which may affect the quality or safety of the **Utility Service** to the **Occupier** or another **Person**;~~
  - ~~(d) the **Occupier** becoming aware of a problem with a **Utility Service** at the **Premises** of the **Occupier**.~~
- (5) ~~If an **Electricity distributor** or **NERL retailer** makes an **Appointment** with an **Occupier**, the **Electricity distributor** or **NERL retailer** must:~~

- ~~(a) — not be more than 30 minutes late for the agreed **Appointment** unless at least one hour's notice has been given to the **Occupier** that the **Electricity distributor** or **NERL retailer** will be late; and~~
  - ~~(b) — give 24 hours' notice of the cancellation of an **Appointment**.~~
  - ~~(6) — An **Electricity distributor** or **NERL retailer** may, when making an agreed **Appointment** with an **Occupier**, negotiate a time frame in which the **Electricity distributor** or **NERL retailer** must keep that **Appointment**.~~
- Example: An **Electricity distributor** or **NERL retailer** may agree to attend the **Premises** of the **Occupier** between 8:00am and 11:00am.*
- ~~(7) — For the purposes of clauses 5(1), (2) and (3), an **Electricity distributor** or **NERL retailer** includes an **Agent** acting on the behalf of the **Electricity distributor** and **NERL retailer**.~~

## 6 — Complaints

### 6.1 — Complaints procedures

An **Electricity distributor** or **NERL retailer** must develop, maintain and implement procedures to deal with:

- ~~(1) — A **Complaint** of an **Occupier**, including:
 
  - ~~(a) — a right to have the **Complaint** considered by a senior employee within the **Electricity distributor** or **NERL retailer** if the **Occupier** is not satisfied with the manner in which the **Electricity distributor** or **NERL retailer** is handling the **Complaint**; and~~
  - ~~(b) — a **Complaint** by an **Occupier** against an **Agent** of the **Electricity distributor** or **NERL retailer**; and~~~~
- ~~(2) — the resolution of a dispute between the **Electricity distributor** or **NERL retailer** and an **Occupier**.~~

### 6.2 — Practices and procedures to comply with Australian Standards

The procedures implemented by a an **Electricity distributor** or **NERL retailer** under clause 6.1(1) must provide for the handling of a **Complaint** in accordance with the relevant Australian Standard on complaints handling.

### 6.3 — Addressing complaints

An **Electricity distributor** or **NERL retailer** that receives a **Complaint** from an **Occupier** must advise the **Occupier** of the following matters:

- ~~(1) — in its initial response to the **Occupier** — the **Electricity distributor** or **NERL retailer's** complaint handling practices and procedures; and~~
- ~~(2) — in a response giving its final decision on a **Complaint** — any right the **Occupier** may have to refer their **Complaint** to the ACT Civil and Administrative Tribunal (**ACAT**).~~

### 6.4 — Utility to keep records

An **Electricity distributor** or **NERL retailer** must keep its records of a **Complaint** made by an **Occupier** for not less than 12 months after the **Complaint** is resolved.

## 7—Provision of information

### 7.1—Utility to provide information

- (1) ~~An **Electricity distributor** or **NERL retailer** must, on request, provide an **Occupier** with information about the services provided by the Electricity distributor or NERL retailer to the **Occupier** Premises;~~
  - (2) ~~An **Electricity distributor** or **NERL retailer** must, on request, provide an **Occupier** with information about:~~
    - (a) ~~Load Profiles and Power Factors, if applicable;~~
    - (b) ~~meter readings for Utility Services provided to the **Occupier's** Premises by the Electricity distributor or NERL retailer;~~
    - (c) ~~the Account of an **Occupier** with the Electricity distributor or NERL retailer; and~~
    - (d) ~~efficient energy consumption;~~
- ~~to the extent that the information is reasonably available to the **Electricity distributor** or **NERL retailer**.~~

### 7.2—Electricity distributor or NERL retailer may recover costs of providing information

- (1) ~~Subject to the prior approval of the **ICRC** either in a particular case or generally for the type of information being requested, an **Electricity distributor** or **NERL retailer** may charge an **Occupier** for the reasonable costs of supplying information under clause 7.1.~~
- (2) ~~A Charge approved under clause 7.2(1) should be listed on the website of the **Electricity distributor** or **NERL retailer**.~~

### 7.3—Disclosure of Occupier information by an Electricity distributor or NERL retailer to a third party

~~An **Electricity distributor** or **NERL retailer** must not disclose personal information about an **Occupier** to a third party except in accordance with the *Privacy Act 1988* (Cth) and the *Utilities Act 2000* (ACT). “Personal information” is defined in the *Privacy Act 1988* (Cth), section 6(1).~~

## 8—Notice

### 8.1—Requirements for effective notice to Occupier

- (1) ~~Unless alternative arrangements have been agreed between the **Electricity distributor** or **NERL retailer** and an **Occupier**, where this Code requires that a notice be issued to an **Occupier**, an **Electricity distributor** or **NERL retailer** must ensure that the notice is in writing and:~~
  - (a) ~~delivered by hand to the **Premises** of an **Occupier** (unless the **Occupier** has specified an alternative address for service); or~~
  - (b) ~~sent by prepaid mail to the **Premises** of an **Occupier** (unless the **Occupier** has specified an alternative address for service); or~~
  - (c) ~~sent by facsimile to the facsimile number of the **Occupier**; or~~

- (d) ~~sent to the **Occupier** by some other electronic means capable of generating a delivery confirmation report~~  
~~except where this Code specifies another method of notification.~~

## 8.2 — Deemed delivery

Unless it can be shown that a notice was received at an earlier time, and subject to section 250 of the *Legislation Act 2001* (ACT), if an **Electricity distributor** or **NERL retailer** has followed the procedures set out in clause 8.1, the **Occupier** is deemed to have received the notice:

- (1) ~~if delivered by hand, upon leaving it at the relevant address;~~
- (2) ~~if mailed to an address, when the notice would have been delivered in the ordinary course of post; or~~
- (3) ~~if sent by facsimile or electronic mail, when it was sent.~~

*Note:* ~~Section 250 of the *Legislation 2001 Act* (ACT) describes when service will be taken to be effected, with reference to delivery by particular means.~~

# 9 — Summary of rights

## 9.1 — An Electricity distributor or NERL retailer to prepare summary

- (1) ~~An Electricity distributor or NERL retailer must prepare a statement summarising the rights of an **Occupier** and the Electricity distributor or NERL retailer under the Utilities Act, this Code and the relevant Customer Contract with respect to the Utility Service provided by the Electricity distributor or NERL retailer under the Customer Contract.~~
- (2) ~~An **Electricity distributor** or **NERL retailer** is not required to prepare a statement under clause 9.1(1) for a **Customer** who has agreed with the **Electricity distributor** or **NERL retailer** to alternative arrangements or standards.~~

## 9.2 — Content and format of summary

- (1) ~~The summary must deal with:~~

### Rights of an Occupier

- (a) ~~the level of service standards an **Occupier** is entitled to receive;~~
- (b) ~~**Occupiers'** right to information;~~
- (c) ~~**Customers'** and **Consumer's** right to complain about an **Electricity distributor** or **NERL retailer's** conduct and service levels, and who **complaints** can be made to.~~

### Electricity distributor or NERL retailer Rights

- (d) ~~the right of the **Electricity distributor** or **NERL retailer** to payment for services provided to a **Customer**;~~
  - (e) ~~the right of the **Electricity distributor** or **NERL retailer** to disconnect or restrict supply to a **Customer** for non-payment of a **Customer Account**;~~
  - (f) ~~any rights of access and asset protection that the **Electricity distributor** or **NERL retailer** has, including the right to enter the **Premises** of an **Occupier**.~~
- (2) ~~The summary must be expressed in simple and straightforward language.~~

- (3) — In addition, the summary must advise **Occupiers** of the availability of:
  - (a) — interpreter services; and
  - (b) — other versions of the summary.

#### ~~9.4 — An Electricity distributor or NERL retailer to provide copy of summary~~

- (1) — A copy of the summary must be included in an **Occupier's** initial **Account** unless provided previously. If the summary is changed in any significant respect a copy must be sent to each **Occupier** with the **Account** following the change.
- (2) — An **Electricity distributor** or **NERL retailer** must, on request, provide an **Occupier** with a copy of the summary.
- (3) — An **Electricity distributor** or **NERL retailer** must make the most recent version of the summary available on its website.

## ~~11 — Obligation to comply with service standards~~

### ~~11.1 — Compliance by utilities with minimum service standards~~

An **Electricity distributor** or **NERL retailer** must comply with Service Standard 2 of the Minimum Service Standards set out in Schedule 1 of the Consumer Protection Code, except to the extent that:

- (1) — alternative arrangements or standards have been agreed between the **Electricity distributor** or **NERL retailer** and an **Occupier**; or
- (2) — events or conditions outside the control of the **Electricity distributor** or **NERL retailer**, including emergencies declared under the *Emergency Act 2004 (ACT)* or any other **Law**, prevent the **Electricity distributor** or **NERL retailer** from complying with the Minimum Service Standards in Schedule 1 of the Consumer Protection Code.

### ~~11.2 — Obligation to pay rebate for non-compliance~~

- (1) — If:
  - (a) — an **Electricity distributor** or **NERL retailer** does not comply with its obligations under clause 11.1; and
  - (a) — there is a resultant liability to pay a rebate prescribed in Schedule 1 of the Consumer Protection Code to an affected **Occupier**; and
  - (b) — the affected **Occupier** has, within three months of the incident of non-compliance by the **Electricity distributor** or **NERL retailer**, applied to the **Electricity distributor** or **NERL retailer** for the rebate,
 the **Electricity distributor** or **NERL retailer** must pay the rebate.
- (2) — An **Electricity distributor** or **NERL retailer** is not required by clause 11.2(1) to pay more than one rebate to each affected **Premises** per event of non-compliance with the performance standards.

*Example:* A family of 2 adults and 3 children have had gas supply to their home interrupted and have not been given the required notice of interruption. The family would be eligible for 1 rebate, not 5 rebates.

### 11.3 Method of payment of rebate

#### Payment of rebates to ~~Customers~~

- (1) — An ~~Electricity distributor~~ or ~~NERL retailer~~ required under this Code to pay a rebate to an ~~Occupier~~ may pay the rebate:
- (a) — by cash or cheque or as otherwise agreed by the ~~Occupier~~; or
  - (b) — by deducting the amount of the rebate from the amount payable by the ~~Occupier~~ under the next ~~Customer Account~~ which is due after the rebate became payable; or
  - (c) — if the ~~Electricity distributor~~ or ~~NERL retailer~~ is an ~~Electricity Distributor~~, the rebate may be paid by the ~~Utility~~ to ~~Customer's Electricity Supplier~~, to be deducted from the amount payable by the ~~Occupier~~ under the next ~~Customer Account~~ which is due after the rebate becomes payable; or
  - (d) — if the ~~Occupier~~ has discontinued the ~~Utility Service~~, the rebate may be paid directly to the ~~Occupier~~ or as otherwise agreed by the ~~Occupier~~.

### 11.4 Rebates to be paid in addition to damages

If an ~~Electricity distributor~~ or ~~NERL retailer~~ becomes liable under this Code to pay a rebate to an ~~Occupier~~, that liability is in addition to, and not in substitution for, any claim for damages that the ~~Occupier~~ may have against the ~~Electricity distributor~~ or ~~NERL retailer~~ for breach of the ~~Customer Contract~~, or any right to compensation or damages an ~~Occupier~~ may have under ~~Law~~.

### 11.5 Information to be provided to Occupier

- (1) — An ~~Electricity distributor~~ or ~~NERL retailer~~ must inform an ~~Occupier~~ of:
- (a) — the Minimum Service Standards in Schedule 1 of the ~~Consumer Protection Code~~; and
  - (b) — the ~~Occupier's~~ entitlement to apply for a rebate if those standards are not met; and
  - (c) — the process to be followed by an ~~Occupier~~ applying for a rebate.
- (2) — An ~~Electricity distributor~~ or ~~NERL retailer~~ is not required to inform an ~~Occupier~~ of the matters in clause 11.5(1) if alternative arrangements or standards have been agreed between the ~~Electricity distributor~~ or ~~NERL retailer~~ and the ~~Occupier~~.

## 22 Negotiated customer contract provisions

### 22.1 Obligations under the Utilities Act

Under the ~~Utilities Act~~, a ~~Utility~~ that provides a ~~Utility Service~~ to a ~~Non Franchise Customer~~ must do so in accordance with a ~~Negotiated Customer Contract~~.

### 22.2 Provisions to be contained in the negotiated customer contract

A ~~Negotiated Customer Contract~~ with a ~~Small Non Franchise Customer~~ must give effect to this Part of the Code.

### ~~22.3 Provisions to be regarded as minimums only~~

Nothing in this Part of the Code is to be taken to prevent a **Utility** including provisions in a **Negotiated Customer Contract** with a **Small Non-Franchise Customer** that are in addition to, and not inconsistent with, matters covered by this Part.

## ~~28 Utility to make contract available to customers~~

- ~~(1) — A **Utility** must make a copy of a **Negotiated Customer Contract** available to the **Occupier**, free of charge.~~
- ~~(2) — A **Utility** may charge an **Occupier** the reasonable cost of providing any additional copies of a **Negotiated Customer Contract**.~~

## ~~31 Contract information~~

- ~~(1) — A **Utility** shall provide the following information, in writing, to an **Occupier** within two **Business Days** of entering into a contract with an **Occupier**, unless this information has been previously supplied, in writing, to the **Occupier**:~~
  - ~~(a) — the full terms, conditions and applicable costs of the contract including the period of the contract;~~
  - ~~(b) — advice to the **Occupier** that the **Occupier** has the right to cancel the contract;~~
  - ~~(c) — a **Utility** contact point which the **Occupier** may contact for further information or to cancel the contract; and~~
  - ~~(d) — how to make a **Complaint** against the **Utility**.~~
- ~~(2) — Any information provided to the **Occupier** under clause 31(1) must be in simple and straightforward language.~~

## Schedule **43**: Code amendment history

The Electricity Feed-in Code was first determined on 27 February 2009 under the Utilities (Electricity Feed-in Code) Determination 2009 (DI2009-23).

The Code has been varied, revoked or re-determined by the following instruments. These are available on the ACT Legislation Register ([www.legislation.act.gov.au/a/2000-65/default.asp](http://www.legislation.act.gov.au/a/2000-65/default.asp)).

Instrument name and number	Date of effect	Comment
Utilities (Electricity Feed-in Code) Determination 2010 (DI2010-268)	Effective from October 2010	Revoked the Code determined in 2009 and determined new Code
Utilities (Electricity Feed-in Code) Determination 2012 (DI2012-154)	Effective from July 2012	Revoked the Code determined in 2010 and determined new Code to incorporate the commencement of the NECF in the ACT
Utilities (Electricity Feed-in Code) Determination 2015 (DI2015- <del>TBA</del> <a href="#">256</a> )	Effective from September 2015	Made variations to the code determined in 2012 to omit reporting obligations under the Feed-in scheme. Removed clauses 4.5, 5.4 and 7 and schedule 3. Revoked DI2012-154.
<a href="#">Utilities (Electricity Feed-in Code) Determination 2020 (DI2020-TBA)</a>	<a href="#">Effective from 1 July 2020</a>	<a href="#">Revoked the Code determined in 2015 and determined a new Code to reflect commencement of a new Consumer Protection Code, (DI2020-6)</a>