

**INFORMATION PAPER:**

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

January 2009

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## 1 Purpose of this Information Paper

The Independent Competition and Regulatory Commission is conducting a public consultation process on the draft Electricity Feed-in Code. The period for comments on the draft Code will close on **23 February 2009**.

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

This information paper is intended to assist the public consultation process by providing additional background and contextual material and further information on the draft Code's provisions.

## 2 Introduction

### 2.1 *Utilities Licensing and Industry Codes*

The Utilities Act provides a regulatory framework for utilities in the ACT. Licensing of utilities is dealt with under Part 3 of the Utilities Act. In relation to licences, the Independent Competition and Regulatory Commission (the Commission) has responsibility particularly for:

- licensing of utilities, including granting, varying, transferring and revoking licences
- determining and monitoring compliance with licence conditions
- granting exemptions from compliance with licence conditions, and
- determination of licence fees.<sup>1</sup>

Licences are subject to a number of conditions with which utilities are required to comply. For example, section 25 of the Act requires all licensees to comply with:

- any requirements under the Act or a related law
- any requirements under any other Territory law that apply to the utility in relation to the provision of a utility service
- any relevant industry or technical codes, and
- any directions given by the Commission or by the chief executive under part 5 of the Act.<sup>2</sup>

Provisions relating to industry codes are set out in Part 4 of the Act. An industry code 'may set out practices, standards and other matters about the provision of a utility service'.

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<sup>1</sup> Following amendment of the Utilities Act in 2007 to establish the energy industry levy, the chief executive officer of the Commission was appointed as levy administrator.

<sup>2</sup> Part 5 of the Act deals with technical regulation, responsibility for which is located in the ACT Planning and Land Authority.

## 2.2 Development of Industry Codes

The Utilities Act provides for the consideration by the Commission of codes submitted by a utility or a person representing a group of two or more utilities (section 57). The Act also provides for industry codes determined by the Commission. Section 59(1) of the Act states that:

- (1) ICRC may, in writing, determine an industry code if it—
  - (a) has consulted the Minister, and the Minister responsible for part 5 (Technical regulation), in relation to the code; and
  - (b) is satisfied that—
    - (i) the code is not inconsistent in material respects with another industry code or a technical code; and
    - (ii) it is necessary or convenient to determine the code.

Section 60 of the Act sets out the consultation requirements for industry codes.

- (1) Before ICRC approves or determines an industry code, it must—
  - (a) publish a notice in a daily newspaper that—
    - (i) states that the draft code has been prepared; and
    - (ii) states the place or places where copies of the draft code may be inspected or obtained; and
    - (iii) invites interested people to make submissions to ICRC about the draft code within the period stated in the notice; and
  - (b) make copies of the draft code available for public inspection in accordance with the notice.
- (2) The period stated in the notice must run for at least 30 days after the publication of the notice.
- (3) ICRC must have due regard to any submission made in accordance with the notice when approving or determining the industry code.

## 2.3 The ACT Electricity Feed-in Scheme

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

The Electricity Feed-in Act provides for new licence conditions for electricity distributors licensed to distribute electricity through an electricity network and electricity suppliers licensed to supply electricity from the network. Section 6(2) of the Electricity Feed-in Act provides that:

It is a condition of the distributor's licence that the distributor must, on application by the occupier of premises at which there is an NEL compliant renewable energy generator—

- (a) connect the generator to the distributor's network to enable electricity generated by the generator to be supplied to the network; and
- (b) reimburse the utility that is the electricity supplier to the premises the difference between—
  - (i) the amount payable under subsection (5) for electricity generated by the generator; and
  - (ii) the normal cost of that electricity; and
- (c) pass on to the occupier any additional metering costs in relation to electricity generated by the generator.

Section 6(5) of the Electricity Feed-in Act provides that:

For the electricity supplier mentioned in subsection (2), it is a condition of the supplier's licence that the supplier must, on application by the occupier of premises at which there is an NEL compliant renewable energy generator connected to the electricity network, pay the occupier at the applicable rate under section 8 (Payment for electricity from renewable energy generators) for the total amount of electricity generated by the generator.

Section 7 of the Electricity Feed-in Act provides that:

Each of the following is a utility service for the *Utilities Act 2000*:

- (a) the action required by a distributor under section 6 (2);
- (b) the action required by a supplier under section 6 (5).

### **3 Variation of Utility Licences to take Account of Electricity Feed-in Scheme**

Section 38 of the Utilities Act allows the Commission to vary a utility licence subject to certain conditions including consultation with the utility and the public. In the case of an amendment of an Act or a subordinate law the Commission may vary a licence "on its own initiative" to give effect to the direction.

The Commission has moved to amend the individual licences of all electricity distributors and all electricity suppliers to take account of the requirements of the Electricity Feed-in Act. The intention is:

- insert the new licence conditions into the licences
- amend the Reference Schedule of each licence to insert a new utility service

This is being handled as a process separate from that of the Electricity Feed-in Code.

## **4 Draft Electricity Feed-in Code – General Considerations**

The aim of the draft Code is to set up a light-handed regulatory regime that, in the light of experience, can be developed at a future date should this prove necessary or desirable.

In developing the Electricity Feed-in Code, the Commission has noted that.

- The feed-in scheme is a voluntary arrangement, entered into on the application of an occupier of premises (who, following the definition of the term in the Electricity Feed-in Act are customers of an electricity supplier), for the financial reward of the occupier.
- Electricity feed-in arrangements for renewable generation have been in place in the ACT for several years, with payments made under arrangements agreed between occupiers of premises and relevant utilities. No major difficulties have emerged.
- It would be difficult to define service standards, along the lines of those in the Consumer Protection Code for electricity supply, in the absence of experience with the operation of the Electricity Feed-in Act.

## **5 Draft Electricity Feed-in Code – Specific Provisions**

### *5.1 Distributor Obligations*

Throughout the draft Code the provisions of section 6(2) of the Electricity Feed-in Act, set out in section 2.3 of this information paper, are called the 'distributor actions'.

Certain distributor actions are relevant for occupiers of premises (who, following the definition of the term in the Electricity Feed-in Act are customers of an electricity supplier). An example is the obligation to connect a renewable generator. Certain actions are relevant for electricity suppliers. An example is the obligation to reimburse suppliers.

The obligation on distributors to pass on additional metering costs to occupiers is relevant to both occupiers and to suppliers (suppliers would pass such distribution costs on to occupants). No additional metering costs are in place, however, and the Commission understands that no additional costs are foreshadowed. For that reason, the draft Code does not address the metering cost issue.

#### Distributor to detail arrangements to supplier (section 4.1)

The draft Code provides that the distributor must, upon request, provide to an electricity supplier a statement of the terms on which it will provide the distributor actions relevant to electricity suppliers. The Network Use of System Agreement will apply to this so far as relevant. This Agreement is the contract in place between a distributor or supplier in accordance with the Electricity Network Use of System Code<sup>3</sup>.

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<sup>3</sup> Accessible on the Commission's website at [www.icrc.act.gov.au](http://www.icrc.act.gov.au)

The draft Code also provides that the distributor must, upon application from an occupier of premises, enter into a negotiated contract with the occupier for distributor actions relevant to the occupier. The Code recognises that, following usual electricity industry practice, such an application may be received via the occupier's chosen electricity supplier and that the negotiated contract can be either direct between the parties or via the electricity supplier as agent of the distributor.

#### Distributor to alert supplier and occupier of certain dates (section 4.2)

Section 11(1) of the Electricity Feed-in Act provides that:

The premium rate for the financial year in which a renewable energy generator is connected to a distributor's network applies, if the generator remains connected to the network, in relation to electricity generated by the generator during the 20 years after the date of the connection.

The draft Code provides that an electricity distributor, as part of its response to an application for connection, should inform the electricity supplier and the occupier of the date on which the 20-year period commenced and the date on which it will conclude.

Suppliers and occupiers of premises should therefore be aware of when the 20-year period will end, a fact particularly relevant to occupiers moving into premises where a renewable generator has already attracted premium payments. The distributor is the party best equipped to provide such information.

#### Dispute resolution (sections 4.3 and 4.4)

The opportunity has been taken to clarify in the draft Code that disputes between the distributor and the parties to which it has obligations should be handled under existing arrangements. For disputes between distributors and suppliers, the existing arrangements are those set out in the Network Use of System Agreement between the parties. For disputes between distributors and occupiers, the provisions are the Utilities Act and the requirements of the Consumer Protection identified in Schedule 2 to the draft Code.

#### Reporting to Commission (section 4.5)

The draft Code also sets up a requirement for the distributor to report to the Commission on the matters set out in Schedule 1 of the draft Code. Reports are to be provided quarterly.

Utility reports will assist the Commission in assessing how the scheme is developing and what, if any, problems have emerged. The reports will also be important for the ACT Government in determining the extent to which the Feed-in scheme is achieving its environmental objectives. The quarterly timeframe is consistent with reporting obligations under the ACT Climate Change Strategy.

## *5.2 Supplier Obligations*

### Supplier to detail arrangements to occupiers (section 5.1)

The draft Code provides that the supplier must provide a statement of the terms on which it will provide its required actions to occupiers. The statement is to cover matters such as: the information that will be provided to occupiers of premises when a payment is made; the frequency of payments; and the method and circumstances of payment of occupiers.

The draft Code also provides that the statement is to be made available to the public on the electricity supplier's website.

### Dispute resolution (sections 5.2 and 5.3)

The provisions mirror those contained in the Distributor Obligations section (sections 4.3 and 4.4).

### Reporting to Commission (section 5.4)

The provisions mirror those contained in the Distributor Obligations section (section 4.5).

## *5.3 Occupier Protections and Obligations*

### Applicability of Consumer Protection Code provisions and extended definition of 'utility service' (section 6.1 and 6.2)

The draft Code clarifies that the application of the Consumer Protection Code in relation to matters other than the Feed-in Scheme is not affected. As an example, the draft Code does not alter the provisions of the Consumer Protection Code that relate to electricity supply to customers.

Schedule 2 to the draft Code sets out whether Consumer Protection Code provisions are applicable to the Feed-in Scheme. Section 5.5 of this information paper provides some additional explanation of the assessments made on individual provisions of the Consumer Protection Code.

Some provisions of the Consumer Protection Code are not applicable to the Feed-in Scheme. For example, provisions relating to standard customer contracts (Part 3.1 of the Consumer Protection Code) are not applicable as the draft Code provides that negotiated contracts are to be used to set out terms and conditions for the Feed-in Scheme (sections 4.1 and 5.1). Provisions relating to disconnection of supply are not applicable to the Feed-in Scheme as they relate to distribution services, not the 'distributor actions' or the 'supplier actions' relevant to the Feed-in Scheme.

Some Consumer Protection Code provisions are applicable to the Feed-in Scheme. As examples, provisions relating to the conduct of utilities (e.g. that a utility must act 'ethically, fairly and honestly' in section 5 of the Consumer Protection Code) and the service standard for responding to customer complaints (Schedule 1 to the Consumer Protection Code) are clearly applicable to the Feed-in Scheme.

Certain provisions would be applicable to the Feed-in Scheme if the term 'utility service' as defined in the Consumer Protection Code covered the utility services (the obligations on distributors and suppliers) set up under section 11 of the Electricity Feed-in Act. The intent of the extended definition of 'utility service' in section 6.2 of the draft Code is to ensure that Consumer Protection Code provisions such as the obligations under utility licences set out in section 4 of the Consumer Protection Code apply to the Feed-in Scheme.

### Feed-in scheme payments not to be used to recover debts subject to hardship provisions (section 6.3)

Clause 5.1 of the draft Code requires the supplier to detail arrangements to occupiers of premises. The draft Code states that, despite this, a supplier must not set terms that would allow a payment owing to an occupier of premises for renewable generation to be used to recover (without the approval of the occupier) a customer debt:

- which is subject to an application under the hardship provisions of Part 12 of the Utilities Act, or
- where a customer has been experiencing difficulty paying a debt and has entered into an arrangement with a supplier related to the repayment of that debt.

### Requirement for occupier application (section 6.4)

The draft Code clarifies that 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 electricity supplier to participate in the scheme.

#### *5.4 Review of Code (section 7)*

In section 7, the draft Code provides for the Commission to review the Code in the light of experience with the Feed-in Scheme within two years of the commencement of the Feed-in Act.

#### *5.5 Applicability of Consumer Protection Code Provision to the Feed-in Scheme (Schedule 2)*

<b>Part or section</b>	<b>Provision</b>	<b>Applicability to feed-in scheme</b>	<b>Notes</b>
4	Obligations under licence	Applicable (reading 'utility service' to include distributor actions and supplier actions)	
5	Conduct of utilities	Applicable	
6	Complaints	Applicable	
7	Provision of information	Applicable	



<b>Part or section</b>	<b>Provision</b>	<b>Applicability to feed-in scheme</b>	<b>Notes</b>
8	Notice	Applicable	
9	Summary of Consumer and Utility Rights	Applicable	
10	Special needs	Not applicable	Provision relates to supply to a premises
11	Obligation to comply with service standards	Only service standard 3 of Schedule 2 of the Consumer Protection Code applies.	No service standards specific to the Feed-in Scheme have yet been defined
12	Charges	Applicable	
13	Customer accounts	Only applicable to the extent that information relating to the Feed-in Scheme appears on a customer account	
14	Interest and other charges	Not applicable	
Part 3.1 (Clauses 15-16 and 18-19)	Matters that must be addressed in standard customer contracts	Not applicable	Relevant negotiated contract provisions will apply
Part 3.1 (Clauses 17 and 20)	Matters that must be addressed in standard customer contracts	Not applicable	
Part 3.2 (Clause 21)	Standard customer contracts	Not applicable.	
22	Negotiated contract provisions	Applicable	
23	Disconnection of supply	Not applicable	Provision relates to failure to pay account for supply
24	Cooling off period	Not applicable	
25	Recession under Negotiated Customer Contract	Not applicable	
26	Notice where Negotiated Customer Contract Ends	Not applicable	
27	Security deposit	Not applicable	
28	Utility to Make Contract available to customers	Applicable	
Part 5 (Clauses 29 and 30)	Marketing of electricity and gas supply services	Not applicable	Provision relates to electricity and gas supply services
31	Contract information	Applicable	
32	Informed consent	Not applicable	Provision relates to the

<b>Part or section</b>	<b>Provision</b>	<b>Applicability to feed-in scheme</b>	<b>Notes</b>
			transfer of electricity of gas supply
33	New occupants	Not applicable	See section 6.4 of the Information paper – an application is required for participation in the Feed-in Scheme