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ACAT Response to Consultation Paper
Draft Electricity Feed-in Code

ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

The ACT Civil and Administrative Tribunal (the ACAT) was established by the *ACT Civil and Administrative Tribunal Act 2008* and commenced operation on 2 February 2009. The functions of the ACAT and its important role in relation to energy and water hardship and complaints in the ACT are described in the ACAT Submission to the Commission's *Draft Report No 2 of 2020*, made on 19 March 2020.

The *Electricity Feed-in (Renewable Energy Premium Act 2008)* (ACT) established a feed-in tariff (FiT) for 20 years for customers who installed solar systems in accordance with the Act. This scheme is now closed to new entrants. In relation to this Consultation Paper, it is relevant that the ACAT has the role of resolving feed-in tariff disputes between Evoenergy, the electricity distributor in the ACT, and occupiers of properties with a feed-in tariff utility service, and between occupiers and National Energy Retail Law (NERL) retailers.

ACAT Energy & Water had jurisdiction conferred in relation to FiT disputes by s 6.1 and Schedule 2 to the *Electricity Feed-in Code 2009* originally made by the ICRC. This Code provided that the Consumer Protection Code applied to specified parts of the Feed-In Code. Section 6.3 protected feed-in payments from being used to recover the utility debt of an ACAT hardship client, or contrary to an ACAT direction.

The 2009 Feed-in Code was replaced by the 2012 Electricity Feed-in Code, which provided for the commencement of the NECF in the ACT, and the 2012 Code was revoked by the 2015 Electricity Feed-in Code. There is some doubt about how the jurisdiction of the ACAT in relation to FiT disputes continued under the 2012 and 2015 Codes (discussed below).

The feed-in tariff currently is paid to customers by Evoenergy and the FiT scheme is administered by the Environment, Planning and Sustainable Development Directorate.

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RESPONSE

The Commission has proposed a new *Consumer Protection Code 2020* (CPC), which will commence on 1 July 2020. The ACAT agrees that the 2015 Electricity Feed-in Code must be reviewed in the light of this new CPC and supports the Commission’s general approach to the drafting of the proposed 2020 Electricity Feed-in Code (2020 FiT Code). In particular, the new drafting approach expressly requires utilities to comply with the CPC and does not attempt to replicate provisions from the CPC into the new 2020 FiT Code.

The ACAT notes that the proposed 2020 FiT Code continues a requirement that utilities “must act ethically, fairly and honestly in all dealings with a Customer or Consumer”: CPC s 5(1). This requirement is stated in s 1.2 of the 2020 FiT Code.

There is some uncertainty in the 2012, 2015 and proposed 2020 FiT Codes about how the ACAT is given jurisdiction to consider complaints under the FiT Code between an occupier and the distributor Evoenergy, and between an occupier and an NERL retailer (“occupier disputes”).

Item 2 in the table to s 172 of the *Utilities Act 2000* provides that ACAT has jurisdiction in relation to:

2	consumer affected by contravention	contravention of an industry code dealing with utility service standards by a utility
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The 2020 FiT Code states that it is an Industry Code under the Utilities Act (s 1.1) and that the electricity distributor and NERL retailers must comply with the FiT Code (s 1.2).

Sections 4.4 and 5.3 state that occupier disputes “will be resolved in accordance with the Utilities Act and complaint procedures developed by the [Electricity distributor/NERL retailer] in accordance with the Consumer Protection Code”. The fact that complaint procedures developed by a utility state that complainants may make a further complaint to ACAT does not in itself confer such a jurisdiction on ACAT (“A stream cannot run higher than its source”).

There is no explicit statement in the FiT Code that the ACAT has jurisdiction in relation to contraventions of the Code – it is implicit from references to “utility”, “utility service” and the “Consumer Protection Code”.

The ACAT recommends that the Commission consider this issue of how jurisdiction to resolve FiT disputes is conferred on the ACAT, and whether an explicit conferral of jurisdiction in the FiT Code itself should be added to the proposed Code.

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If you have any questions in relation to this submission, please contact me.

Yours sincerely



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President

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