

Mr Joe Dimasi  
Senior Commissioner  
Independent Competition and Regulatory Commission  
PO Box 161  
Civic Square ACT 2608

**ACAT Supplementary Response to Consultation Paper**  
***Draft Electricity Feed-in Code***

I refer to the Submission made by the ACAT on 9 April 2020 in relation to the above Consultation Paper, and to subsequent conversations between Senior Member Sutherland and Ms Cath Collins, Assistant Director Legal of the Commission.

In its Submission, the ACAT observed that 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. The ACAT recommended that the Commission consider 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.

Further to the conversations between Senior Member Sutherland and Ms Collins, I wish to provide some supplementary observations, and to indicate the ACAT's agreement to an approach suggested by the Commission.

Our supplementary observations are:

- In the ACAT decision in *Humphries and ACTEWAGL Retail (Energy & Water)* [2017] ACAT 35, Senior Member Sutherland found that the ACAT had jurisdiction under the 2009 FiT Code to consider and resolve Electricity Feed-in disputes (see paragraphs [2] and [13]-[16]).
- The ACAT has not considered, in any more recent decision, whether this conclusion about jurisdiction has been affected by amendments to the FiT Code and the *Utilities Act 2000* in 2012 and 2015.
- The ACAT will consider and determine this issue of jurisdiction if it receives a relevant application.
- The Commission has pointed out that the current Review of the Electricity Feed-in Code is limited in scope. It is intended to ensure consistency with the 2020 Consumer Protection Code and is not intended to address issues with the FiT Code at large.

In view of these observations, the ACAT agrees with the Commission's suggestion that a Note be included in the 2020 FiT Code which signposts that a customer may have a right of review of a FiT decision under Part 12 of the *Utilities Act 2000* and that no other changes be made in respect of review rights.

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

Yours sincerely

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Graeme Neate AM

President

15 April 2020

**ENERGY & WATER**

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