



# ICRC

independent competition and regulatory commission

Final decision

## **Electricity Feed-in Code**

Report 5 of 2020, April 2020

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

The Commission is responsible for managing the utility licence framework in the ACT, established under the *Utilities Act 2000* (Utilities Act). The Commission is responsible for the licensing determination process, monitoring licensees' compliance with their legislative and licence obligations and determination of utility industry codes.

The Commission's objectives are set out in section 7 and 19L of the ICRC Act and section 3 of the *Utilities Act 2000*. In discharging its objectives and functions, the Commission provides independent robust analysis and advice.

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

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

The Commission may be contacted at the above addresses, 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 its email address is [icrc@act.gov.au](mailto:icrc@act.gov.au).

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## Abbreviations and acronyms

ACAT	ACT Civil and Administrative Tribunal
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>
NERL retailer	An electricity or gas retailer authorised under the NERL
Utilities Act	<i>Utilities Act 2000 (ACT)</i>

# 1 Overview

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 electricity 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<sup>2</sup> came into effect in 2015 and includes schedule 3, which quotes sections of the Consumer Protection Code. In December 2019 the Commission determined a new Consumer Protection Code, which comes into effect on 1 July 2020. As a consequence, the FiT Code requires updates to ensure it reflects the new Consumer Protection Code.<sup>3</sup> For information on the Consumer Protection Code review, please visit <https://www.icrc.act.gov.au/projects/completed-projects/consumer-protection-code-review>.

When updating the FiT Code, the Commission noted other minor technical amendments were required to reflect the National Energy Customer Framework (NECF).

In February 2020, the Commission prepared a draft FiT Code and report for public consultation and sought submissions on the proposed amendments.

## 1.1 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;
- advise the Minister about access arrangements;
- investigate and report on competitive neutrality complaints and government regulated activities; and

<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> *Utilities (Electricity Feed-in Code) Determination 2015*, available at <https://www.legislation.act.gov.au/di/2015-256/>

<sup>3</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/>.

- advise the Government on competition policy and other matters referred to it.

Section 7 of the ICRC Act sets out the Commission’s objectives as to:

- (a) promote effective competition in the interests of consumers;
- (b) facilitate an appropriate balance between efficiency and environmental and social considerations;
- (c) 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>4</sup>

Under the Utilities Act, the Commission is responsible for managing the licensing framework for utility service providers in the ACT, including issuing licences and monitoring licence compliance. NERL retailers are not licensed by the Commission under the Utilities Act.<sup>5</sup> The Commission has responsibility for industry codes of practice and approving standard customer contracts.

The Commission’s role in determining industry codes is set out in Part 4 of the Utilities Act and is explained in more detail in Appendix 2.

## 1.2 Commission’s requirements under the Utilities Act

Part 4 of the Utilities Act sets out the requirements that must be met when the Commission determines an industry Code.

Appendix 1 explains how the Commission met each of those requirements.

## 1.3 Timeline of the review

Table 1-1 below outlines the Commission’s timeline for the review of the Code.

Table 1-1 Review timeline

Release of draft FiT Code	27 February 2020
Public Notice (Canberra Times)	4 March 2020
Submissions on draft FiT Code close	5 April 2020
Release of Final decision and determined FiT Code	4 May 2020
Commencement date of the new FiT Code	1 July 2020

<sup>4</sup> Section 8 (1) (g) *Independent Competition and Regulatory Commission Act 1997*.

<sup>5</sup> NERL retailers are authorised under the National Energy Retail Law by the Australian Energy Regulator.

## 2 Consultation report and draft FiT Code

The Commission advised stakeholders that the FiT Code would be amended as part of Consumer Protection Code review, and engaged directly with key stakeholders, including the Feed-in Tariff scheme administrator (Evoenergy) prior to releasing a consultation report.

On 27 February 2020, the Commission released a consultation report and draft FiT Code. Chapter 2 of the consultation report outlined each proposed change to the FiT Code. Submissions were open for a five-week period and closed on 5 April 2020.

### 2.1 Submissions received

The Commission received submissions from Evoenergy and the ACT Civil and Administrative Tribunal (ACAT). Both submissions acknowledged the need to review the FiT Code and supported the proposed changes.

In addition to the two submissions, the Commission also received email correspondence from four NERL retailers (ActewAGL Retail, Origin Energy, Energy Australia and Powerclub) indicating that they were comfortable with the proposed amendments.

Copies of the consultation report, draft FiT Code and submissions received are available at: <https://www.icrc.act.gov.au/projects/current-projects/electricity-feed-in-code-update>.

#### **Evoenergy**

Evoenergy's submission acknowledged *'the Commission's work in updating the Consumer Protection Code and... the consequent need to review the Electricity Feed-in Tariff Code'*.<sup>6</sup> The submission noted Evoenergy's support for the amendments to clause 4.1(b) and the deletion of subsections that quoted complaints provisions contained within the Consumer Protection Code.

Evoenergy raised an additional issue that related to the role and powers of independent experts (Schedule 1, clauses C and H). The issue raised is outside of the scope of the review and there is no evidence that the current provisions have caused, or are causing, any significant concern for stakeholders. The Commission intends to consider this matter when the next full review of the FiT Code is undertaken.

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<sup>6</sup> Evoenergy 2020, p.1.

## **The ACAT**

The ACAT provided an initial submission on 9 April 2020 and, after discussions between the ACAT and Commission staff, a supplementary submission on 15 April 2020. The ACAT’s first submission was supportive of the Commission’s approach to the FiT Code review and noted:

The ACAT agrees that the 2015 Electricity Feed-in Code must be reviewed in the light of [the new Consumer Protection Code] and supports the Commission’s general approach to the drafting.<sup>7</sup>

The ACAT submission raised a query relating to its jurisdiction to hear complaints under the FiT Code. The Commission notes that the FiT Code is an industry code, made under the Utilities Act. The ACAT’s power to hear complaints relating to a contravention of an industry code is established and provided for in Part 12 of the Utilities Act.

The Commission acknowledges that there was no explicit reference in the draft FiT Code to an occupier’s right to have a complaint referred to the ACAT. The draft FiT Code referred to the Consumer Protection Code, which in turn requires utilities to advise a customer of this right in a final response to a complaint. To clarify this right for occupiers, the Commission has created ‘signposts’ in the form of notes in the new FiT Code (clauses 4.4 and 5.3) which state:

Note: An Occupier may have rights to refer a dispute to the ACAT under Part 12 of the Utilities Act (Complaints to ACAT about Utilities).

The Commission took a similar approach in updating the Consumer Protection Code by using notes to alert consumers to protections that were provided in the NECF. Commission staff discussed this approach with the ACAT, which noted in its supplementary submission that:

... the ACAT agrees with the Commission’s suggestion that a Note be included...which signposts that a customer may have a right of review... under Part 12 of the *Utilities Act 2000* and that no other changes be made in respect of rights.<sup>8</sup>

The Commission considers this is an effective and appropriate method of raising awareness of customer rights, while avoiding duplication of provisions that are covered in legislation.

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<sup>7</sup> ACAT 2020a, p.2.

<sup>8</sup> ACAT 2020b, p.2.

## 3 Final Decision

The Commission’s final decision is that a new Electricity Feed-in Code be determined to apply from 1 July 2020. The new Electricity Feed-in Code is contained in Attachment 1.

The Commission is satisfied that the new Electricity Feed-in Code will ensure that FiT customers have access to the same general consumer protection rights and obligations as non-FiT customers when accessing utility services.

Table 3-1 outlines the changes the Commission has made to the FiT Code. Except for the notations added to clauses 4.4 and 5.3 (noted above), the changes are as proposed in the consultation report.

**Table 3-1 changes to the Fit Code.**

	Clause	Outline of change
1.	4.1(b) Distributor to detail arrangements to NERL retailer	Removed 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.  A notation advising occupiers that they may have rights to refer a dispute to the ACAT under the Utilities Act has been added.
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

	Clause	Outline of change
		statement of the terms upon which it will perform the supplier actions under the Feed-in Act.
4.	5.3 Dispute resolution – occupier disputes	<p>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.</p> <p>A notation advising occupiers that they may have rights to refer a dispute to the ACAT under the Utilities Act has been added.</p>
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 Compliance with Utilities Act

Part 4 of the Utilities Act sets out the Commission's role and requirements in determining industry codes. The Commission's compliance with those requirements is outlined in table A-1 below.

**Table A-1 Compliance with Utilities Act**

Section	Requirement	Comments
56A	<b>NERL retailers determination</b>	The Commission is satisfied that it is reasonable for the Code to apply to NERL retailers. The Code has specific provisions that relate to NERL retailers
(1)	The Commission must be satisfied on reasonable grounds that it is appropriate to apply to a NERL retailer	
(2)	A disallowable instrument must be registered of the Commission's determination of application to NERL retailers	A disallowable instrument of the Commission's s56A determination was registered on the ACT legislation register on 4 May 2020 (DI2020-87).
59(1) (a)	Consultation with Minister and Minister for Technical Regulation	Draft code and consultation report sent to Minister for Climate Change and Sustainability (responsible for energy) and the Technical Regulator on 27 February 2020.
(b)	The Code is not inconsistent in material aspects with another industry code or technical code	Email received from staff within Technical Regulator's office on 2 April 2020 advising that Utilities Technical Regulation officers have reviewed the relevant documents and are satisfied that the draft FIT Code was not inconsistent with any technical codes.
59(3)	Provide a copy of the determined code to each utility to which the code applies	This will be completed once the Code is notified on the legislation website, which is expected to occur in May 2020. This will allow sufficient notification to each utility before the new Code commences on 1 July 2020.
60	<b>Public consultation</b>	A public notice was placed in the Canberra Times on 4 March 2020 inviting submissions. A copy of the draft was also placed on the Commission website and sent to the
(1)	Prepare draft, give public notice, and invite submissions.	

		Commission's stakeholder email list on 27 February 2020.
	(2) Submission period must run for at least 30 days after the publication of the notice.	Submission period closed on 5 April 2020, which is more than 30 days after publication of the public notice on 4 March 2020.
	(3) Give regard to any submission received	The Commission has considered all submissions received on the draft Code and addressed the submissions in this final report.
62	(b) <b>Notification of code</b> A disallowable instrument must be notified for a determined code	A disallowable instrument [DI2020-86] was notified on the ACT Legislation website on 4 May 2020.
63	<b>Public access</b> Commission to make copies of documents available	This report and the new Code is available on the Commission's website. Copies can also be obtained at the Commission's offices.

## Appendix 2 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>9</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 clarify services and ensure consistent approaches are made to service provision. 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 to 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.

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).

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<sup>9</sup> S55(2) *Utilities Act 2000*.

## References

ACAT, 2020a, 'ACAT Response to Consultation Paper draft Electricity Feed-in Code, 9 April 2020', Canberra: ACT Civil & Administrative Tribunal

ACAT, 2020b, 'ACAT Supplementary Response to Consultation Paper draft Electricity Feed-in Code, 15 April 2020', Canberra: ACT Civil & Administrative Tribunal

Evoenergy, 2020, 'Submission to Electricity Feed-In Tariff Code review', 3 April 2020, Canberra: Evoenergy