



# ICRC

independent competition and regulatory commission

Final decision

## **Consumer Protection Code review**

Report 15 of 2019, December 2019

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*.

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## Abbreviations and acronyms

ACCC	Australian Competition and Consumer Council
ACAT	ACT Civil and Administrative Tribunal
ACTCOSS	ACT Council of Social Services
AER	Australian Energy Regulator
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
Code	Consumer Protection Code
Commission	Independent Competition and Regulatory Commission
COTA ACT	Council of the Aging ACT
GSL	Guaranteed Service Level
GST	Goods and Services Tax
ICRC	Independent Competition and Regulatory Commission
ICRC Act	<i>Independent Competition and Regulatory Commission Act 1997 (ACT)</i>
IPART	Independent Pricing and Regulatory Tribunal
NECF (National electricity 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
NEL (National Electricity Law)	<i>National Electricity (South Australia) Act 1996 (SA)</i> and applied in each of the participating jurisdictions.
NEM (National electricity market)	The national market set out in the <i>National Electricity Law</i>
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
NERR (National Energy Retail Rules)	The rules made under section 238 of the <i>National Energy Retail Law</i>
NGL (National Gas Law)	<i>National Gas (South Australia) Act 2008 (SA)</i>
QCA	Queensland Competition Authority
STPIS	Electricity distribution network service provider Service Target Performance Incentive Scheme, as drafted by the AER
Utilities Act	<i>Utilities Act 2000 (ACT)</i>

## Executive summary

The current Consumer Protection Code (Code) has been in place since 2012. It was last amended to allow for national regulation of the energy industry when the ACT entered the National Energy Customer Framework (NECF). The Independent Competition and Regulatory Commission (the Commission) has conducted a review of the Code to ensure that it remains appropriate, taking into account current market conditions and the priority issues for consumers, and supports the objectives of the *Utilities Act 2000* (Utilities Act).

In making this final decision, the Commission's focus has been to streamline the Code, make it easier to read and understand (for both consumers and the utilities), and ensure it provides the basic consumer protections that consumers and stakeholders see as most important. The final determination of a new Code takes into consideration submissions received to the issues paper and draft report, as well as feedback received in targeted stakeholder engagement and recommendations from the ACT Government standing committee on public accounts.

After reviewing submissions to the issues paper and feedback received from stakeholders, and conducting cross-jurisdictional comparisons, the Commission identified that the priority issues that required addressing were:

- customer awareness of the Code and available rebates;
- ensuring that customers receive rebates when certain minimum service standards are not met;
- updating minimum service standards (guaranteed service levels);
- requiring water utilities to have a hardship policy;
- life support registration requirements for water utilities; and
- clarifying requirements for electricity and gas retailers (NERL retailers).<sup>1</sup>

The Commission's final decisions on revising the Code, which are set out in this report, address these priority issues and include:

1. Changes to the rebate payment process, removing the requirement for customers to apply for a rebate and requiring all utilities to monitor and pay rebates automatically (Chapter 4).
2. Inclusion of new guaranteed service levels (GSL) for wrongful disconnection (energy) and reliability (Chapter 3).
3. Requirements for water utilities to have a hardship policy (Chapter 5).
4. Processes for life support premises registration and deregistration (Chapter 6).

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<sup>1</sup> A NERL retailer is an electricity or gas retailer who is authorised by the Australian Energy Regulator to sell energy under the National Energy Retail Law.

5. A schedule specifying which sections of the Code apply to NERL retailers (Chapter 2).

The Commission has made some amendments to the draft Code released in August 2019. These amendments address feedback received in submissions, correct minor drafting errors and clarify how the Code operates. The main amendments relate to exclusions to the GSLs, practices for registering life support premises, and rectifying a drafting error from the 2012 amendments that allowed the water utility to disconnect for outstanding debt.

The Commission is satisfied that the new Code represents an appropriate balance between the aims of ensuring basic customer protections and minimising the costs incurred by utilities in complying with the Code. The new Code will come into effect from 1 July 2020.

The Commission notes that the energy sector is undergoing a period of significant change and the Australian Energy Market Commission (AEMC) and Australian Energy Regulator (AER) continue to update rules and guidelines under the NECF, with a focus on improving outcomes, visibility and protections for consumers. The Commission will continue to monitor developments and consider whether further Code amendments are needed in the future. In any future review, the Commission may revisit issues raised in the issues paper, draft report and stakeholder submissions that were not addressed during this review.



# 1 Overview

The Consumer Protection Code (the Code) is an industry code made under Part 4 of the *Utilities Act 2000* (Utilities Act).<sup>2</sup> The purpose of the Code is to outline the basic rights of customers and consumers<sup>3</sup> and set out obligations on utilities with respect to access to, and provision of, utility services. The Code establishes a number of consumer protections including:

- circumstances in which a utility can interrupt, restrict or disconnect services;
- information and process requirements for billing and debt collection;
- obligations utilities must meet when dealing with customers, such as notice periods and complaint handling;
- requirements for standard customer contracts;
- utility obligations in respect of properties with life support equipment; and
- guaranteed service levels and payment of rebates to customers.

The current (2012) Code primarily applies to water and sewerage services. However, clause 11 and the schedule of minimum service standards also apply to electricity and gas retailers authorised under the National Electricity Retail Law (NERL) and to electricity and gas distributors.

The Commission has reviewed the Code to ensure it remains appropriate, taking into account market developments and current and emerging utility consumer protection issues. In making its determination of a new Code, the Commission has balanced a number of considerations, including ensuring consumer protections are adequate, minimising regulatory compliance costs, and ensuring appropriate harmonisation across jurisdictions.

## 1.1 The Commission's role and objectives

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

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<sup>2</sup> The *Utilities (Consumer Protection Code) Determination 2012* can be accessed at <https://www.legislation.act.gov.au/di/2012-149/>.

<sup>3</sup> The terms customer and consumer have similar meanings and can often be interchanged. A customer is usually a consumer; however, a consumer is not always a customer. A customer is the account holder, whereas a consumer is a person using the service. For example, a property may have several occupants and only one account holder; or in the case of water services on a rental property, the customer is the landlord and the tenant is the consumer.

government regulated activities; and 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 also has a function to determine licence fees and levies 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 more detail in Appendix 22.

In undertaking this review, the Commission has been guided by its objectives under the Utilities Act,<sup>6</sup> in particular:

- encourage the provision of safe, reliable, efficient and high-quality utility services at reasonable prices;
- minimise the potential for misuse of monopoly power in the provision of utility services;
- promote competition in the provision of utility services;
- protect the interests of consumers; and
- ensure that advice given to the Commission by the ACT Civil and Administrative Tribunal (ACAT) is properly considered.

The specific objectives of this review and Code redraft were to ensure that:

- consumer protections (including minimum service standards) are appropriate and meaningful and support the objectives of the Utilities Act;

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<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.

<sup>6</sup> Section 3.

- where possible and appropriate, the Code complements the National Electricity Customer Framework (NECF);
- the Code is easy to understand by stakeholders; and
- the Code amendments do not discourage retail energy competition in the ACT.

## 1.2 Commission’s requirements under 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 sets out the Commissions compliance against each of those requirements.

## 1.3 Issues paper

On 29 November 2018, the Commission released an issues paper<sup>7</sup> outlining potential issues with the current Code that had come to the attention of the Commission. The purpose of the issues paper was to seek stakeholder views and feedback on the priority issues that should be addressed in the Code redraft. Stakeholders were also invited to suggest any additional priority issues for consideration in their submissions.

Nine submissions were received in response to the issues paper.<sup>8</sup> Themes arising in the submissions included:

- support for a single Code across all utility services;
- general support for the principle of harmonisation to the NECF;
- support by consumer representatives for continued application of parts of the Code to energy retailers;
- support by consumer representatives for improving the ACT community’s knowledge of the Code protections and availability of rebates;
- support by consumer representatives for the automatic payment of rebates by utilities, but some concerns were raised by Icon Water and Evoenergy with this approach;
- support for the introduction of reliability minimum standards for energy; and
- support for the Code to require water retailers to have a hardship policy.

<sup>7</sup> Available at: <https://www.icrc.act.gov.au/utilities-licensing/consumer-protection-code-review/>.

<sup>8</sup> Ibid.

## 1.4 Draft report and draft Code

In August 2019, the Commission released its draft report and draft Code. The draft report addressed priority issues that had been identified from issues paper submissions and views provided in targeted consultation. The Commission considered that the priority issues to be addressed by the review were:

- harmonisation of the Code with NECF requirements and continued application of the Code to NERL retailers;
- review of guaranteed service levels (including wrongful disconnection and reliability);
- review of rebate payment processes and values; and
- hardship policy requirements for water utilities.

Three submissions to the draft report were received, as well as a letter from the Utilities Technical Regulator confirming that the draft Code did not conflict with any Technical Codes.

The Commission hosted a public forum on the draft report and draft Code on 11 September 2019.

Copies of the draft report, draft Code, public forum transcript and submissions received are available at: <https://www.icrc.act.gov.au/utilities-licensing/consumer-protection-code-review/>.

## 1.5 Other review processes

The draft report noted that some issues that were raised during the review are being, or will be, addressed in other review processes.

### Improving pricing transparency and information for customers

The Commission received submissions requesting consideration of adding provisions in the Code that would enhance information about, and transparency of, energy pricing offers to customers.

In May 2019, the Commission received from the ACT Government terms of reference to determine standing offer prices for ActewAGL Retail for the supply of electricity to small customers over the regulatory period 2020–24. The terms of reference include a request for the Commission to consider whether any changes could be made in the Territory to promote improved transparency and comparability of pricing offers.

For information on the 2020–24 Retail Electricity price review, please visit <https://www.icrc.act.gov.au/energy/electricity/retail-electricity-prices-2020-24>.

## Water consumption charges in unit title properties

The Commission received submissions on water consumption charges in unit title properties (discussed in the Commission’s issues paper, section 4.6.3). The ACT Government has announced ‘Managing Buildings Better’ reforms which may result in changes to legislation, including requirements for planning, development and management of unit plans. The reforms may result in planning and development changes that could impact upon how future unit title properties are metered and charged for water consumption.

The Commission also understands that Icon Water has recently undertaken a review to see whether individual unit metering would be feasible, and that technological advances may make this possible for units in the future.<sup>9</sup> The Commission will monitor the outcomes of the reform project and consult with Utilities Technical Regulation, before considering whether any future changes may be required in the Code.

For information on the Managing Buildings Better reforms, please visit:

<https://www.planning.act.gov.au/build-buy-renovate/reviews-and-reforms/managing-buildings-better>.

## Consumer protections contained in technical codes

The Commission considered incorporating into the Code some consumer protections that are currently set out within technical codes.<sup>10</sup> To avoid any potential conflict of provisions, any incorporation of protections from technical codes would need to occur in conjunction with revised technical codes being released. The Commission intends to consider such provisions in conjunction with any reviews by Utilities Technical Regulation of technical codes; this would be a separate process to this review.

## 1.6 A single Consumer Protection Code for utility services

When the Code was initially drafted in 2000 all utility services (energy, water and sewerage services) were provided by ActewAGL. Since that time, utility service delivery in the ACT has changed significantly. Today there are multiple businesses involved in delivering utility services, including Icon Water (water and sewerage services), Evoenergy (energy distribution), and several energy retailers.

The Commission has considered whether the Code should remain as a single code covering all utility services, or whether separate codes should be created for water and sewerage services and for energy services. Consumer representatives submitted in response to the issues paper that customers and other stakeholders value

<sup>9</sup> Icon Water, 2019b, p 2.

<sup>10</sup> For example, a customer’s right to have their meter tested for accuracy.

consistent requirements and service standards as consistency can facilitate consumers understanding of their rights. For these reasons, the Commission has maintained a single code.

In its draft decision, the Commission created separate schedules for energy (NERL retailers and energy distributors) and water and sewerage service GSLs.<sup>11</sup> The Commission believes this will assist in readability and understanding for all users. Establishing two separate schedules responded to stakeholder feedback that, due to the nature of the services provided, some GSLs may be relevant to certain utility services but not others (for example, wrongful disconnection). The Commission did not receive any submissions disagreeing with this approach and the Commission has maintained this approach in its final determination.

The Commission notes that the energy industry continues to undergo changes at a national level, and that some of the regulatory changes in the energy sector are not applicable to or appropriate for water utility regulation. The Commission will keep a watching brief on these changes and may revisit whether a single code is the most appropriate instrument in the future.

## 1.7 Timeline of the review

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

**Table 1-1 Review timeline**

<b>Targeted consultation with key stakeholders</b>	<b>Apr-Oct 2018</b>
<b>Publication of Issues Paper</b>	<b>29 November 2018</b>
<b>Public submissions on Issues Paper closed</b>	<b>1 February 2019</b>
<b>Release of draft decision</b>	<b>23 August 2019</b>
<b>Public forum</b>	<b>11 September 2019</b>
<b>Submissions on draft decision closed</b>	<b>25 October 2019</b>
<b>Release of final determination</b>	<b>12 December 2019</b>
<b>Commencement date of the new Code</b>	<b>1 July 2020</b>

## 1.8 Structure of this report

The remainder of this report is structured as follows:

- Chapter 2 discusses the Code’s applicability to NERL retailers and harmonisation of the Code with the NECF.

<sup>11</sup> In the current (2012) Code, guaranteed service levels are termed ‘minimum service standards’. This terminology change is discussed in Chapter 3.

- Chapter 3 sets out findings from a comparison of GSL schemes in other jurisdictions and the Commission’s final decision on introducing additional GSLs for wrongful disconnection and reliability and adjustment of rebate values.
- Chapter 4 sets out the Commission’s final decision on the rebate payment process.
- Chapter 5 explains the Commission’s final decision on hardship policy requirements for water and sewerage utilities.
- Chapter 6 outlines the Commission’s decision on life support registration and deregistration requirements for water utilities.
- Chapter 7 outlines the Commission’s final decisions on other matters being addressed in the Code.
- Appendix 1 is the Commission’s compliance statement with the Utilities Act, showing the processes the Commission is required to undertake when determining an industry Code.
- Appendix 2 summarises the Commission’s role in determining industry codes under the Utilities Act.
- Appendix 3 provides a summary of each submission received to the draft report.
- Appendix 4 provides a summary of each submission received to the issues paper.
- Attachment 1 is the Commission’s final determination: Consumer Protection Code.

## 2 Harmonising the Code with the NECF and application to NERL retailers

### 2.1 Harmonising the Code with the National Energy Customer Framework and application to NERL retailers

One of the objectives of the Code review has been to ensure that, where possible and appropriate, the Code complements the NECF. The NECF is a suite of legislation, rules and regulations that regulate the sale and supply of electricity and gas at a national level. The laws made under the NECF apply in the ACT and are regulated and enforced by the AER.

In the issues paper, the Commission noted recent reports released by national and jurisdictional regulators that had found that departures from national regulation (that is, jurisdictional specific regulation) can lead to increased complexity and cost, and pose a potential barrier to entry for new NERL retailers.<sup>12</sup> The Australian Competition and Consumer Commission’s (ACCC) Retail Electricity Pricing Inquiry Final Report recommended that jurisdictions should seek to harmonise with the national framework but also recognised that there may be some jurisdictional needs or characteristics where harmonisation may not be appropriate.<sup>13</sup>

The current (2012) Code differentiates requirements between NERL retailers and licensed utilities. NERL retailers are the energy service providers from which customers receive their electricity or gas bill. The licensed utility (energy distributor or water and sewerage network operator) provides and maintains the network (that is, the pipes, poles and wires).

In 2012, the AER became predominantly responsible for regulating and monitoring the performance of NERL retailers. The National Gas Law (NGL), National Electricity Law (NEL), NERL and National Energy Retail Rules (NERR) set out specific actions and requirements that NERL retailers (and distributors) must undertake and meet when supplying energy.

The NERL and NERR set out many consumer protections including requirements relating to:

- properties with life support equipment;
- content and frequency of bills;

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<sup>12</sup> ICRC, 2018, p 7.

<sup>13</sup> ACCC, 2018, p 228.



- billing arrangements, including under- and over-charging;
- when a customer may be disconnected; and
- hardship policy requirements.

Many of these provisions are similar, or more detailed, to consumer protections set out in the current Code.

The national legislation includes a civil penalty framework where energy providers (retailers and distributors) can receive a penalty for instances where certain consumer protections are not met. Penalties issued by the AER are currently \$20,000 per notice.

When the AER issues a penalty, it is paid directly to the AER and the customer is not financially recognised. In some cases, the energy company may provide the customer with ex-gratia or other payments, but such payments to the customer are at the discretion of the energy utility, and not required by regulation. The AER's penalty system is focused towards ensuring that energy companies improve their systems to avoid further future occurrences. The penalty arrangements under the NECF are separate to GSL payments, which provide a payment directly to a customer when a standard is not met. GSL arrangements are discussed in chapter 3.

The national legislation and rules relating to the conduct and service provision of NERL retailers has undergone significant revision since the ACT joined the NECF in July 2012. Since 2017, the AEMC has completed 14 retail rule change determinations, with a further four currently under consideration. The changes have primarily been aimed at producing better outcomes and increasing protections for customers. Examples include advanced notice of both discounts expiring and price changes, more transparent discounting practices, maximum meter installation timeframes, enabling customers to submit a meter read when a bill has been based on an estimate, and strengthening protections and information requirements for customers experiencing financial hardship.<sup>14</sup>

## 2.2 Principle of harmonisation to the NECF

Submissions to the issues paper indicated support for the principle of harmonisation of Code requirements with the NECF wherever it is reasonable and appropriate to do so. The Commission has been guided by this principle when making its final decisions.

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<sup>14</sup> AEMC rule change references RRC0010, RRC0015, RRC0012, RRC0016, RRC0018 and RRC0017. <https://www.aemc.gov.au/our-work/changing-energy-rules/rule-changes>.

## 2.3 Application to NERL retailers

### 2.3.1 Draft decision

The majority of submissions to the issues paper showed support for, and an expectation that, NERL retailers would remain covered by the Code.

Whilst ActewAGL’s submission to the issues paper stated that mechanisms beyond the national approach introduced inefficiencies as well as additional costs and reporting burdens, no evidence was provided on the cost or regulatory burden imposed by the current (2012) Code. The Commission did not receive any submissions on the costs of complying with the current Code, or any evidence that the Code was a barrier to competition or to entry by NERL retailers considering entering the ACT.

The Commission’s preliminary view was that submissions to date showed that applicability to NERL retailers was valued by stakeholders.

The Commission’s draft decision was that NERL retailers should remain subject to the Code. This draft decision reflected a continuation of the current arrangement.

### 2.3.2 Final decision

No submissions were received on the draft decision discussing the general application of the Code to NERL retailers.

The Commission’s final decision is that NERL retailers will continue to be subject to the Code. The Commission will continue to monitor developments in the NECF and may reassess whether the Code should continue to apply to NERL retailers in future.

## 2.4 Obligations in the NECF

### 2.4.1 Draft decision

In the draft decision, the Commission considered Evoenergy’s request not to replicate or duplicate obligations that are in other legal frameworks, but also noted other stakeholder comments that *‘consumers often do not differentiate between retailers and the utility. To avoid confusion one code should apply to everyone involved’*.<sup>15</sup>

The Commission’s draft decision was that, where a requirement was covered in more detail for energy utilities in the NECF, the Code drafting would include notes that refer consumers to the national framework.

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<sup>15</sup> COTA ACT, 2019, p 1.

## 2.4.2 Final decision

No submissions were received on the Commission’s approach to using notes and drafting techniques in the Code that refer customers to the national framework. The Commission’s final decision is to affirm the draft decision and include notes and Schedule 3 (application to NERL retailers) into the new Code, referring consumers to the national framework where appropriate.

The Commission considers that this approach represents a balance between duplication and customer convenience and may assist energy consumers with understanding the regulatory framework.

## 2.5 Specific Code amendments in relation to NERL retailers

### 2.5.1 Draft decision

The Commission received several submissions to the issues paper that requested changes or additions to the Code that specifically related to NERL retailers.

Given the number of changes still occurring at the national level relating to energy retailers, the Commission did not consider it would be appropriate to make significant jurisdictional changes that affect the energy sector during this review. As noted in section 2.4.1 above, the Commission clarified basic consumer protections that applied to all utility service providers and provided references to the national legislation to assist consumers, where appropriate.

The Commission proposed changes for NERL retailers that addressed gaps between the NECF and the ACT regulation, and provided appropriate recognition of customers for inadequate service, and incentives for utilities to meet service levels.

### 2.5.2 Final decision

In its submission, the ACAT supported the Commission’s draft changes to the Code relating to NERL retailers.<sup>16</sup> No other submissions were received on the changes relating to NERL retailers.

The Commission’s final decision is that amendments relating to NERL retailers are required to:

- address gaps between the NECF and ACT regulation;
- provide transparency on compliance with the Code;
- provide appropriate recognition to customers for failure to meet guaranteed service levels; and
- provide incentives for energy retailers to meet service levels.

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<sup>16</sup> ACAT, 2019, p2.

Schedule 3 (application to NERL retailers) has been included in the new Code to assist stakeholders in identifying and understanding which provisions of the Code apply to NERL retailers.

## 3 Guaranteed service levels and rebate values

Guaranteed service levels (GSL) establish minimum performance standards. They set out key service levels that are expected of utilities and result in a financial payment (rebate) being payable to a customer if the service level is not met. Not all performance requirements (i.e. those in Parts 2 and 3 of the Code) have a rebate entitlement; it is only those specifically listed as guaranteed service levels in schedules to the Code that result in this entitlement.

In the current (2012) Code, GSLs are termed minimum service standards. The draft report noted that the Commission had changed the terminology from minimum service standards to guaranteed service levels. This change in terminology reflects that the AER considers the Code to be a jurisdictional GSL scheme.<sup>17</sup> Retitling the service standards assists in clarifying this and creates consistent terminology with other jurisdictions<sup>18</sup> and the national framework.

This chapter sets out the Commission’s approach and final decisions relating to GSLs and rebate values.

### 3.1 Current approach and matters raised in the issues paper

#### 3.1.1 Guaranteed service levels

The issues paper provided an outline of the national GSL model for electricity distributors developed by the AER and provided a comparison of GSL and minimum service standard schemes in other Australian jurisdictions. The jurisdictional comparison showed that whilst minimum performance requirements were commonly set for both water and energy sectors, a requirement to pay rebates to customers was more common in the energy sector than in the water sector.

Chapter 4 of the issues paper discussed licensed utility performance against the current Code minimum service standards and showed that during the five-year period July 2012–June 2017 the service levels were not met by the licensed utilities as follows:

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<sup>17</sup> The AER has drafted a national GSL scheme for electricity distributors, but it does not apply in the ACT, as the Code is considered a ‘jurisdictional GSL scheme’. This is not unusual in the NECF, with other jurisdictions continuing to maintain their own GSL schemes.

<sup>18</sup> Some jurisdictions differentiate between minimum service standards (MSS) and GSLs; with MSS being a performance measure or target and GSLs being performance measures that result in a rebate or payment to a customer if they are not met.

- Icon Water: on 2901 occasions, the majority being for failure to respond to a problem or fault within 48 hours;
- Evoenergy electricity: on 2517 occasions, the majority relating to notice periods for planned interruptions; and
- Evoenergy gas: on 1381 occasions, the majority being for failure to respond to a problem or fault within 48 hours.

The issues paper also noted that the ACT Government’s Standing Committee on Public Accounts had recommended that the Code include a new GSL for multiple interruptions over a set period (for example, over a year).

The current Code sets out a single schedule of five minimum service standards that apply to all utility service providers. The minimum service schedule has been in place in predominantly the same form since the Code was first determined in 2000.<sup>19</sup>

### 3.1.2 Rebate values

Chapter 3.1 of the issues paper noted that rebates allow customers to receive financial recognition for service failings without the cost, time or complexity of a court or tribunal process. It is important to note that rebates do not replace a customer’s right to seek compensation for damages or loss and are not designed to penalise utilities. They are a way to create a consistent system of recognition by a utility to a customer when a core service level is not met. This approach to GSL payments is consistent across jurisdictions, with the AER’s STPIS stating payments *‘are not intended to compensate customers for loss suffered as a result of poor service. GSL payments are intended to be an acknowledgement of poor service.’*<sup>20</sup>

Creating a system for the utility to recognise poor service also strengthens the utility’s incentives to improve its services to customers.

The rebate values in the current (2012) Code were set in December 2000. Chapter 3 of the issues paper set out rebate values in other jurisdictions and asked stakeholders whether the current values were appropriate and what was an appropriate method to review rebate values.

## 3.2 Guaranteed Service Levels: draft report

Submissions to the issues paper showed general support for consistent GSLs across all utility services. However, stakeholders noted that there may be instances where service requirements or payment levels could be tailored to the type of service

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<sup>19</sup> The original Code made in 2000 contained 9 minimum service standards. These were consolidated down to 5 in 2005. Refer to the explanatory statement for the changes made in 2005 <https://www.legislation.act.gov.au/di/2005-132>.

<sup>20</sup> AER, 2018, Clause 6.3.3(a).

provided. Several submissions also supported the inclusion of new GSLs specifically for energy (particularly, wrongful disconnection and reliability).

The Commission was asked by submitters to consider new GSLs for missed appointments, wrongful disconnection and reliability. The Commission’s draft decision was to include new GSLs for wrongful disconnection and reliability; these decisions are discussed in more detail in 3.3–3.5 below.

When considering whether a GSL for missed or late appointments was appropriate, the Commission considered multiple factors, including:

- the history of missed appointments being removed from the GSL schedule in 2005;
- arrangements in other jurisdictions;
- the low number of complaints regarding missed appointments;<sup>21</sup> and
- potential implementation and ongoing system costs to monitor performance.

The Commission considered that the implementation and ongoing real-time monitoring of systems to capture and report appointment timeliness could be costly and outweigh the potential benefits. The Commission did not seek to introduce a GSL for missed or late appointments. No further submissions were received on this matter and the Commission’s final decision is not to set a GSL for missed or late appointments.

### **3.3 Wrongful disconnection**

#### **3.3.1 Draft decision**

The Commission’s draft report noted that the NERR has civil penalties in place for wrongful disconnection for both energy retailers and distributors.<sup>22</sup> This means that, if an energy customer is disconnected and the NERR procedures have not been followed, the AER may issue a penalty (currently \$20,000 per occurrence) to the utility involved. The civil penalty provides a significant incentive for the utility to adhere to the rules.

The draft decision described and compared other jurisdictional GSL schemes that included wrongful disconnection. An overview of wrongful disconnection arrangements in the three jurisdictions that include this GSL is in Table 3-1.

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<sup>21</sup> Less than twenty complaints over the five years to June 2018 had been made to Evoenergy regarding missed or late appointments. Icon Water does not currently report against this category.

<sup>22</sup> The NERR sets out that a retailer or distributor may only de-energise a customer’s premises in accordance with Part 6, Division 2 or Division 3.

**Table 3-1 Wrongful disconnection arrangements in other jurisdictions**

	QLD <sup>23</sup>	VIC <sup>24</sup>	WA <sup>25</sup>
<b>Applies to</b>	Distributors (see note)	Retailers	Retailers and Distributors
<b>Payment value</b>	\$155 <sup>26</sup>	\$500 per full day (max \$3,500) Pro rata amount for any part of a day	\$100 per day

**Note:** In Queensland the distributor must pay a GSL when it acts upon a retailer's request that contains errors, or when the retailer did not give the customer a disconnection warning. The framework allows the distributor to recover the payment from the retailer.<sup>27</sup>

The Commission understands that the Victorian payment value was increased in 2015 from \$250 to \$500 following concerns that wrongful disconnections were increasing.<sup>28</sup> In contrast, the Queensland Competition Authority (QCA) noted in its 2019 report that wrongful disconnections have been decreasing in Queensland (for distributors).<sup>29</sup>

The Commission's draft decision was that wrongful disconnection should be included as a GSL that is applicable to both energy distributors and NERL retailers in the ACT. The Commission's draft decision was that the value of the GSL rebate for wrongful disconnection would be set at \$100.

Wrongful disconnection was not relevant for water and sewerage services as the water utility does not generally disconnect properties from supply.<sup>30</sup>

### 3.3.2 Final decision

The Commission's final decision is that wrongful disconnection is included in the Code as a GSL that is applicable to both energy distributors and NERL retailers in the ACT. The Commission's final decision is that the value of the GSL rebate for wrongful disconnection is set at \$100.

<sup>23</sup> Clause 3.2.2 *Electricity Distribution Network Code* (QLD).

<sup>24</sup> Clause 40B *Electricity Industry Act 2000* (VIC) and Clause 48A *Gas Industry Act 2001* (VIC).

<sup>25</sup> Clause 14.2 and 14.5 *Code of conduct for the supply of electricity to small use customers 2018* (WA).

<sup>26</sup> Applicable from 1 July 2020.

<sup>27</sup> S3.2.2(d) *Electricity Distribution Network Code* (QLD).

<sup>28</sup> QCA, 2019, p 22.

<sup>29</sup> Ibid.

<sup>30</sup> Clause 17.4 of the current Code sets out the circumstances that must be met before a water utility can restrict or disconnect supply for non-payment of accounts. In practice, Icon Water does not disconnect properties for non-payment.



In its submission to the draft report, the ACAT submitted that:

- for energy wrongful disconnections, the distributor should be responsible for payment of the GSL by default, with provision for recovery from the NERL retailer; and
- wrongful disconnection or wrongful restriction of supply should be applied to water and sewerage utilities.

The Commission has considered these proposals below.

### **Energy wrongful disconnections: default payment by distributor**

In Queensland, wrongful disconnection GSL payments are paid by the distributor, whilst in Victoria payments are made by the NERL retailer.<sup>31</sup> In Western Australia payments are made by the entity responsible for arranging or conducting the disconnection, with the distributor being excluded from payment liability if they act in accordance with a retailer's instructions.<sup>32</sup>

The Commission understands that there were less than 20 energy wrongful disconnections in the ACT in the three years to April 2019, the majority of which were due to NERL retailer error. Given this background, the Commission does not consider it appropriate to make the distributor responsible by default for wrongful disconnections.

The Commission has noted the ACAT's concerns regarding identifying the responsible retailer. Given the low number of wrongful disconnections, the significant civil penalties that can be issued by the AER, the requirements for NERL retailers to report disconnection information quarterly to the AER,<sup>33</sup> and the explicit and detailed rules in the NERR for when a distributor or NERL retailer may disconnect premises, the Commission expects that the number of disputes regarding responsibility for the disconnection will be minimal. The Commission expects that a customer would ordinarily contact their NERL retailer in the event of a wrongful disconnection, and that the NERL retailer will assist the customer to receive the GSL payment.

The Commission will monitor incidences of wrongful disconnection and any complaints regarding payment of the GSL rebate, and may revisit this matter in future if required.

### **Water and sewerage wrongful disconnection or restriction**

The ACAT submission noted that the current (2012) and draft Code allow for disconnection or restriction of water and sewerage services in specified

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<sup>31</sup> See *Electricity Distribution Network Code* (QLD), *Electricity Industry Act 2000* (VIC) and *Gas Industry Act 2001* (VIC).

<sup>32</sup> s14.2 & s14.5 *Code of Conduct for the Supply of Electricity to Small Use Customers 2018* (WA).

<sup>33</sup> AER, 2018a, p27-29.

circumstances, but that a wrongful disconnection GSL has not been applied to these services.

In the draft decision the Commission had not considered applying a wrongful disconnection GSL to water and sewerage services, as it was understood that Icon Water does not disconnect water or sewerage services for outstanding debt, making a GSL largely irrelevant. In its final decision, the Commission has amended the draft Code to explicitly prevent the water utility from disconnecting a customer for an outstanding debt; this is discussed in more detail in chapter 7.1.

Icon Water has advised the Commission that *‘it does not often restrict water to its customers as a consequence of failure to pay bills and has never, in recent years, disconnected a customer for these reasons’*.<sup>34</sup>

The Commission notes that a wrongful restriction GSL is available to customers in Victoria, but no other Australian jurisdiction has a GSL for wrongful water disconnection or restriction.

The Commission’s final decision is that a GSL for wrongful disconnection or restriction of water and sewerage services is not required at this time. The Commission considers that, given the low use of flow restrictors, the requirements outlined in Clause 20 of the new Code<sup>35</sup> provide appropriate protections for customers. In its final decision, the Commission has also amended GSL-W1 to include removal of flow restrictors, this is discussed in more detail in chapter 3.6 below.

The Commission will monitor future incidences of disconnection and the use of flow restrictors in the ACT and may revisit this issue in future if necessary.

## 3.4 Energy service reliability

### 3.4.1 Draft decision

The draft report provided an overview of the AER’s Service Target Performance Incentive Scheme (STPIS) GSLs and noted that there was general support in submissions for the introduction of GSLs that were aligned with the AER’s GSL scheme.

The AER’s reliability GSLs apply only to unplanned ‘sustained interruptions’<sup>36</sup> and include provisions that exclude payments for interruptions that occur due to:

- load shedding events, including generation shortfall or direction of AEMO;

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<sup>34</sup> Email from Icon Water to the ICRC dated 14 November 2019.

<sup>35</sup> Clause 17 of the current (2012) Code.

<sup>36</sup> An interruption to electricity supply that lasts longer than 3 minutes.

- failure of the transmission network or transmission connection assets;
- interruptions directed by state or federal emergency services; and
- ‘major event days’ (that is, days where the network is experiencing a significantly higher number of interruptions than normal).<sup>37</sup>

Table 3-2 outlines Evoenergy’s performance against the AER’s reliability GSLs for the past three financial years.

**Table 3-2 Evoenergy electricity performance against AER reliability GSLs**

	2016–17	2017–18	2018–19 <sup>38</sup>
Customers that have experienced more than 9 sustained interruptions	0	0	0
Properties that have experienced 20 hours of interruption in a financial year	91	78	122

Source: Email from Evoenergy to the Commission dated 4 April 2019

Evoenergy advised the Commission that it estimated it would be liable for approximately \$10,000 per annum in GSL payments if the AER’s reliability GSLs were included in the Code and made subject to customer rebate payments. Evoenergy advised the Commission that its systems have the capacity to capture the required information for the new GSLs and estimated costs to ‘*build reports to monitor multiple interruptions and duration in line with the GSL*’ at \$25,000.<sup>39</sup>

The Commission’s draft decision was to include the following energy reliability GSLs into the Code:

- Frequency of planned interruptions.
- Duration of unplanned interruption (single event).
- Total duration of unplanned interruption (cumulative).

The draft decision aligned the GSL parameters and exclusions with the AER’s electricity distribution GSL scheme outlined in the STPIS. The draft Code included new provisions to guide the calculation of frequency and duration of interruptions, including excluded events, which were informed by the AER’s methodology for electricity distributors.

### 3.4.2 Final decision

Evoenergy submitted updated figures regarding the costs associated with complying with the reliability GSLs. The updated figures include additional one-off costs for developing system capabilities and reporting, as well as ongoing staffing costs to

<sup>37</sup> A major event day is where events on a given day are more than 2.5 standard deviations greater than the mean of log normal distribution for the system average interruption duration (SAIDI).

<sup>38</sup> Figures are to 30 March 2019.

<sup>39</sup> Source: Email from Evoenergy to the Commission dated 4 April 2019.

administer GSL payments. Whilst the estimated costs submitted by Evoenergy are higher than advised during the draft report, they are not material in the context of Evoenergy’s total revenue. The Commission has considered Evoenergy’s submission on costs in making its final decision. The estimated costs associated with the changes made to the Code in this final decision are discussed further in Chapter 4.3.

Evoenergy also submitted that applying GSLs (and exclusions) based upon the AER’s STPIS assumes that ‘meeting reliability thresholds in the gas network are equivalent to electricity’.<sup>40</sup> Evoenergy’s submission suggested that a wider range of exclusions were required for gas networks, to reflect safety practices and ensure the GSL did not apply if it was unsafe to reconnect gas due to a leak inside a customer’s premises. Evoenergy proposed exclusions in line with the Victorian *Gas System Distribution Code 2018*.

The Commission notes that the exemptions proposed by Evoenergy include additional exemptions that cover matters beyond a customer’s internal installation and exclude events that would be included in the electricity GSL, for example an interruption affecting more than 50 customers that was caused by a third party.

The Commission considers that it is reasonable that a rebate will not be payable where the customer’s internal installation prevents a utility from safely reconnecting gas. For the final decision, the Commission has updated the exclusions in Schedule 2, Clause 3 of the new Code to ensure they also reflect gas services and provide for faults within a customer’s installation. In November 2019, the Commission consulted with Evoenergy regarding the updated exclusion clause. Evoenergy advised that it was comfortable with the Code.

The Commission’s final decision is that the following electricity and gas reliability GSLs be included in the new Code and that the rebate values for the energy reliability GSLs be aligned with the values set in the AER’s STPIS.

**Table 3-3 Final decision – electricity and gas reliability GSLs**

Parameter	Payment trigger	GSL payment value
<b>Frequency of unplanned interruptions</b>	>9 sustained <sup>41</sup> unplanned interruptions in a financial year	\$80
<b>Duration of unplanned interruption (single event)</b>	12 hours	\$80
<b>Total duration of unplanned interruptions (cumulative)</b>	Number of hours in a year Level 1 – 20 hours Level 2 – 30 hours Level 3 – 60 hours	\$100 \$150 \$300

<sup>40</sup> Evoenergy, 2019b, p2.

<sup>41</sup> A sustained interruption is an interruption that lasts longer than 3 minutes.

## 3.5 Water and sewerage services reliability

### 3.5.1 Draft decision

The issues paper did not explicitly seek submissions on whether reliability GSLs should be implemented for water and sewerage services. However stakeholder submissions supported consistent measures across all utility services where appropriate.

The draft decision discussed GSL arrangements for water and sewerage services in other Australian jurisdictions and found that rebates to customers for service failures are not common. Most jurisdictions have service standards or targets relating to the reliability of water and sewerage services, with New South Wales and Victoria being the only jurisdictions apart from the ACT that require rebate payments to customers for failure to meet set standards. The draft report compared the ACT, Victorian and New South Wales reliability GSLs and rebates.

In its submission to the issues paper, Icon Water submitted that a reliability indicator for frequency of water and sewerage interruptions should not be implemented at this time, as further customer engagement would be required to ascertain customer expectations on the appropriate service level. Icon Water also submitted that it has the capability to monitor and identify customers who have had multiple unplanned interruptions over a 12-month period, and provided data outlining the number of properties affected by multiple interruptions for the past three years. The data showed that a limited number of properties each year experienced five or more interruptions to their property.

Table 3-4 Icon Water reliability performance

	2016–17	2017–18	2018–19 <sup>42</sup>
<b>Properties with 5+ unplanned interruptions</b>			
Water supply	0	12	0
Sewerage services	3	4	2

Source: Icon Water 2019b

<sup>42</sup> Data is to 28 February 2019.

### Interruption duration (single event)

Table 3-5 compares GSL parameters and values for unplanned outages in the ACT with New South Wales and Victoria (the only other jurisdictions that include this GSL for water and sewerage customers).

**Table 3-5 Water & sewerage interruption jurisdictional comparison**

Service standard	Jurisdiction, payment trigger & value			
	ACT	NSW <sup>43</sup>	VIC <sup>44</sup>	
			Yarra Valley Water	City West Water
<b>Interruptions - duration (single event)</b>	12 hours \$20	5 hours \$35	4 hours \$50	5 hours \$100
<b>Reliability - Interruption frequency</b>		>3 <sup>45</sup> \$SC	>5 \$50	>3 \$100

Note: \$SC = annual service charge<sup>46</sup>

The Commission’s draft decision was that the unplanned interruption duration GSL rebate trigger would remain at 12 hours, and that the rebate value should be increased to \$80.00. The higher rebate value would align the rebate for water and sewerage services with the rebate for energy reliability. The Commission noted that while the rebate value of \$80.00 is higher than New South Wales and the majority of the approved Victorian GSL schemes,<sup>47</sup> the duration trigger in the ACT is longer than the other state schemes.

### Interruption duration (cumulative)

The Commission’s draft decision was that a cumulative duration of interruption for water and sewerage services was not required at this time. The Commission noted that this GSL is not adopted for water services in any other jurisdiction and believed that it could be difficult to implement and monitor. The Commission’s position differed in this instance from energy services, where system feedback on interruptions is more automated and capturing and monitoring this data is relatively common across the NECF.

### Interruption frequency

The Commission’s draft decision was that an interruption frequency GSL should be included for water and sewerage services. The draft decision was that the rebate

<sup>43</sup> Sydney Water, Customer Contract, Clause 7.2.

<sup>44</sup> Essential Services Commission, *Customer Service Code – Urban Water Businesses*.

<sup>45</sup> Sydney Water Customer Contract standard is “Three or more unplanned interruption events to your property that last for over one hour”.

<sup>46</sup> The 2019-20 Sydney Water residential water service charge is \$24.30 per quarter (\$97.20 per annum).

<sup>47</sup> Seven GSL schemes in Victoria offer a rebate for duration of interruption, payment values are between \$50-\$100. The interruption duration before a rebate is triggered differs between each utility offering this GSL. See *Customer Service Code – Urban Water Businesses (VIC)*.

trigger would be more than nine interruptions in a financial year, and that the rebate value be set at \$80.00. This draft decision aligned the water and sewerage services interruption frequency GSL with the energy services GSL. The Commission was satisfied that Icon Water had the capability to implement these GSLs and the annual cost of rebates was expected to be minor.

### 3.5.2 Final decision

The ACAT submitted that the cumulative duration of interruptions which apply to energy services should also apply to water and sewerage services. As noted in the draft report, the Commission’s reasons for not including this reliability measure is that this GSL is not used for water services in any other jurisdiction and given that the provision of water and sewerage services is less automated than energy services, it could be difficult to implement and monitor.

No other submissions were received on the water and sewerage services reliability GSLs. Icon Water submitted that non-drinking water customers be excluded from GSLs and this is discussed in chapter 3.7.

The Commission’s final decision is that the following water and sewerage services reliability GSLs be included into Schedule 1 of the Code, and that the rebate values for water and sewerage reliability GSLs be aligned with the relevant energy rebates.

**Table 3-6 Final decision - water & sewerage services reliability GSLs**

Parameter	Threshold	GSL payment value
<b>Frequency of unplanned interruptions</b>	>9 unplanned interruptions in a financial year	\$80
<b>Duration of unplanned interruptions (single event)</b>	12 hours	\$80

## 3.6 Water service connection and supply restriction

In the draft Code, Schedule 1 included the following GSL for a water and sewerage utility:

**Table 3-7 draft decision - water & sewerage connection times (GSL-W1)**

	Parameter	Threshold	Rebate
<b>GSL-W1</b>	Customer Connection times	Connection not provided by the required date	\$60 per day (maximum \$300)

The draft Code schedule provided additional information regarding the threshold and timeframes, which included that the connection timeframes only apply if the service

is physically connected to the water or sewerage network. This is not a new GSL and is a continuation of a standard that has been in place since the Code was first developed in 2000.

In its submission, Icon Water noted that, as this GSL requires a physical connection to be in place and it does ‘*not turn supply on and off when customers move in and out*’<sup>48</sup> or disconnect for outstanding debt, services generally remain connected and this GSL in its current form does not apply in practice. Icon Water submitted that it would apply the timeframes in this GSL to the removal of flow restrictors.<sup>49</sup>

to ensure ongoing compliance with this service level, Icon water will ensure that any restrictors are promptly removed on payment or settlement of the account, which could include the sale of the property, in accordance with the timeframes set out in the Code.<sup>50</sup>

The Commission considers that removal of flow restrictors within required timeframes is an important consumer protection and agrees with Icon Water’s proposal to apply a GSL to removal of flow restrictors. The Commission has decided to amend GSL-W1 in the new Code to include timeframes for the removal of flow restrictors. GSL-W1 has been expanded and amended to read:

**Table 3-8 Final decision - Customer connection & removal of flow restrictors (GSL-W1)**

	Parameter	Threshold	Rebate
<b>GSL-W1</b>	Customer Connection and removal of flow restrictors	Connection not provided, or flow restrictors not removed, by required date	\$60 per day (maximum \$300)

To enact this decision, a new clause 2.2 has been added to Schedule 1 of the new Code to align the GSL parameters for removal of flow restrictors to those outlined in Code clauses 20.4(5) and 20.4(6).<sup>51</sup> In November 2019, the Commission consulted with Icon Water regarding the changes to GSL-W1. Icon Water did not raise any concerns regarding the approach and the amendments to include flow restrictors in the GSL.

This decision will provide a rebate to a customer if a water supply restrictor is not removed within 24 hours.

<sup>48</sup> Icon Water, 2019c, p.3.

<sup>49</sup> The Code (draft Clause 20.4, current clause 17.4) sets out circumstances where a utility may restrict the flow of water to a property to no less than 2 litres per minute.

<sup>50</sup> Icon Water, 2019c, p.3.

<sup>51</sup> Clause 17.4(5) and 17.4(6) of the current (2012) Code.



### 3.7 Application of GSLs to customers on contracts for non-drinking water

In its submission to the draft report, Icon Water requested that Clause 11 and Schedule 1 (guaranteed service levels) of the new Code be excluded for customers who are on a contract for non-drinking water. Icon Water noted:

[T]he non-drinking water services are not designed with the level of redundancy and other network features required to guarantee supply to the same extent as in the drinking water network. Our non-drinking water customers are aware of this position through their standard customer contracts.<sup>52</sup>

Clause 11 of the new Code applies to all water services customers, excluding non-franchise customers. Non-franchise customers are a class of water customers that the Minister has declared as being non-franchise under section 18 of the Utilities Act. A non-franchise declaration is made due to special characteristics of the water supply arrangement, for example, supply of recycled water or raw water to rural properties.

Customers from Uriarra are on a contract for non-drinking water where supply is not guaranteed and there are a number of restrictions on the use of the water. However, Uriarra customers have not been declared as non-franchise customers under the Utilities Act. Icon Water has requested that Uriarra customers be excluded from clause 11 of the new Code similarly to non-franchise customers.

The *Uriarra Raw Water Services and Pressure Sewerage Services Connection and Supply Standard Customer Contract*,<sup>53</sup> which is approved by the Commission, provides the following information to customers:

- advises customers that they may experience an interruption longer than 12 hours and that supply is not guaranteed (clause 4.2 and 4.3);
- requires Icon Water to give notice of planned interruptions in line with the GSLs (Clause 4.6-4.8); and
- advises customers that they may be entitled to a rebate if GSLs are not met (Clause 5.10).

The Commission notes that the contract terms imply that the GSLs for duration of interruption (GSL-W4) and frequency of interruption (GSL-W5) will not apply to Uriarra customers. Customers are aware, from the contract, that they do not have guaranteed supply and may experience an interruption longer than 12 hours.

Uriarra customers do, however, have a right to apply for and receive rebates under the current Code. Icon Water has not advised that it has consulted with Uriarra customers regarding, nor provided any justification for, its proposal to remove customers' current rights to GSLs that are not related to unplanned interruptions

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<sup>52</sup> Icon Water, 2019c, p2.

<sup>53</sup> Available at <https://www.legislation.act.gov.au/View/ni/2016-292/current/PDF/2016-292.PDF>.

(such as the GSLs for complaints and notice of a planned interruption). The Commission considers that an exclusion of the entire GSL schedule and the removal of rights to rebates for Uriarra customers is not justified or required.

The Commission’s final decision is to exclude rebate payments for water and sewerage services reliability GSLs (GSL-W4 duration of interruption and GSL-W5 frequency of interruption) for customers on a contract for the supply of non-drinking water. The other GSLs for water and sewerage services will apply to these customers. This approach maintains the current rights of Uriarra customers. To apply this decision, an exclusion clause has been included in Schedule 1 of the new Code. In November 2019, the Commission consulted with Icon Water regarding the exclusion of some GSLs for customers on a contract for the supply of non-drinking water. Icon Water did not raise any concerns regarding the approach and the exclusions.

### 3.8 Rebate values

There was no consistent view on the approach to setting and reviewing rebate values across the submissions received to the issues paper. Evoenergy and Icon Water did not support changing the rebate values and submitted that the current values appear appropriate. In contrast, the ACAT and COTA ACT supported increasing the values. COTA ACT and Icon Water also submitted that an annual CPI adjustment may be an appropriate method to ensure values do not reduce in real terms.

#### 3.8.1 Draft decision

In reviewing the values of the rebates in the draft Code, the Commission considered GSL payment values in other jurisdictions. Chapter 3 of the issues paper and chapter 4 of the draft report described arrangements in other jurisdictions.

The draft decision noted that the AER’s STPIS sets a national framework for setting GSL payments in electricity distribution, but there is no national approach to setting water GSL payments. Only New South Wales and Victoria currently have GSL schemes for water and sewerage services.

In the ACT, the rebate value for a GSL is the currently the same across energy and water services. The continuation of this approach was supported in submissions, with stakeholders noting that consistency in standards and values facilitates customer awareness and understanding. Icon Water suggested that customer engagement could be used to determine values of rebates across utility services, but did not specifically ask to change the current approach at this time.

The Commission noted that despite the current rebate values being set in 2000, the ACT values were generally similar to values in other jurisdictions for electricity GSLs. The notable exception was the value for a single prolonged service interruption, where the average payment in other jurisdictions was \$80 or more and \$20 in the ACT.

The Commission’s draft decision was that the rebate values in the Code should be broadly aligned with the AER’s STPIS, provided they did not result in a reduction in the current value of the rebates. In reviewing the rebate values, the Commission considered whether the current rebate values were within the range for similar GSLs in other jurisdictions. If the ACT was within the range, no change to the rebate value was made.

Table 3-9 summarises the draft decision on rebate values.

**Table 3-9 Draft decision rebate values**

Indicator	Current Value	Range across other jurisdictions	Draft decision	Summary of reason
<b>Connection times</b>	\$60 per day (max \$300)	\$56.50 - \$70 (\$300-350)	\$60 per day (max \$300)	No change. The current value sits within the range across other jurisdictions
<b>Responding to complaints</b>				No change. The current value sits within the range across other jurisdictions
- Electricity	\$20	\$20-\$50 <sup>54</sup>	\$20	
- Water	\$20	\$10-\$100 <sup>55</sup>	\$20	
<b>Wrongful disconnection (energy only)</b>	–		\$100	This is a new GSL. The value has been aligned with WA, where it also applies to both retailers and distributors.
<b>Planned interruptions (Notice period)</b>	\$50	\$31 - \$77	\$50	No change. The current value sits within the range across other jurisdictions
<b>Interruption duration (single event) -</b>				The value has been increased to align with the AER’s STIPS.
- Electricity	\$20	\$80-\$160	\$80	
- Water	\$20	\$35-\$75	\$80	
<b>Interruption duration (cumulative) (energy only)</b>	–		\$80	This is a new GSL. The value has been aligned with the AER’s STIPS.
<b>Frequency of interruptions</b>	–		\$80	This is a new GSL. The value has been aligned with the AER’s STIPS.
<b>Respond to network fault or incident</b>	\$60 (max \$300)	\$60-\$3000 <sup>56</sup>	\$60	No change. The ACT is the only jurisdiction with broad coverage for response times regardless of incident type. Other jurisdictions apply specific response time requirements for sewer overflows or burst mains.

<sup>54</sup> WA is the only state that applies this GSL to electricity. The range in WA is \$20-\$50.

<sup>55</sup> Three Victorian GSL schemes include a rebate relating to complaints or enquiry response times.

<sup>56</sup> This range includes a sewer overflow into premises caused by the utility network.

### 3.8.2 Final decision

In its response to the draft report, the ACAT submitted that *'the rebates do not appear to be in proportion to the inconvenience suffered by the customer'*<sup>57</sup> particularly for interruptions less than 12 hours. In aligning the ACT with other jurisdictions, the draft decision increased the value of the rebate for an unplanned interruption by 300 per cent from \$20.00 to \$80.00. Preliminary consultation and submissions to the issues paper showed stakeholder support for aligning the GSLs with the AERs STPIS. It is the Commission's final decision that no changes to the GSL or rebate values are required for interruptions lasting less than 12-hours.

No other submissions to the draft decision were received that addressed the Commission's approach to reviewing the current GSL rebate values. Table 3-10 sets out the Commission's final decision on rebate values.

**Table 3-10 Final decision rebate values**

Indicator	Final decision	
Connection times	\$60 per day (max \$300)	
Responding to complaints	\$20	
Wrongful disconnection (energy only)	\$100	
Planned interruptions (Notice period)	\$50	
Interruption duration (single event)	\$80	
Interruption duration (cumulative per year) (energy only)	Level 1 – 20 hours	\$80
	Level 2 – 30 hours	\$150
	Level 3 – 60 hours	\$300
Frequency of interruptions	\$80	
Respond to network fault or incident	\$60	

### 3.9 Adjusting future rebate values

In the draft report, the Commission noted that COTA ACT and Icon Water suggested that an annual CPI adjustment may be an appropriate method to ensure that rebate values do not decline in real terms over time. The Commission found that arrangements to review the rebate values in other jurisdictions varied. Some

<sup>57</sup> ACAT, 2019, p.6.

jurisdictions have no defined reviewed period,<sup>58</sup> whilst others review rebate values when new regulatory price determinations are made. The draft report described how GSL payment values were set in Queensland and South Australia (for electricity) and Victoria (for water). The different approaches included inflation adjustments, or adjustments based upon customer engagement that was aligned with regulatory price determinations.

The Commission considered that aligning the review of rebate values to a price direction period is not appropriate in the ACT, as price directions for water and sewerage services and electricity retail (both conducted by the Commission) and electricity distribution (conducted by the AER) occur at different times. As the draft decision introduced new GSLs that were aligned with the AER's STIPIS, the Commission considered that an automatic CPI adjustment would not be appropriate. If automatic CPI increases were applied, the ACT scheme could fall out of alignment with other jurisdictions and the AER's STIPS.

The Commission's draft decision was that rebate values should be reviewed on an as required basis.

### **3.9.1 Final decision**

In its submission to the draft report, the ACAT sought advice on whether the Commission intends to revise the Code and rebate amounts periodically.

The Commission's final decision is to confirm its draft decision. It will monitor GSL arrangements in other jurisdictions and review the Code, GSL arrangements and rebate values as required.

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<sup>58</sup> The AER's STPIS guideline and the Tasmanian Guaranteed Service Level Scheme do not have defined review periods.

## 4 Rebate payment process

Clause 11 of the current (2012) Code places an obligation on utilities to meet the minimum service standards outlined in schedule 1 of the Code. If a utility does not meet those service standards, a customer or consumer<sup>59</sup> is entitled to receive a rebate. Clause 11 (including sub-clauses) of the current Code applies to licensed utilities and NERL retailers. This chapter sets out the Commission’s final decisions on the payment of rebates and explains the factors considered by the Commission in reaching these decisions.

As noted in chapter 3, the Commission has made a decision to change the terminology of minimum service standards to GSLs for consistency with the Utilities Act and the AER’s national GSL scheme. In the rest of this chapter, the term GSL will be used, including when referring to the minimum service standards included in the current Code.

### 4.1 Matters raised in the issues paper and draft decision

Under the current Code, utilities are only obliged to pay a rebate when they do not meet a GSL and the affected customer has applied for the rebate.<sup>60</sup> The utility is not required to automatically make the payment (in the absence of an application) or to proactively notify the customer of their right to a rebate when they do not meet a GSL. Chapter 4 of the Commission’s issues paper set out concerns raised by stakeholders during targeted consultation about consumer and customer awareness of the current Code, the GSLs, available rebates, and the process for receiving a rebate. The issues paper noted that whilst the utilities had failed to meet the GSLs on hundreds of occasions every year,<sup>61</sup> relatively few rebates had been paid. Only 11 rebates were claimed by customers over the five-year period from 2012–2017.

The Commission also noted that in 2017 the ACT Government’s Standing Committee on Public Accounts recommended the Code be amended to require the automatic payment of rebates.

In its draft decision, the Commission reviewed how GSL payments are administered in other Australian jurisdictions and noted that the ACT is the only jurisdiction that

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<sup>59</sup> The terms customer and consumer have similar meanings and can often be interchanged. A customer is usually a consumer; however, a consumer is not always a customer. A customer is the account holder, whereas a consumer is a person using the service. For example, a property may have several occupants and only one account holder; or in the case of water services on a rental property, the customer is the landlord and the tenant is the consumer.

<sup>60</sup> Under clause 11.2 the affected person must apply for a rebate within 3-month of the minimum service standard not being met.

<sup>61</sup> Over a five-year period, the standards were not met by Icon Water 2901 times, Evoenergy Electricity 2517 times and Evoenergy Gas 1381 times.

currently requires customers to apply for a GSL payment. Most submissions to the issues paper supported the automatic payment of a rebate to customers when a GSL threshold is triggered. The draft report also discussed the estimated costs of changing the rebate payment process.

In reaching its draft decision, the Commission considered an alternative approach proposed by Evoenergy to the option of making an automatic payment to an ‘affected customer’. Under the alternative ‘every customer’ model, all customers on the network would receive a share of the annual total for applicable rebate/s, payable by way of a reduced network charge for every customer in the following year. Evoenergy stated that *‘[t]his model would not require the level of system and process changes as the proactive, affected customer model does’*.<sup>62</sup>

The Commission considered that Evoenergy’s proposal would meet part of the objective of rebates, which is to provide incentives to improve the quality of service to customers and consumers, but it would not meet an important part of the intended purpose, which is to recognise the individual customers who have not received adequate service. The Commission’s draft decision was that an ‘every customer’ network charge reduction was not an appropriate method of paying GSL rebates. No further submissions were received on this proposal. The Commission’s final decision on this proposal is to confirm its draft decision.

## **4.2 Customers and consumers**

### **4.2.1 Draft decision**

Icon Water and Evoenergy submitted that by requiring a utility to pay a rebate to the account holder (the customer), the affected consumer (for example, a tenant) may not receive recognition that they have not received adequate service.

The Commission noted in its draft report that other jurisdictions do not require rebate payments to be made to consumers who are not customers. Noting that the utility or NERL retailer only has a direct contractual relationship with its customers, the Commission’s draft decision was that it would be unreasonable to require utilities to make rebate payments to persons who are not its customers and that GSL rebates are payable to customers.

### **4.2.2 Final decision**

The ACAT submitted that as landlords in the ACT are entitled to recover consumption charges under the standard tenancy agreement, the Code should require the GSL

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<sup>62</sup> Evoenergy, 2019a, p 2.

payment to be offset against the consumption charge: this would ensure *‘the tenant would receive the benefit of the GSL’*.<sup>63</sup>

Adopting the ACAT’s proposal could be costly to implement, would increase billing complexity and results in differential treatment of tenants in different forms of housing; for example, tenants in apartments would not receive an automatic rebate because Unit Title properties are not separately metered and do not receive consumption charges.

The Commission maintains its view that water billing arrangements between landlords and tenants are a private contractual matter that is outside the scope of the Code. It is important to note that rebates do not replace a customer’s or consumer’s right to seek compensation from a utility for damages or loss resulting from poor service.

The Commission’s final decision is that GSL rebates are payable to customers.

## 4.3 Payment of rebates

### 4.3.1 Draft decision

The Commission’s draft decision was that the Code should include provisions obligating utilities and NERL retailers to pay rebates when GSLs have not been met. The draft Code included a redraft of Clause 11 to implement the draft decision, including a new draft clause 11.2 requiring utilities to monitor compliance against GSLs and pay rebates. The current Code allows for various methods of paying a rebate, including payment from a distributor through a NERL retailer. The draft decision did not seek to make any changes to the payment methods available.

In making its draft decision, the Commission considered the cost of requiring utilities and NERL retailers to make automatic payments. The Commission anticipated that implementing an automated ‘no customer application required’ arrangement would require utilities and NERL retailers to create, generate and monitor reports against the GSLs. Given that licenced utilities are already required to generate these reports to meet annual licence reporting requirements, the additional cost to monitor these reports was expected to be minimal. The Commission noted that whilst NERL retailers do not currently report to the Commission against Code performance, the applicable performance indicators are consistent with NECF requirements and were not expected to create an unreasonable reporting and monitoring burden.

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<sup>63</sup> ACAT, 2019, p5.



Evoenergy submitted in its response to a request by the Commission that the estimated cost to ‘*build reports to monitor multiple interruptions and duration*’ was around \$25,000.<sup>64</sup>

Based upon Utility Licence Annual Report data<sup>65</sup> over the five-year period from 2013-18, and information provided from utilities relating to the new GSLs, the Commission estimated the annual rebate cost would be approximately \$84,000. The majority of rebate payments were expected to be paid by Icon Water (est. \$35,000) and Evoenergy electricity (est. \$31,000).

### 4.3.2 Final decision

The Commission received three submissions relating to the draft decision to automate rebate payments. The ACAT supported the proposed changes to Clause 11.2 of the Code. Icon Water sought an exemption for a particular class of customers (customers on a contract for non-drinking water) from Clause 11 (and Schedule 1). Icon Water’s request is discussed in chapter 3.7 above.

Evoenergy submitted that the introduction of auto-rebates would:

Improve [the] customer experience in understanding [guaranteed service levels] and create incentives for Evoenergy to achieve these minimum service standards.<sup>66</sup>

Evoenergy also submitted updated implementation cost information, which included significantly higher costs than its initial estimate of \$25,000. Evoenergy submitted that there would be one-off costs of \$155,000 to implement automatic rebate payments and ongoing costs of \$105,000 per annum for staff to administer the GSLs. These costs would be split across the gas and electricity distribution businesses.

The Commission considers that the ongoing costs stated by Evoenergy appear high, given that much of the required information is already captured and reported to the AER. Nevertheless, the implementation costs stated are not unreasonably high relative to the revenues of Evoenergy’s gas and electricity distribution businesses.

In November 2019, Evoenergy provided the Commission with updated compliance figures for ‘failure to provide 4 days’ notice of a planned interruption’ for 2016-17 and 2017-18. This has resulted in an increase in the rebate costs previously estimated.

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<sup>64</sup> Source: Email from Evoenergy to the Commission dated 4 April 2019.

<sup>65</sup> For information on Utility Licence Annual Reports, see <https://www.icrc.act.gov.au/utilities-licensing/utility-licence-annual-reports>.

<sup>66</sup> Evoenergy, 2019b, p.1.

Noting that actual rebate costs will depend on utility performance, the Commission now estimates the total annual cost of rebates paid to customers to be around \$98,000. Table 4-1 shows the estimated utility rebate costs payable. The rebate costs have been calculated using updated Utility Licence Annual Report data<sup>67</sup> over the five-year period from 2013/18, and information provided from utilities relating to the new GSLs.

**Table 4-1 Estimated total annual cost of rebates paid to customers by utility**

Entity	Estimated annual rebate cost
Icon Water	\$35,000
Evoenergy Electricity	\$45,000
Evoenergy Gas	\$17,000
Energy retailers	\$1,000
<b>TOTAL</b>	<b>\$98,000</b>

**Note:** when calculating the figures for Table 4-1, for GSLs that have amounts payable for each day the GSL isn't met (e.g. GSL-W6 response time) it was assumed that utilities did not meet the GSL by one day only. The Commission understands that in some cases the maximum GSL payment (\$300) would have been payable but does not have enough data on these GSLs to calculate the average rebates payable.

The Commission's final decision is for the new Code to include provisions obligating utilities and NERL retailers to pay rebates when GSLs have not been met. The Clause 11 provisions of the new Code have been informed by the requirements of the AER's STPIS and jurisdictional GSL schemes. The provisions maintain the options available to utilities for the payment method and maintains flexibility for utilities and NERL retailers to select a method that suits their operations.

The Commission's final decision means that customers will no longer be required to apply for a rebate, as is the case under the current (2012) Code. The Commission considers that requiring utilities and NERL retailers to make payments will:

- align the ACT with other jurisdictions;
- ensure customers receive rebates when they are entitled to them;
- assist in raising awareness of the Code and GSLs; and
- strengthen the incentives for utilities and NERL retailers to ensure GSLs are met.

<sup>67</sup> For information on Utility Licence Annual Reports, see <https://www.icrc.act.gov.au/utilities-licensing/utility-licence-annual-reports>.

## 5 Hardship policies

### 5.1 Current Code provisions and matters raised in the issues paper

The current (2012) Code requires utilities to provide customers with ‘*information about and referral to, any hardship program offered by the utility*’.<sup>68</sup> The current (2012) Code specifies that bills must include details on how to make a hardship complaint to the ACAT and that services cannot be restricted or disconnected if the customer has made a hardship complaint to the ACAT.

The issues paper noted that energy retailers are required to have hardship policies under the NECF. However, there is no current requirement for a water retailer to have a hardship policy. Stakeholders were asked if the Code should require water utilities to have a hardship policy and if so, what elements should it cover.

### 5.2 Draft decision

The draft report noted that all issues paper submissions on this issue supported including provisions to require water utilities to have a hardship policy. Three submissions included comments on what factors should be included in drafting new provisions within the Code. Icon Water submitted that a hardship policy should only apply to residential customers, and that a hardship policy that covered large business consumers would not benefit the wider community.

The Commission’s draft decision was that the Code will include provisions requiring water utilities to have a hardship policy. The Commission’s draft decision also included consideration of other matters related to the development and application of the policy; these matters are summarised in 5.2.1 to 5.2.3 below.

In accordance with the draft decision, a new Clause 14 was included in the draft Code specifying the minimum requirements to be addressed in a hardship policy. Specific requirements for water retail businesses were informed by the requirements in codes in Queensland, Victoria and Tasmania.<sup>69</sup>

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<sup>68</sup> Clause 13.14(b).

<sup>69</sup> See *Customer Water and Wastewater Code 2017 (QLD)*, *Customer Service Code: Urban Water Business (VIC)* and *Tasmanian Water and Sewerage Industry Customer Service Code*.

### 5.2.1 Application of hardship policies for water and sewerage services customers

The Commission reviewed the hardship policy provisions in other jurisdictions and noted that hardship policies are required to cover residential or small customers<sup>70</sup> only. In this respect, Icon Water’s submission was consistent with the approach adopted in other jurisdictions.

The Commission’s draft decision was that the water utility’s hardship policy must apply, as a minimum, to customers of residential premises.

### 5.2.2 Hardship policy requirements

The Commission considered COTA ACT’s submission to require the utility to conduct an assessment of a customer’s capacity to pay and refer customers experiencing payment difficulties to financial counselling services. The Commission also considered a request to include customer default on instalment arrangements to be included as an indicator for entry into a hardship program.

The Commission’s draft decision was that the hardship policies should include requirements for the water utility to:

1. supply information about and referral to government assistance programs and independent financial counsellors, and
2. offer flexible payment options in accordance with an assessment of the customer’s capacity to pay; and
3. outline the measures it will use to proactively identify customers who may be experiencing hardship.

### 5.2.3 Terminology: Financial hardship or payment difficulties

The Commission considered COTA ACT’s submission that use of the term financial hardship can be a barrier to people accessing hardship programs. The Commission noted that IPART recently recommended that the term ‘financial hardship’ be replaced with ‘payment difficulty’ in the Sydney Water licence obligations.<sup>71</sup> However, the term financial hardship continues to be widely used in energy and water regulation in Australia.

The Commission considers that using different terminology to describe water hardship policies and energy hardship policies may have the potential to cause customer confusion. The AER has responsibility for regulating energy utilities in

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<sup>70</sup> The ACT does not use the term ‘small customer’ in its legal framework. In South East Queensland a small customer includes residential and non-residential (business) customers who use less than 100 kL of water per annum. Clause 3, *Customer Water and Wastewater Code 2017* (QLD).

<sup>71</sup> IPART, 2019, p 81.

respect of hardship policies. The AER has retained the use of the term ‘hardship’ in its recently released Customer Hardship Policy Guideline and requires energy utilities to use the term ‘hardship’ in its standardised statements.<sup>72</sup>

For consistency across utility services, the Commission’s draft decision was to retain the use of the term ‘hardship’ in describing hardship policy requirements in the Code. However, the Commission noted that in developing its hardship policy, Icon Water may wish to seek the views of its customers on terminology to ensure the policy is clear and understandable to them.

### 5.3 Final decision

The ACAT’s submission to the draft report provided commentary on various aspects of the new hardship clause and policy requirements. Matters raised included:

- Notification of a drafting error (incorrect cross-reference in 14.2(3)). This has been corrected in the new Code;
- Suggestions for how certain provisions may operate, for example how the utility should address the ‘promotion of hardship policy’ requirements and ‘flexible payment’ options; and
- A request that the ACAT be specifically included as a body that can identify a customer to whom the hardship policy must apply under clause 14.4.

The Commission notes the ACAT’s comments and suggestions regarding the operation of the policy. The Commission maintains its view that responsibility for developing the hardship policy will remain with the water utility. This allows Icon Water to determine how the hardship policy operates, provided that the required areas specified in the Code are covered in the policy. The Commission expects that Icon Water will consult with stakeholders regarding the development and application of the hardship policy.

The Commission has considered the ACAT’s request to be included as a referring authority under clause 14.4 of the draft Code. The purpose of this clause is to state the minimum circumstances for when a water utility must apply its hardship policy to a customer. The draft clause 14.4 includes, at a minimum, self-referral or referral by a utility or accredited financial counsellor into the hardship program.

As the clause is drafted as a minimum requirement, the ACAT is not prevented from referring a customer to Icon Water for hardship management. The Commission considers that an amendment to the draft clause 14.4 of the Code is not required.

The Commission’s final decision is to confirm its draft decision that water utilities are required to have a hardship policy, the policy must apply to residential customers at a

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<sup>72</sup> AER, 2019, p 5.

minimum, and the policy must, at a minimum, cover the list of minimum requirements set out in Clause 14 of the new Code.

The Commission will monitor compliance with the Code provisions through the utility licence annual reporting process, including any complaints relating to the hardship policy.

The Commission considers that the water utility should consult with its customers and stakeholders when developing, implementing and reviewing its hardship policy.

## 6 Life support

### 6.1 Draft decision

In its draft report, the Commission stated its view that the current (2012) Code did not provide adequate protection for consumers requiring life support equipment, and it was not in line with similar provisions for energy utilities in the NECF. The current Code does not provide any requirement for confirmation of registration of premises as a life support equipment address. The Commission also noted that the current Code did not specify any minimum contact requirements before disconnecting or removing premises from the register.

The Commission’s draft decision was that upon notification, a utility must register premises as a life support equipment address, provide confirmation and information to the consumer regarding that registration, and attempt to contact the consumer multiple times before removing them from the register. The Commission updated the provisions in the Code (clause 10 in the draft Code) to provide these additional protections for consumers that require life support equipment.

### 6.2 Final decision

In its submission, Icon Water provided details of its current process for receiving details of life support consumer details (and registration). This process includes Icon Water proactively registering premises after requesting and receiving a report from ACT Health each month to confirm home haemodialysis customers. Icon Water submitted that this process should continue, as it removed the need for consumer applications and for Icon Water to obtain medical information confirming the customer’s use of life support equipment.

The Commission acknowledges that Icon Water’s arrangements with ACT Health benefit consumers who require life support equipment, as it automates the registration process. The Commission considers that retaining the option for consumers to self-register and the processes for confirmation of registration and removal from the register remain important protections. The Code needs to provide for self-registration in situations such as when:

- a consumer is not on the ACT Health report;
- new life support equipment technology becomes available, or
- the arrangement with ACT Health ceases.

The Commission’s final decision is that upon receipt of advice (either from ACT Health or the consumer), a utility must register a premises as a life support equipment address, provide confirmation and information to the consumer regarding that registration, and attempt to contact the consumer multiple times before removing

them from the register. Clause 10.1 of the new Code has been revised to reflect Icon’s Water’s arrangement with ACT Health.

The life support provisions in the Code apply to water utilities and are closely aligned with NERR obligations that cover energy utilities and NERL retailers.

Icon Water submitted that the draft Code provisions should not apply to franchise customers who are on a contract for non-drinking water. This concern related to customers in Uriarra who are on a contract for non-drinking water. The contract,<sup>73</sup> which is approved by the Commission, explicitly states that the water supply is not suitable for life support equipment. In finalising the Code, the Commission has amended the application of Clause 10 to state that it does not apply to customers on a contract for non-drinking water.

In November 2019, the Commission consulted with Icon Water regarding the changes to Clause 10 of the new Code. Icon Water did not raise any concerns with the Commission’s approach or changes.

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<sup>73</sup> The current *Uriarra Raw Water Services and Pressure Sewerage Services Connection and Supply Standard Customer Contract* is available on the ACT legislation website <https://www.legislation.act.gov.au/View/ni/2016-292/current/PDF/2016-292.PDF>.



## 7 Other matters

### 7.1 Disconnection of water services for debt

The ACAT submitted that there appeared to be an unintentional drafting error made when the Code was amended in preparation for the ACT's entrance into the NECF in 2012. This drafting error allowed water to be disconnected for outstanding debt (which was not allowed prior to 2012). The ACAT suggested amendments to Clause 20.4 in the draft Code to remove a water utility's right to disconnect a property for outstanding debt.<sup>74</sup>

The Commission accepts that this was an unintended consequence of the 2012 Code redraft. Icon Water has advised the Commission that it has not disconnected a customer for outstanding debt in recent years. Icon Water submitted:

Icon Water agrees with the suggested revised drafting with the effect that Icon Water is not able to disconnect a residential customer for failure to pay a bill. We note that there may be other circumstances (not related to failure to pay) where disconnection is appropriate and permitted... including where failure to disconnect may constitute a health or safety risk.<sup>75</sup>

The Commission's final decision is that Clause 20.4 in the draft Code should be amended to ensure that water supply is not disconnected for an outstanding debt. The clause has been amended to allow a utility to restrict supply (but not disconnect) for failure to pay an outstanding bill. As stated in section 3.3.2 above, the Commission intends to monitor utility use of flow restrictors through the Utility Licence Annual Report.

### 7.2 Embedded networks

In its submission to the draft report, the ACAT asked whether GSLs would apply to embedded networks and questioned how the Commission would monitor compliance by embedded networks. As was noted in the issues paper, electricity embedded networks are outside the scope of the review as they are excluded from the Utilities Act (see Utilities (General) Regulation 2017). As the Code is determined under the Utilities Act, electricity embedded networks are excluded from the Code.

In relation to any other potential types of embedded networks, the Code applies to any person providing a utility service as defined under the Utilities Act. A licensed utility is required to adhere to the Code and provide GSL payments to its customers (to the extent that a Code provision or GSL applies to a particular utility service). The

<sup>74</sup> Clause 17.4 in the current (2012) Code was moved to 20.4 in the draft Code.

<sup>75</sup> Source: email from Icon Water to ICRC dated 15 November 2019.

Commission monitors compliance against the Code, GSLs and other licence conditions through the Utility Licence Annual Reports.

An embedded network operator (non-electricity) is responsible for GSLs relating to the performance of its own network or operations, but not the performance of the upstream distributor.

### 7.3 Utility rights to recover undercharges

The Commission notes the ACAT submission to the draft report requesting certain NECF energy obligations be applied to water utilities, in particular a utility's right to recover under-charges. The Commission recognises that energy retailers under the NECF may only recover under-charges for a nine-month period, whereas a water retailer may recover up to 12 months of under-charges under the Code.

The Commission notes that the industry standard across Australian water jurisdictions is to allow recovery of under-charges for a 12-month period.<sup>76</sup> In its response to the issues paper, Icon Water submitted that this practice allows all four seasons to pass and is *'a useful mechanism to assess the reasonableness of each quarterly bill'*.<sup>77</sup>

The Commission's stated objective regarding harmonisation was to harmonise the Code where it was reasonable and appropriate. The Commission considers that a change to the back-charging arrangements for a water retailer would change established industry billing practices and be out of line with other Australian water jurisdictions. The Commission will continue to monitor developments in other jurisdictions and complaints relating to billing practices and may revisit this matter in the future.

### 7.4 Reporting by NERL retailers

As noted in the draft report, a new provision (Clause 4.1) was included in the draft Code to clarify that the Commission may request NERL retailers to report against Code and GSL compliance.

The Commission's final decision is that NERL retailers are required to report against the Code. This decision aligns NERL retailer Code reporting requirements with energy distribution and water and sewerage service utilities who currently report compliance each year through the Utility Licence Annual Report.

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<sup>76</sup> See *Tasmanian Water and Sewerage Industry Customer Service Code (TAS) s5.7, Customer Service Code – Urban Water Businesses (VIC) s4.8, Water Retail Code – Major Retailers (SA) s21.1 and Water Services Code (Customer Service Standards) 2018 (WA) s18.*

<sup>77</sup> Icon Water, 2019a, p.4

The Commission intends to seek information from NERL retailers each year, in a simplified reporting format, to allow it to monitor NERL retailer compliance with the Code, including the GSLs and rebate payments. The types of information that will be sought include:

- the number of times each GSL has been exceeded;
- the number of rebates paid against each GSL; and
- confirmation of compliance relating to clauses identified as applying to NERL retailers in Schedule 3 of the Code.

## 7.5 Commencement date

The Commission's final decision is that the commencement date of the new Code will be 1 July 2020. The Commission believes that this commencement date will allow enough time for utilities to establish or modify systems to implement the changes required by the new Code. A commencement date of 1 July will also simplify reporting in the first year for licensed utilities as the commencement date will align with the next Utility Licence Annual Report reporting period.

## 7.6 Updates to clauses and dictionary

As noted in the draft report, the draft Code showed substantive changes only in mark-up. Some other drafting updates were made to the Code to clarify application and improve readability. Some clauses were moved to improve navigation, and clause numbers may have changed.

The final Code includes revisions outlined in this report, as well as some minor non-substantive changes. To ensure stakeholders have a complete understanding of the new Code, its application and the changes, stakeholders are encouraged to read the new Code as a complete document.

## 7.7 Electricity Feed-in Code and Determination on the application of Industry Codes to NERL retailers

The Commission notes that the *Utilities (Electricity Feed-in Code) Determination 2015* (DI2015-256) currently quotes several sections of the current Code. The Commission will make amendments to the Electricity Feed-in Code to ensure it reflects the new Code.

The Commission will revoke the *Utilities (NERL retailers – Application of Industry Codes) Determination 2012* (DI2012-171) and reissue an updated NERL retailer application determination to ensure that it reflects the Code final decision.

# Appendix 1 Compliance with Utilities Act

Part 4 of the Utilities Act sets out the Commission's role and requirements in determining industry codes.

Table A-1 Compliance with Utilities Act

Section	Requirement	Comments
56A	<b>NERL retailers determination</b>	
	(1) The Commission must be satisfied on reasonable grounds that it is appropriate to apply to a NERL retailer	The Commission is satisfied that it is reasonable for the Code to apply to NERL retailers. This is supported by stakeholder submissions received during this review.
	(2) A disallowable instrument must be registered of the Commission's determination of application to NERL retailers	This will be completed once the Code and Feed-in Tariff Code are finalised (as they are both subject to a 56A determination).  Expected completion will be prior to Commencement of the Code and will take effect from 1 July 2020.
59(1) (a)	Consultation with Minister and Minister for Technical Regulation	Draft code sent to Minister for the Environment and Heritage (responsible for Water and Sewerage Services), Minister for Climate Change and Sustainability (responsible for energy) and the Technical Regulator on 27 August 2019.
	(b) The Code is not inconsistent in material aspects with another industry code or technical code	Letter received from Technical Regulator on 23 September 2019 confirming no inconsistencies. This is available on the Commission's website.
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 early 2020. This will allow sufficient notification to each utility before the new Code commences on 1 July 2020.
60	<b>Public consultation</b>	
	(1) Prepare draft, give public notice, and invite submissions.	A public notice was placed in the Canberra Times on 4 September 2019 inviting submissions. A copy of the

		draft was also placed on the Commission website and sent to the Commission's stakeholder email list on 23 August 2019. The Commission held a Public Forum on 11 September 2019.
	(2) Submission period must run for at least 30 days after the publication of the notice.	Submission period closed on 25 October 2019, which is more than 30 days after publication of the public notice on 4 September 2019.
	(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 is expected to be notified on the ACT Legislation website in early 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>78</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>78</sup> S55(2) *Utilities Act 2000*.

## Appendix 3 Summary of submissions received to draft report

The Commission received three submissions during the draft report submission period between 23 August 2019 and 25 October 2019. A letter was also received from the Technical Regulator confirming that the draft Code did not conflict with any Technical Codes. A summary of each submission is outlined below.

### 1. Icon Water

Icon Water submitted that it broadly supported the draft amendments to the Code and noted that many of the proposed changes formalised established processes it already has in place. It submitted the following for consideration:

- Life support (Clause 10) – Icon Water has a registration process in place with ACT Health and would like to continue this arrangement as part of the process. It submitted that the clause should not apply to customers of Uriarra as they are on a contract that states the water supply is not suitable for life support.
- Guaranteed service levels (Clause 11) – Icon Water submitted that this clause should not apply to customers on a contract for non-drinking water. Non-drinking water services are not designed for the same level of redundancy and supply is not guaranteed.
- Suggested wording changes to Clause 11.4 to reflect that rebates are an acknowledgement that the GSL has not been met, rather than implying poor service.
- A minor change to the definition of franchise customer so that it only refers to the definition in the Utilities Act.
- GSL-W1 (Schedule 1) – Icon Water noted that it would apply this GSL to the removal of flow restrictors, as it does not disconnect properties (therefore re-connection is not required).

### 2. Evoenergy

Evoenergy submitted that it supports the direction of the draft decision, including the proposal to introduce auto-rebates. Evoenergy's submission focused on the proposed GSLs and costs of administration of automatic rebate payments. It submitted:

- Ongoing costs of \$100,000 and one-off costs of \$150,000 to implement and administer the changes.
- Updated estimated annual rebate costs based upon 2-year performance (electricity) and 1-year performance (gas).
- GSL exclusions needed to be considered in the context of a gas network and that the exclusions should be widened to take account of gas specific issues.

Evoenergy also noted that it has over-reported the number of 'failure to respond within 48-hours' for its gas network and it expects this number will decline

significantly in future reports. This was due to a misinterpretation of the definition of 'respond' as outlined in the Code.

### **3. ACT Civil and Administrative Tribunal (ACAT)**

The ACAT submission supported:

- a single Code for all utility services;
- changes to application of the Code to NERL retailers;
- terminology change from minimum service standard to GSL; and
- the automatic payment of rebates.

It also submitted the following for consideration:

- Aligning water and sewerage requirements with the National Energy Retail Rules (for example undercharging arrangements).
- Suggestions for rectification of an unintended drafting error made in 2012 that allowed water to be disconnected for debt.
- Inclusion of GSLs for wrongful disconnection/restriction and cumulative duration of interruptions for water and sewerage services.
- Making the distributor the default payer for wrongful disconnection of energy so that the customer is not involved in disputes regarding which utility was at fault.
- The Commission's role and oversight of GSLs in embedded networks.
- Request that GSLs be paid against consumption charges to ensure tenants receive benefit of the GSL.
- The rebates do not appear to be in proportion to the inconvenience suffered by customers.
- Incorrect cross-reference in 14.2(3) (Hardship).
- A request to be included as a referring authority under 14.2(4) (Hardship).

The ACAT made suggestions for how Icon Water may address aspects of the hardship policy, and sought confirmation of whether the Commission would review the Code periodically.



## Appendix 4 Summary of submissions received to issues paper

The Commission received nine submissions during the issues paper submission period between 29 November 2018 and 1 February 2019. Icon Water and Evoenergy provided additional submissions after the Commission sought additional information relating to specific topics. A summary of each submission is outlined below.

### 1. Rodd Manns

Mr Manns submitted on the issue of consumption charges in unit title properties. He submitted that:

- The current arrangements where the meter owner (Owners' Corporation) is billed for consumption by the water utility is unfair and inequitable. He submitted that it effectively results in unit owners having to pay GST on water consumption.
- Owners Corporations for a units plan with a single meter should be able to opt to have the total water consumption charge divided among unit owners and be billed directly by the utility.
- Large unit plan complex consumption charges can be tens of thousands of dollars, with the resulting effective GST recovered through unit levies to owners being thousands of dollars.
- Allocation by the water utility to unit owners should, by default, be set by the unit allocation at the time a units plan is registered.

### 2. Evoenergy

Evoenergy provided two submissions. Its first submission provided responses to all energy related questions in the issues paper, whilst its second submission covered more detailed aspects of guaranteed service levels schemes. Evoenergy submitted that:

- Definitions in the Code need to be reviewed and, where appropriate, aligned with the national legislation. It also submitted that the Code should not duplicate obligations found in other frameworks (such as the NECF).
- The Code should still apply to NERL retailers and should be updated to reflect the 'Power of Choice' changes that have made NERL retailers responsible for some functions previously undertaken by distributors (such as planned outages for meter installations).
- The current rebate values are appropriate, and if changes are proposed, the cost of rebates may become relevant in future tariff settings
- Evoenergy supports '*consistency of service standards and rebates across all utilities (including distributors and retailers). This facilitates consumer understanding of the rebate program*'.
- Evoenergy did not support the introduction of reliability minimum standards (this position was reviewed in its second submission – see below).

- Evoenergy had concerns with prescribing automatic rebate payments, noting that they do not always have customer account details, and that clarification regarding exclusions, arrangements with NERL retailers and payment methods would be required. Evoenergy also noted that the account holder is not always the individual impacted by a failure to meet standards.

Evoenergy's initial submission did not support the introduction of reliability minimum standards. In its second submission, Evoenergy stated:

The Evoenergy position on Minimum Service Standards (MSS) related to reliability of supply is to align with the AER Service Target Performance Incentive Scheme Guaranteed Service Levels (GSL) for frequency of interruptions and duration of interruptions. This will provide assurance and compensation to the customer for any poor reliability and would standardise with performance measures used across the industry.

Evoenergy proposed an alternative approach to rebate payments to an 'affected customer'. Under the alternative 'every customer' model, all customers on the network would receive a share of the total applicable rebate/s payable by way of a reduced network charge for every customer in the following year, as opposed to rebates being paid directly to only the customers affected by a failure to meet the minimum service standards.

### **3. EnergyAustralia**

EnergyAustralia submitted that:

- It supports customers receiving payments for poor reliability or poor service. EnergyAustralia noted that unlike distributors, NERL retailers operate in a competitive market, which already creates an impetus for retailers to provide a high level of service to retain customers.
- The NERR provides adequate protections for the types of interruptions that retailers conduct. EnergyAustralia also submitted that retailer outages differ significantly to distributor interruptions in duration and number of customers impacted.
- GSL payments should not apply to NERL retailers.
- Wrongful disconnection by retailers is an area where protections could be strengthened: *'One area that is not specifically covered under the NERR that would increase protection of customers is retailer Wrongful Disconnection Payments'*.
- EnergyAustralia supports the automatic application of GSL payments to customers when a service level parameter is triggered.

#### 4. Council of the Ageing ACT (COTA ACT)

COTA ACT submitted against all questions raised in the issues paper. Its submission included:

- Support for harmonisation with the NECF, but also that NERL retailers should continue to be covered by the Code: *‘consumers often do not differentiate between retailers and the [distributor]’*.
- support for the alignment of GSLs with the AER’s STIPIS, and also for a new GSL for wrongful disconnection, applicable to both retailers and distributors, to be included in the Code. COTA ACT supported the adoption of the same GSLs for all utilities, but noted that it may be appropriate in some circumstances for GSLs that apply to a single utility service only (eg. response time to a sewer spill).
- It considers that the current rebate values are inadequate in terms of providing an incentive to utilities to meet the standards and they require review to ensure they do not decline in real terms.
- It commented that there is very little awareness of the Code, the GSLs and available rebates. It suggested ways of improving visibility, including making information available in multiple formats and dissemination methods.
- COTA ACT supports utilities being required to make automatic rebate payments for GSLs, noting that this approach would assist in overcoming *‘lack of awareness and barriers to accessing rebates and act as a greater incentive for utilities to meet the standards’*.
- It requested inclusion of an explicit provision to prohibit charging for paper bills.
- It supports water utilities being required to have a hardship policy and provided views and suggestions for consideration in policy development.

COTA ACT also commented on a lack of information regarding smart meters and stated that general information is confusing and difficult to read and understand. It raised concerns regarding concessions and their expiration without notice, and lack of obligations for explicit consent when payment amounts increase for customers on bill smoothing arrangements.

COTA ACT noted that individual consumption billing would be useful for residents in dual occupancy properties and provided an example where individual billing would have been beneficial.

## 5. Icon Water

Icon Water provided two submissions. Its first submission provided responses to all water and sewerage service related questions in the issues paper, and its second submission covered more detailed aspects of unit title billing and guaranteed service levels schemes. Icon Water submitted that:

- Customer engagement and feedback regarding service standards, including ‘willingness to pay’ should be key considerations for determining GSLs and rebates values. GSL changes may be best suited to occur in conjunction with a price review process.
- The current rebates values appear appropriate when compared to other jurisdictions. It suggested a methodology for reviewing rebate values, including ‘willingness to pay’ for service levels, jurisdictional comparisons and CPI adjustments.
- Icon Water’s initial submission did not support the automatic payment of rebates when GSLs were not met. *‘Icon Water believes automatically making payment to the account holder may not always provide compensation to the impacted consumer’*. Its second submission noted that *‘Icon Water agrees it should work towards providing customer’s automatic payment of the rebates...’*
- Icon Water supports the introduction of a requirement for water utilities to have a hardship policy, and provided suggestions for drafting, including that it only apply to residential customers.
- It did not support aligning undercharging provisions to the NERR and noted that twelve months is industry standard for water.

Icon Water noted that introducing consumption charges for unit title properties would be a significant change and require changes to the billing system. It noted that whilst the change would deal with the GST issue posed in the issues paper, it would not address the issue of different rates of consumption across units (despite unit allocation). Its second submission commented on the South Australian model. Icon Water considered that options and innovations for metering unit title properties should be investigated further; suitable options would address both the GST and equitable (consumption reflective) charging issues.

Icon Water’s second submission also provided views and data on potential reliability GSLs, and stated that reliability payments should not be introduced at this time.

**6. ActewAGL**

ActewAGL submitted that it supports the ACCC’s recommendation of seeking to harmonise with the national framework and reduce regulatory burden.

ActewAGL submitted that:

The NECF ensures consistency and relevancy across all jurisdictions. ActewAGL’s view is that an additional jurisdictional approach for electricity and gas retail customers in the ACT is no longer required. In fact, an additional mechanism beyond that set out through the national approach introduces inefficiencies as well as additional cost and reporting burdens.

ActewAGL submitted that in future the Code *‘should be applicable only to water utilities in the ACT’*.

In relation to the GSLs and rebates ActewAGL submitted that these *‘appear to be outdated and are inapplicable in most other jurisdictions.’*

**7. ACT Civil and Administrative Tribunal (ACAT)**

The ACAT submitted against all questions raised in the issues paper. Its submission included:

- Support for harmonisation with the NECF, as well as a request to enhance and strengthen obligations for NERL retailers within the Code. It supports including and aligning some requirements (such as bill smoothing and undercharging) with the NECF.
- Support for the current rebate values to be increased, noting that they have not been adjusted for inflation since 2000.
- Support for reliability GSLs and two additional GSLs for ‘wrongful disconnection’ and ‘failure to attend appointment within required timeframe’.
- Support for water utilities being required to have a hardship policy.

The ACAT stated that awareness of the Code should be increased, including through promotion on bills, and supported proactively paying the rebate.

**8. Australian Energy Regulator (AER)**

The AER supports the Code’s harmonisation with the national framework where appropriate. In relation to implementation of reliability minimum standards, the AER suggested adoption of:

definitions, parameters and measures in our recently published Distribution Reliability Measure Guideline. The guideline...sets out common definitions and parameters to assess and compare the reliability performance of distributors across all jurisdictions.

The AER's submission noted that the automatic payment of electricity GSL rebates was likely to make payments more accessible to consumers and support the objectives of consumer protection.

**9. ACT Council of Social Services (ACTCOSS)**

The ACTCOSS submission covered concessions, billing, minimum training requirements for staff and smart meters. Its submission also commented on considerations for specific provisions within the Code itself (Clauses 9-13).

ACTCOSS submitted that:

- Utilities should provide GSL information to customers annually.
- *'Community advocates would like to see alignment of [GSLs] across electricity, gas and water'*.
- Utilities should be required to automatically facilitate rebates when GSLs are not met.
- It supports water utilities being required to have a hardship policy, and suggested that the Yarra Valley Water policy is a good practice model.
- It supports alignment of requirements with the NECF (for example bill smoothing and undercharging).

ACTCOSS raised general concerns regarding provision of information to customers, including difficulty in understanding bills, not knowing about dispute mechanisms, payment options and changes to 'Even Pay' amounts.

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