



ICRC

independent competition and regulatory commission

Draft decision

Consumer Protection Code review

Report 11 of 2019, 23 August 2019

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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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How to make a submission

Closing date for submissions: **25 October 2019**

This draft decision report provides an opportunity for stakeholders to inform the Commission's Consumer Protection Code review. It will also ensure that relevant information and views are made public and brought to the Commission's attention.

The Commission will consider all submissions received by the closing date. Submissions, comments or inquiries regarding this paper should be sent to:

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The Commission encourages stakeholders to make submissions in either Microsoft Word format or PDF (OCR readable text format – that is, they should be direct conversions from the word-processing program, rather than scanned copies in which the text cannot be searched).

Submissions should be sent to the Commission with a completed submission cover sheet, which is available on the Commission's website at <http://www.icrc.act.gov.au/submissions/>.

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For submissions received from individuals, all personal details (for example, home and email addresses, telephone and fax numbers) will be removed for privacy reasons before the submissions are published on the website.

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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
ERAWA	Economic Regulation Authority of Western Australia
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>
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	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 (the 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 draft decision, the Commission's focus has been to streamline the Code, make the Code easier to read and understand (for both consumers and the utilities), and ensure the Code provides the basic consumer protections that consumers see as most important.

The Commission released an issues paper in November 2018, seeking views on the parts of the Code that need updating and feedback on issues that had come to the attention of the Commission. Nine submissions were received. The Commission also held targeted meetings with stakeholders to obtain views on the priority issues for the review.

Submissions showed there were differing views between consumer groups and utilities as to the effectiveness of the Code. The Commission identified that the priority issues that required addressing were:

1. customer awareness of the Code and available rebates;
2. ensuring that customers receive rebates when service standards are not met;
3. updating minimum service standards (guaranteed service levels); and
4. requiring water utilities to have a hardship policy.

The Commission recognises that the energy sector has, and still is, undergoing a period of significant change. In making this draft decision, the Commission was mindful of ensuring that local regulatory requirements complement national reforms and maintain flexibility as the Australian Energy Market Commission (AEMC) and Australian Energy Regulator (AER) continue to implement changes in the sector.

In this draft report the Commission considers whether harmonisation with the NECF is a desired principle and if continued application of the Code to NERL Retailers is still required. The decisions made in this regard inform the rest of the draft report.

Submissions to the issues paper showed general support for changes to be made to the guaranteed service level scheme, including the introduction of new rebates for frequency of interruption, cumulative duration of interruption and wrongful disconnection. Chapter 3 considers whether new GSLs should be introduced and utilises jurisdictional comparison to inform these decisions. An associated component of the GSL is the rebate value; chapter 4 explores options for the review and setting of the rebate values.

The Commission has considered stakeholder feedback relating to the current guaranteed service levels and processes for customers to receive a rebate. The Commission has also noted that very few rebates have been claimed by customer's over recent years, despite guaranteed service levels not being met. Submissions have shown that consumer awareness of the Code and the available rebates is an area of concern and that changes to the obligations of when a utility is required to pay are warranted. The draft Code recommends changes that are informed by arrangements in other jurisdictions.

Submissions to the issues paper showed support for water utilities to be required to have a hardship policy. The Commission has considered factors to be incorporated into the draft Code including, who it applies to, identification of customer's experiencing hardship, terminology and detailed policy requirements.

The Commission also noted that improvements were required to ensure water customers requiring life support equipment were afforded similar protections to energy customers. The draft Code clarifies requirements for registration of a premises with life support equipment.

The draft Code presents improvements that will ensure more customers receive rebates when guaranteed service levels are not met, and that those guaranteed service levels are more aligned with arrangements in other Australian jurisdictions.

The Commission is satisfied that the draft Code represents a fair balance between achieving appropriate customer outcomes and the costs incurred by utilities in complying with the Code.

The Commission is seeking submissions from interested parties on the draft amendments to the Code and feedback on the Commission's draft decision. The new Code will come into effect from 1 July 2020.

1 Overview

The Consumer Protection Code (the Code) is an industry code made under Part 4 of the *Utilities Act 2000* (Utilities Act).¹ The purpose of the Code is to outline the basic rights of customers and consumers² and 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 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 Law (NEL) and to electricity and gas distributors.

The Commission is reviewing the Code to ensure it remains appropriate, taking into account market developments and current and emerging utility consumer protection issues. 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, to independently investigate competitive neutrality complaints and government regulated activities.

Section 7 of the ICRC Act sets the Commission's objectives as:

¹ The *Utilities (Consumer Protection Code) Determination 2012* can be accessed at <https://www.legislation.act.gov.au/di/2012-149/>.

² 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.

- (a) To promote effective competition in the interests of consumers;
- (b) To facilitate an appropriate balance between efficiency and environmental and social considerations;
- (c) To 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.³

Under the Utilities Act, the Commission is responsible for managing the licensing framework for non-NERL utility service providers in the ACT, including issuing licences and monitoring of licence compliance. 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 1.

In undertaking this review, the Commission has been guided by its objectives under the Utilities Act,⁴ 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 are to ensure that:

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

³ Section 8 (1) (g) *Independent Competition and Regulatory Commission Act 1997*

⁴ Section 3.

1.2 Issues paper

On 29 November 2018, the Commission released an issues paper⁵ 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.

The issues paper was open for submissions for a nine-week period, closing 1 February 2019. Nine submissions were received in response to the issues paper.⁶ Icon Water and Evoenergy provided supplementary submissions on topics that the Commission sought additional information on after the closing period. A summary of submissions is provided in Appendix 3. Submissions were received from:

- | | |
|-------------------------------------|---|
| 1. Mr Rodd Manns | 6. ActewAGL Retail |
| 2. Evoenergy | 7. ACT Civil and Administrative Tribunal (ACAT) |
| 3. Energy Australia | 8. Australian Energy Regulator (AER) |
| 4. Council of the Ageing ACT (COTA) | 9. ACT Council of Social Services (ACTCOSS) |
| 5. Icon Water | |

Themes arising in the submissions include:

- 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.

1.3 Priority issues that will be considered in this review

In determining the priority issues that will be addressed in this review, the Commission was guided by submissions and views provided in targeted consultation. The Commission considers the priority issues for this review are:

⁵ Available at: <https://www.icrc.act.gov.au/utilities-licensing/consumer-protection-code-review/>.

⁶ Submissions can be viewed at: <https://www.icrc.act.gov.au/utilities-licensing/consumer-protection-code-review/>.

- 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.

The Commission considers that focussing its review and redraft of the Code on the highest priority issues will allow for a more timely update to the Code. Further, the Commission notes that the energy sector is undergoing a period of significant transformation and the Australian Energy Market Commission (AEMC) and 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 will revisit the issues raised in the issues paper and stakeholder submissions that it has not been able to consider during this review.

The changes proposed under this draft decision and draft Code modernise and improve the existing consumer protections by dealing with the priority issues in a timely manner.

1.4 Issues being considered in other processes

Three issues raised in submissions are being, or will be, addressed in other processes.

Improving pricing transparency and information for customers

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

In May 2019, the Commission received from the ACT Government terms of reference to determine standing offer prices for 2020–24 for ActewAGL Retail for the supply of electricity to small customers. 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.⁷

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 recently announced ‘Managing Buildings Better’ reforms which may

⁷ For information on the price investigation, see <https://www.icrc.act.gov.au/energy/electricity/retail-electricity-prices-2020-24>.

result in changes to legislation, including requirements for planning, development and management of unit plans. The reforms may see 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.⁸ The Commission will monitor the outcomes of the reform project and consult with Utilities Technical Regulation, before considering whether changes are 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.⁹ To avoid any potential conflict of provisions, any incorporation of protections from technical codes would need to occur in conjunction with new 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 the current review.

1.5 A single Consumer Protection Code for utility services

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.

The current Code covers electricity, gas, water and sewerage retail and distribution services. This coverage is consistent with the Utilities Act which also covers these utility services. Consumer representatives submitted in response to the issues paper that customers and other stakeholders value consistent requirements and service standards as this facilitates consumer understanding of their rights. For these reasons, the Commission has maintained a single code at this time.

The Commission notes that the energy industry continues to undergo reform at a national level. These reforms reflect the changing energy industry and changing customer needs. Some of the regulatory changes in the energy sector are not

⁸ Icon Water, 2019b, p 2

⁹ For example, Customer's right to have meter tested for accuracy.

applicable to or appropriate for water utility regulation and the Commission may revisit whether a single code is the most appropriate instrument in the future.

1.6 Timeline of the review

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

Table 1-1 Indicative review timeline

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

1.7 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.
- Chapter 3 considers guaranteed service level (GSL) schemes in other jurisdictions and the potential introduction of additional GSLs for wrongful disconnection and reliability.
- Chapter 4 considers the rebate payment process and adjustment of rebate values.
- Chapter 5 discusses hardship policy requirements for water and sewerage utilities.
- Chapter 6 outlines other matters being addressed in the draft Code.
- Appendix 1 summarises the Commission’s role in determining industry codes under the Utilities Act.
- Appendix 2 contains the draft GSL schedules from the draft Code
- Appendix 3 provides a summary of each submission received.

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 is 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 its issues paper, the Commission noted recent reports released by the Australian Competition and Consumer Commission (ACCC), the AEMC and the Independent Pricing and Regulatory Tribunal (IPART). These reports 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.¹⁰ The ACCC's 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.¹¹

The 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). Whilst the current Code applies to NERL retailers, it applies only in part. Clause 11 (obligation to comply with service standards) and the minimum service standards themselves are the current provisions that apply to NERL retailers.

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

¹⁰ ICRC, 2018, p 7.

¹¹ ACCC, 2018, p 228.

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

- properties with life support equipment;
- content and frequency of bills;
- 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, 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 Guaranteed Service Level (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 2014, the AEMC has made 20 retail rule change determinations, with the majority (13) occurring in the past two years. 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.¹²

2.2 Issues paper submissions

Submissions received on the issues paper provided general support for the principle of harmonisation of the Code with the NECF. However, the ACAT and ACTCOSS both

¹² AEMC rule change references RRC0010, RRC0015, RRC0012, RRC0016, RRC0018 and RRC0017. <https://www.aemc.gov.au/our-work/changing-energy-rules/rule-changes>.

noted areas where they would like to see jurisdictional specific arrangements, implying a departure from the national arrangements.

Evoenergy, the ACAT, COTA ACT and ACTCOSS all submitted that the Code should continue to apply to NERL retailers. Two NERL retailers (ActewAGL Retail and EnergyAustralia) noted that the NECF already provides customer protections and that the application of the GSLs to NERL retailers is no longer required. GSLs are discussed in chapter 3.

2.3 Commission’s draft decision

2.3.1 Principle of harmonisation to the NECF

The submissions received have indicated support for the principle of harmonisation of Code requirements with the NECF wherever it is reasonable and appropriate to do so. In making its draft decision for this review, the Commission has been guided by this principle.

2.3.2 Application to NERL retailers

Despite the protections offered by the NECF and AER enforcement measures, most submissions to date have shown support for, and an expectation that, NERL retailers will remain covered by the Code.

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

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

The Commission’s draft decision is that NERL retailers should remain subject to the Code. This reflects a continuation of the current arrangements. 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.

2.3.3 Obligations found in the NECF

In reviewing the Code, the Commission considered Evoenergy’s request not to replicate or duplicate obligations found in other legal frameworks. The Commission also noted COTA ACT’s comments that *‘consumers often do not differentiate between retailers and the utility. To avoid confusion one code should apply to everyone*

involved.¹³ The Code provides a single source of core consumer protections relating to utility service delivery in the ACT.

The Commission's draft decision is that, where a requirement is covered in more detail for energy utilities in the NECF, the Code drafting will include notes that refer consumers to the national framework. The Commission considers that this approach represents a balance between duplication and customer convenience and may assist energy consumers with understanding the regulatory framework.

2.3.4 Specific Code amendments in relation to NERL retailers

The Commission received several submissions requesting changes or additions to the Code that specifically related to NERL retailers. As noted in chapter 1 and section 2.1, the energy sector is undergoing a period of transformation and reform.

The Commission does not consider it would be appropriate to make significant jurisdictional changes that affect the energy sector at this time. As noted in section 2.3, the Commission has, in its draft amendments to the Code, clarified basic consumer protections that apply to all utility service providers and provided references to the national legislation to assist consumers, where appropriate.

Based upon the priority issues identified, changes proposed for NERL retailers (discussed in chapters 3 and 4) address:

- gaps between the NECF and the ACT regulation;
- appropriate recognition of customers for inadequate service; and
- incentives for utilities to meet service levels.

As outlined in section 1.3 above, the Commission will consider the need for any additional Code changes in a future review.

¹³ COTA ACT, 2019, p 1

3 Guaranteed service levels

Chapter 3 of the issues paper discussed minimum service standards in the ACT, licensed utilities performance against those standards and how they compare to other jurisdictions. The Commission noted that the AER has drafted a national guaranteed service level scheme for electricity distributors, but that this does not currently apply in the ACT.¹⁴ This chapter outlines proposed changes to the current minimum service standards, including changing terminology and the introduction of new GSLs.

3.1 Changing terminology from minimum service standards to guaranteed service levels

As part of our objective to harmonise with the national legislation, the Commission's draft decision is to change the terminology from minimum service standards to GSL. The Code is considered by the AER as a jurisdictional GSL scheme; retitling the requirements assists in clarifying this and creates consistent terminology with other jurisdictions.¹⁵ This change is also consistent with the Utilities Act which uses the terminology 'GSL Scheme' in describing what industry codes may deal with.¹⁶

3.2 Current approach and matters raised in the issues paper

Chapter 3 of the issues paper provided an overview of GSLs and their purpose. GSLs set out key minimum performance standards that are expected of utilities and that result in a financial payment (rebate) being payable to a customer if the service level is not met.

The issues paper outlined the national GSL model developed by the AER and provided a comparison of GSL and minimum service standard schemes in other jurisdictions. The jurisdictional comparison showed that whilst setting minimum performance requirements was common across both water and energy sectors, a requirement to make payments to customers was more common in the energy sector than in the water sector.

¹⁴ The AER's GSL scheme is not currently applied 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.

¹⁵ 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.

¹⁶ *Utilities Act 2000* s55(c) provides that an industry code may deal with 'a GSL Scheme within the meaning of the *National Energy Retail Law (ACT)*'.

Chapter 4 of the issues paper discussed licensed utility performance against the 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:

- 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 measure 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 2000.¹⁷

3.3 Issues paper submissions

Submissions showed general support for consistent performance standards across all utility services. However, COTA ACT and Icon Water both noted that there may be instances where service requirements or payment levels could be tailored for the service provided (for example, a sewer spill). Several submissions also supported the inclusion of new GSLs specifically for energy (particularly, wrongful disconnection and reliability).

ActewAGL Retail and EnergyAustralia submitted that GSL payments should not apply to NERL retailers. However, EnergyAustralia also submitted that wrongful disconnection is an area where GSL payments could be considered for NERL retailers.

The ACAT, AER, COTA ACT and Evoenergy supported the introduction of energy reliability payments in line with the AER’s national GSL scheme. Icon Water did not support introduction of a reliability GSL for water and sewerage services at this time, submitting that *‘additional customer engagement would be required to obtain a clear understanding of customers’ expectations of water and sewerage services’*.¹⁸

¹⁷ 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>.

¹⁸ Icon Water, 2019b, p 4.

ACAT, EnergyAustralia and COTA ACT submitted that wrongful disconnection should be considered for inclusion in the GSL and have an associated rebate. According to EnergyAustralia: *‘One area that is not specifically covered under the NERR that would increase protection of customers is retailer Wrongful Disconnection Payments’*.¹⁹

The ACAT requested the Commission consider including a GSL payment for missed appointments and suggested some GSL drafting improvements.

3.4 Commission’s draft decision: missed appointments

The Commission has considered the ACAT’s request for a new GSL for missed appointments. The Commission notes that Code previously included a rebate for missed appointments, however it was removed in 2005²⁰ and the obligation for timely attendance at appointments was moved into Clause 5 of the Code, making it a substantive service requirement.

The Commission monitors complaint categories in the annual Utility Licence Annual Report. Reports show less than twenty complaints over the five years to June 2018 have been made in regards to missed or untimely appointments.²¹ The Commission considers 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’s draft decision is that the reintroduction of a GSL and rebate for missed or untimely appointments is not required at this time. This draft decision does not prevent a utility from making a payment to the customer in the event they fail to meet the obligation in the Code. In making this draft decision the Commission will continue to monitor complaint statistics and may revisit this matter in the future.

3.5 Commission’s draft decision: wrongful disconnection

The NERR has civil penalties in place for wrongful disconnection for both energy retailers and distributors.²² 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.

¹⁹ EnergyAustralia, 2019, p 1.

²⁰ See Disallowable instrument DI2005-132.

²¹ Evoenergy data only. Icon Water does not specifically report against this complaint category.

²² 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.

Wrongful disconnection payments are not available in all jurisdictions and are not included in the AER’s model GSL scheme. An overview of wrongful disconnection arrangements in the three jurisdictions that include this GSL is in Table 3-1.

Table 3-1 Wrongful disconnection arrangements in other jurisdictions

	QLD ²³	VIC ²⁴	WA ²⁵
Applies to	Distributors (see note)	Retailers	Retailers and Distributors
Payment value	\$155 ²⁶	\$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 the retailer did not give the customer a disconnection warning. The framework allows the distributor to recover the payment from the retailer.²⁷

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

The Commission notes that the QCA’s recent GSL review did not recommend extending the GSL to wrongful disconnections, where the disconnection is carried out by a retailer. The reasons were that:

Particularly in the Energex area where competition incentives [sic] retailers to provide a high quality service, it is open to retailers to make ‘GSL-type’ payments to customers who receive poor service. We also consider that our decision to not recommend the GSL scheme to be extended to retailers supports the Queensland Government’s decision to adopt the National Energy Customer Framework... transferring (the majority of) retail electricity regulation to the national level.³⁰

However, as noted in Table 3-1 the Queensland legislation specifically requires a distributor to make a GSL payment if it disconnects on a retailer’s instruction and the

²³ Clause 3.2.2 *Electricity Distribution Network Code* (QLD).

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

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

²⁶ Applicable from 1 July 2020.

²⁷ S3.2.2(d) *Electricity Distribution Network Code* (QLD).

²⁸ QCA, 2019, p 22.

²⁹ Ibid.

³⁰ QCA, 2019, p.iv.

retailer has not followed the required disconnection procedures.³¹ As these payments can be recovered from retailers³² the only wrongful disconnections for which retailers are not required by regulation to make a payment to the customer, are ones where the retailer carries out the disconnection itself.

The Commission's draft decision is 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 is that the value of the GSL rebate for wrongful disconnection will be set at \$100. This draft decision aligns the GSL and rebate amount with Western Australia, which also applies a wrongful disconnection GSL to both NERL retailers and distributors.

The Commission understands that there have been less than 20 energy wrongful disconnections in the past three years in the ACT.³³ The Commission considers that the number of wrongful disconnections by NERL retailers in the ACT annually is likely to remain low and will not impose an unreasonable cost burden on individual retailers. The addition of this GSL complements the requirements of the NECF for disconnection and will ensure that customers receive recognition in the event the national rules are not followed. Following from this draft decision, the Commission intends to monitor future incidences of wrongful disconnections in the ACT.

Wrongful disconnection has not been considered for water and sewerage services as the water utility does not generally disconnect properties from supply.³⁴

³¹ S2.3.3(c) *Electricity Distribution Network Code* (Qld).

³² *Electricity Distribution Network Code* (Qld) Annexure A – Standard Coordination Agreement. Available at [http://www.qca.org.au/getattachment/f4c4e0e7-2d87-4591-872c-0d498c58df7e/Electricity-Distribution-Network-Code-Version-\(1\).aspx](http://www.qca.org.au/getattachment/f4c4e0e7-2d87-4591-872c-0d498c58df7e/Electricity-Distribution-Network-Code-Version-(1).aspx).

³³ The figures include wrongful disconnections by distributors and retailers.

³⁴ 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.

3.6 Commission’s draft decision: energy reliability

There was general support in submissions for the introduction of GSLs and payments for energy reliability that were aligned with the AER’s GSL scheme. Table 3-2 outlines the reliability measures and payment values in the AER’s GSL scheme.

Table 3-2 AER reliability GSLs

Parameter	Payment trigger	Payment value
Frequency of unplanned interruptions	>9 interruptions in a year	\$80
Duration of unplanned interruptions (single event)	12 hours	\$80
Total duration of unplanned interruptions (cumulative)	Number of hours in a year	
	Level 1 – 20 hours	\$100
	Level 2 – 30 hours	\$150
	Level 3 – 60 hours	\$300

Source: AER Electricity distribution network service providers: Service target performance incentive scheme

The AER’s reliability GSLs apply only to ‘sustained interruptions’³⁵ and include provisions that exclude payments for interruptions that occur due to:

- load shedding events, including generation shortfall or direction of AEMO;
- 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).³⁶

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

Table 3-3 Evoenergy performance against AER reliability GSLs

	2016–17	2017–18	2018–19 ³⁷
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

³⁵ An interruption to electricity supply that lasts longer than 3 minutes.

³⁶ 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).

³⁷ Figures are to 30 March 2019.

Based upon this data, Evoenergy has estimated that it would be liable for approximately \$10,000 per annum in GSL payments if these reliability GSLs were implemented. Evoenergy has advised the Commission that its systems currently have the capacity to capture the required information for the reliability GSLs and has estimated costs to *'build reports to monitor multiple interruptions and duration in line with the GSL'* at \$25,000.³⁸

The Commission's draft decision is that the following energy reliability GSLs be included in the Code.

Table 3-4 Draft decision - energy reliability GSLs

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

The draft decision aligns the GSL parameters with the AER's GSL model and creates a consistency with other jurisdictions. The draft Code also includes new provisions to guide the calculation of frequency and duration of interruptions, including excluded events, which has been informed by the AER's methodology.

3.7 Commission's draft decision: water and sewerage reliability

The Commission did not explicitly seek submissions on whether reliability GSLs should be implemented for water and sewerage services. However, ACTCOSS, the ACAT, COTA ACT and Evoenergy submissions all supported consistent measures across all utility services.

As noted in chapter 3 of the issues paper, GSL payments for water and sewerage services are not common across other Australian jurisdictions. Most jurisdictions have service standards or targets relating to reliability, but New South Wales and Victoria are the only other jurisdictions that require customers to receive a payment for failure to meet the standard.

³⁸ Source: Email from Evoenergy to the Commission dated 4 April 2019.

In the jurisdictions that have GSLs for water and sewerage reliability, there are two indicators relating to interruptions. They are duration and frequency of interruptions. Frequency of interruption refers to the number of interruptions a customer experiences in a year. Duration of interruption refers to the amount of time a customer does not receive the service when an individual interruption occurs. The ACT currently has a duration of interruption GSL which provides for a payment to customers if they experience an unplanned 12-hour water or sewerage service interruption. Table 3-5 provides a comparison of the three jurisdictions that provide for GSL reliability payments to water and sewerage service customers.

Table 3-5 Water & sewerage interruption jurisdictional comparison

Service standard	Jurisdiction, payment trigger & value			
	ACT	NSW ³⁹	VIC ⁴⁰	
			Yarra Valley Water	City West Water
Interruptions - duration (single event)	12 hours \$20	5 hours \$35	4 hours \$50	5 hours \$100
Reliability - Interruption frequency		>3 ⁴¹ \$SC	>5 \$50	>3 \$100

Note: \$SC = annual service charge⁴²

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. Icon Water provided data outlining the number of properties affected by multiple interruptions over a 12-month period for the past three years as follows:

³⁹ Sydney Water, Customer Contract, Clause 7.2.

⁴⁰ Essential Services Commission, *Customer Service Code – Urban Water Businesses*.

⁴¹ Sydney Water Customer Contract standard is “Three or more unplanned interruption events to your property that last for over one hour”.

⁴² The current Sydney Water residential water service charge is \$88.80.

Table 3-6 Icon Water reliability performance

	2016–17	2017–18	2018–19 ⁴³
Properties with 4 unplanned interruptions			
Water supply	3	54	1
Sewerage services	8	11	4
Properties with 5+ unplanned interruptions			
Water supply	0	12	0
Sewerage services	3	4	2

Source: Icon Water 2019b

Interruption duration single event

The Commission’s draft decision is that the interruption duration GSL rebate trigger should remain at 12 hours, and that the rebate value should be increased to \$80.00. The rebate value of \$80.00 is higher than the New South Wales and the majority of the approved Victorian GSL schemes⁴⁴ and recognises that the duration trigger in the ACT is longer than those other State schemes.

Interruption duration cumulative

The Commission’s draft decision is that a cumulative duration of interruption for water and sewerage services is not required at this time. The Commission notes that this GSL is not adopted for water in any other jurisdiction and believes that it could be difficult to implement and monitor. The Commission’s position differs in this instance from energy, 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 is that an interruption frequency GSL should be included for water and sewerage services. The draft decision is that the rebate trigger is more than nine interruptions in a financial year, and that the rebate value is set at \$80.00. This draft decision aligns the water and sewerage interruption frequency GSL with the energy GSL. The Commission believes that these draft decisions reflect stakeholder feedback that similar GSLs across utility services assists in facilitating consumer awareness and understanding. The Commission is satisfied that Icon Water currently has the capability to implement these GSLs and the annual cost of rebates is expected to be minor.

⁴³ Data is to 28 February 2019.

⁴⁴ 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)*.

Water and sewerage reliability GSLs

The Commission’s draft decision is that the water and sewerage reliability GSLs in Table 3-7 be included in the Code.

Table 3-7 Draft decision - water & sewerage reliability GSLs

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

3.8 Commission’s draft decision: separate utility service schedules

The Commission’s draft decision is that GSL requirements be separated into two schedules:

- Water and sewerage service GSL schedule (schedule 1 in the draft Code).
- Energy GSL schedule (schedule 2 in the draft Code).

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.

In re-drafting the Code, the Commission has created separate schedules for energy (NERL retailers and energy distributors) and water and sewerage service GSLs. This allows each GSL to be stated in a way that is most relevant to the utility service and should assist in readability and applicability for all users. Establishing two separate schedules also responds 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). To implement this draft decision new schedules have been included in the draft Code. These schedules are included in Appendix 2 of this report.

4 Rebate payment and values

Clause 11 of the current 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 consumer⁴⁵ is entitled to receive a rebate. Rebate values are set out in schedule 1 of the current Code. Clause 11 (including sub-clauses) of the current Code applies to licensed utilities and NERL retailers. This chapter sets out the current and proposed approach to payment of rebates and options for setting rebate values.

As noted in chapter 3, the Commission has made a draft 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 Payment of rebates

4.1.1 Current approach and matters raised in the issues paper

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.⁴⁶ 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.

The current Code allows for various methods of paying a rebate, including payment from a distributor through a NERL retailer. It does not require customer agreement to the payment method.

Chapter 4 of the Commission's issues paper sets out concerns raised by stakeholders during targeted consultation about consumer and customer awareness of the 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

⁴⁵ 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.

⁴⁶ Under clause 11.2 the affected person must apply for a rebate within 3-month of the minimum service standard not being met.

every year,⁴⁷ relatively few rebates had been paid. Only 11 rebates were claimed by customers over the five-year period from 2012–2017.

The Commission has reviewed how GSL payments are administered in other Australian jurisdictions. The ACT is the only jurisdiction that currently requires customers to apply for a GSL payment.

The AER’s electricity distribution GSL scheme sets out that:

A payment must be made to a customer when the service performance to that customer exceeds the GSL parameter threshold.

Any payments required to be made to a customer must be paid by the utility as soon as practicable after the obligation arises.

A utility is required to monitor service levels to promptly detect when actual service performance has exceeded the GSL parameter threshold.⁴⁸

The Victorian and Tasmanian water GSL payment provisions specify, respectively, that:

any GSL rebate available to customers under the scheme be applied automatically in the event that customer entitlement to the GSL rebate arises⁴⁹

any GSL rebate is to be paid or given to customers as soon as practicable after a customer entitlement to the GSL rebate arises.⁵⁰

The customer contract that forms part of the Sydney Water operating licence specifies that customers are entitled to ‘automatic rebates’ when certain events occur.⁵¹

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

⁴⁷ Over a five-year period, the standards were not met by Icon Water 2901 times, Evoenergy Electricity 2517 times and Evoenergy Gas 1381 times.

⁴⁸ Clause 6.3.2, AER 2018.

⁴⁹ *Customer Service Code: Urban Water Businesses* August 2018 (Victoria).

⁵⁰ *Tasmanian Water and Sewerage Industry Customer Service Code*.

⁵¹ See Schedule 4: Customer Contract, Clause 7.2.

http://drtest.sydneywater.com.au/web/groups/publicwebcontent/documents/document/zgrf/mdq1/~e disp/dd_045161.pdf.

4.1.2 Issues paper submissions

Seven submissions were received on the issue of payment of rebates, with the AER, EnergyAustralia, COTA ACT, the ACAT, and ACTCOSS supporting the automatic payment of a rebate to customers when a GSL threshold is triggered.

Evoenergy proposed an alternative approach 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, as opposed to rebates being paid directly to only the customers affected by a failure to meet the minimum service standards. Evoenergy stated that *‘[t]his model would not require the level of system and process changes as the proactive, affected customer model does’*.⁵²

Icon Water did not support the introduction of automatic payments to customers and stated:

automatically making payment to the account holder may not always provide compensation to the impacted customer and recommends this approach not be prescribed for water utilities. Icon Water issues water and sewerage invoices in the name of the land owner, and in the instance where a consumer who is not the land owner is impacted, automatic delivery of compensation through the invoice may not reach the intended recipient.⁵³

Consumer stakeholder groups submitted that utilities should be more proactive in advising customers of guaranteed service levels and available rebates for failure to meet the standards.

4.2 Commission’s draft decision: payment of rebates

4.2.1 Evoenergy’s ‘every customer’ proposal

The Commission understands that Evoenergy’s ‘every customer’ proposal is intended to improve Evoenergy’s incentives to improve service standards by making automatic payments to its customer base when minimum services standards have not been met.

The Commission notes that this proposal would still require Evoenergy to monitor and report performance against individual connections, and the payment method is similar to what would occur under an ‘affected customer’ scheme. The Commission has consulted with NERL retailers that implement GSL payments for distributors in other jurisdictions. Retailers advised that they receive, and process, GSL payments

⁵² Evoenergy, 2019b, p 2.

⁵³ Icon Water, 2019a, p 3.

from the distributor as a credit against the network charge for the individual customers who experienced service levels that did not meet the GSL threshold.⁵⁴

The Commission considers 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 proposed approach is not adopted by any other jurisdiction or in the AER’s Service Target Performance Incentive Scheme (STPIS).

The Commission’s draft decision is that an ‘every customer’ network charge reduction is not an appropriate method of paying GSL rebates.

4.2.2 Customers and consumers

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.

While the Commission understands the concern, it notes that the arrangements between landlords and tenants or other persons occupying premises are typically governed by contractual terms, which are beyond the scope of the Code.

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, it would be unreasonable to require utilities to make rebate payments to persons who are not its customers. As outlined in chapter 3 of the issues paper, rebates do not replace a customer’s or consumer’s right to seek compensation for damages or loss. Consumers (and customers) retain the right to seek compensation if a utility’s actions cause loss or damage.

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

4.2.3 Automatic payment of rebates

The Commission’s draft decision is that the Code should include provisions obligating utilities and NERL retailers to pay rebates when GSLs have not been met. This draft decision means that customers would no longer be required to apply for a rebate, as is the case under the current 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;

⁵⁴ The Commission understands that the distributor sends the ‘network charge’ to be recovered in a data file to the registered NERL retailer for each meter (NMI). When a GSL payment is necessitated, the data that comes across from the distributor to the retailer includes a credit line against that NMI with the GSL payment amount.

- will assist in raising awareness of the Code and GSLs; and
- strengthen the incentives for utilities and NERL retailers to ensure GSLs are met.

To implement this draft decision, Clause 11 of the draft Code has been redrafted. The redrafted provisions have been informed by the requirements of the AER's and jurisdictional GSL schemes. The redrafted provisions have not changed the options available for the payment method, which maintains flexibility for utilities and NERL retailers.

Implementation costs

In reaching this draft decision, the Commission considered the cost of requiring utilities and NERL retailers to make automatic payments. The Commission understands that implementing an automated 'no 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 should be minimal. Whilst NERL retailers do not currently report to the Commission against Code performance, the applicable performance indicators are consistent with NECF requirements and should not create an unreasonable reporting and monitoring burden.

The method by which the utility chooses to facilitate a payment to the customer will influence the potential impact on its costs. The draft Code allows for several payment methods and each utility may choose a process that is most efficient and cost effective for its business. The Commission has received information from other jurisdictions where payments are automatically sent by distributors as a cheque, or credits are made to customer accounts. Both methods appear to work well; however, a small percentage of cheques are returned due to information not being up to date, or retailers receive calls requesting information regarding the reasons for the credits.

Over the last five years, the Commission has monitored the number of times licensed utilities have not met the minimum service standards.⁵⁵ Table 4-1 below outlines the estimated value of payments that each licensed utility would have made if they had been required to make payments. These estimates are based upon the current value of the rebates.

⁵⁵ For information on Utility Licence Annual Reports, see <https://www.icrc.act.gov.au/utilities-licensing/utility-licence-annual-reports>.

Table 4-1 Estimated rebate cost per annum based upon current Code rebate values

	2013–14	2014–15	2015–16	2016–17	2017–18	Average pa
Icon Water	\$30,620	\$37,780	\$26,800	\$31,470	\$45,980	\$34,530
Evoenergy Electricity	\$22,340	\$19,260	\$45,480	\$11,980	\$8,760	\$21,564
Evoenergy Gas	\$15,960	\$23,400	\$18,360	\$11,640	\$15,360	\$16,944

Source: Utility Licence Annual Reports submitted to the Commission.

In addition to Table 4-1 above the estimated annual rebate cost of the draft decisions outlined in chapter 3 (new reliability GSLs and increased value of interruption duration) are estimated in Table 4-2 below.

Table 4-2 Estimated additional rebate cost per annum for new GSLs and increased rebate values

Entity	Estimated annual cost
Icon Water	\$200
Evoenergy Electricity⁵⁶	\$15,500
Evoenergy Gas⁵⁷	\$0
Energy retailers⁵⁸	\$1,000

Based upon current reported utility performance, the estimated total annual rebate cost is outlined in Table 4-3.

Table 4-3 Estimated total annual rebate cost

Entity	Estimated annual rebate cost
Icon Water	\$35,000
Evoenergy Electricity	\$31,000
Evoenergy Gas	\$17,000
Energy Retailers	\$1,000
TOTAL	\$84,000

⁵⁶ Evoenergy advised the Commission that it estimated the new reliability GSLs would result in approximately \$10,000 pa in rebate payments. The additional \$5,500 is due to the increased value of the unplanned interruption duration rebate value.

⁵⁷ The Commission anticipates the new GSLs will result in minimal or nil additional rebates for gas due to the low number of unplanned gas interruptions reported to the Commission each year (5-year average 61 unplanned interruptions per year). There have been no gas interruptions reported that lasted longer than 12 hours in the 5 years to June 2017.

⁵⁸ The figure stated is for retailer wrongful disconnection. The Commission does not have data on compliance with the GSLs that already apply to NERL retailers under the current Code.

4.3 Rebate values

4.3.1 Current approach and matters raised in issues paper

The rebate values in the current Code were set in December 2000 and have not changed since then. 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.

Purpose of rebates: recognition, not compensation

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.'*⁵⁹

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

4.3.2 Issues paper submissions

Four submissions were received on the issue of rebate values and their adjustment. There was no consistent view across the submissions received.

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 noted concerns that since 2000, *'there has been a significant reduction in the real value of the rebate and the power to act as an incentive to meet standards is significantly diminished.'*⁶⁰

COTA ACT and Icon Water submitted that an annual CPI adjustment would be an appropriate method to ensure values do not reduce in real terms.

4.4 Commission's draft decision: rebate values

4.4.1 Aligning values with other jurisdictions

In reviewing the values of the rebates in the Code, the Commission considered GSL payment values in other jurisdictions. Chapter 3 of the issues paper set out

⁵⁹ AER, 2018, Clause 6.3.3(a).

⁶⁰ COTA ACT, 2019.

arrangements in other jurisdictions for electricity GSLs. Table 4-3 below has been updated since the issues paper to include the final decisions of the Queensland and South Australian GSL reviews.

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

Table 4-4 Electricity GSL values in other jurisdictions

GSL parameter ⁶¹	Jurisdiction								
	ACT	AER	NSW	VIC	QLD	TAS	SA	WA	NT
Connection Times	\$60 (max \$300)	\$50 (max \$300)	\$60 (max \$300)	\$70 (max \$350)	\$66		\$60 (max \$325)	\$60 (max \$300)	\$56.50 (max \$300)
Responding to complaints	\$20							\$20-\$50 ⁶²	
Response to notification of problem (fault)	\$60 (max \$300)								
Planned Interruptions - notice period	\$50	\$50			\$31- \$77			\$50	\$56.50
Interruptions - duration (single event)	\$20	\$80	\$80 (max \$320)	\$80	\$124	\$80- \$160		\$80	\$90-141
Reliability - Interruption frequency		\$80	\$80 (max \$320)	\$120- \$360	\$124	\$80	\$100		\$90
Reliability - Interruptions duration (cumulative)		\$100- \$300		\$120- \$360					\$141
Wrongful disconnection				\$500 (max \$3500)	\$155			\$100	

a. A range of values indicates multiple service level thresholds. For example, the AER scheme has three thresholds for annual cumulative interruptions (20, 30 & 60 hours), the payment value if the threshold is exceeded is \$100, \$150 & \$300 respectively.

Whilst the AER's STPIS sets a national framework for setting GSL payments in electricity distribution, there is no national approach to setting water GSL payments. Only NSW 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

⁶¹ Missed appointments has been removed from the table (GSL applies in VIC, QLD & NT). It is not being considered by the Commission for inclusion in the ACT GSL at this time. Utilities have obligations for timely attendance at appointments under Clause 5.5 of the Code.

⁶² ERAWA has set the complaint response time value at \$20. Western Power pays \$50 for this GSL.

stakeholders noting that consistency in standards and values facilitates customer awareness and understanding. The Commission has not received any submissions to change this approach. The Commission notes that Icon Water suggested that customer engagement could be used to determine values of rebates across services, but did not specifically ask to change the current approach at this time.

The Commission’s draft decision is that the rebate values in the Code should be broadly aligned with the AER’s STIPIS, provided they do 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 has been made.

Table 4-4 outlines rebate values in this draft decision. Values associated with draft proposed new GSLs are included in the discussion in chapter 3. The draft revised rebate values are as follows:

Table 4-5 Draft decision rebate values

Indicator	Current Value	Range across other jurisdictions	Draft decision	Summary of reason
Connection times	\$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
Responding to complaints				No change. The current value sits within the range across other jurisdictions
- Electricity	\$20	\$20-\$50 ⁶³	\$20	
- Water	\$20	\$10-\$100 ⁶⁴	\$20	
Wrongful disconnection (energy only)	–		\$100	This is a new GSL. The value has been aligned with WA. The reasons for this are discussed in chapter 3.
Planned interruptions (Notice period)	\$50	\$31 - \$77	\$50	No change. The current value sits within the range across other jurisdictions
Interruption duration (single event) -				The value has been increased to align with the AER’s STIPIS. The reasons for this are discussed in chapter 3.
- Electricity	\$20	\$80-\$160	\$80	
- Water	\$20	\$35-\$75	\$80	
Interruption duration (cumulative) (energy only)	–		\$80	This is a new GSL. The value has been aligned with the AER’s STIPIS. The reasons for this are discussed in chapter 3

⁶³ See Table 4-9, WA is the only state that applies this GSL to electricity. The range in WA is \$20-\$50.

⁶⁴ Three Victorian GSL schemes include a rebate relating to complaints or enquiry response times.

Frequency of interruptions	–		\$80	This is a new GSL. The value has been aligned with the AER’s STIPS. The reasons for this are discussed in chapter 3.
Respond to network fault or incident	\$60 (max \$300)	\$60-\$3000 ⁶⁵	\$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.

4.4.2 Adjusting future rebate values

Both 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 has found that arrangements in other jurisdictions vary. In some jurisdictions, rebate values are reviewed when new regulatory price determinations are made.⁶⁶

In Queensland, the GSL payment values are set for a 5-year period in line with the AER’s network price determination. The methodology adjusts the rebate values for movements in the CPI up to when the review commences, and then applies the mid-point of the Reserve Bank of Australia (RBA) target inflation rate up to the middle of the five-year price determination period. Effectively this means that every five years, prices are adjusted in line with inflation.⁶⁷

In Victoria, the water utility GSL payments were reviewed and set during the 2018 price review process. Each utility has different values (and parameters) for GSL payments, which have been driven by customer engagement undertaken by the utilities during the price review process. The Victorian arrangements are in place for a five-year period until 2023.⁶⁸ A similar approach is taken in South Australia with the electricity GSL values set for a five-year period (2020–25); the Essential Services Commission of South Australia undertook a significant amount of customer engagement in determining the values.

The Commission considers that aligning the review of rebate values to a price direction period is not appropriate, 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.

⁶⁵ This range includes a sewer overflow into premises caused by the utility network.

⁶⁶ The AER’s STIPS guideline and the Tasmanian Guaranteed Service Level Scheme do not have defined review periods.

⁶⁷ QCA, 2019, p 37.

⁶⁸ See Essential Services Commission water price review 2018 <https://www.esc.vic.gov.au/water/water-prices-tariffs-and-special-drainage/water-price-reviews/water-price-review-2018>.

The draft decisions in this report have introduced new GSLs that have been aligned with the AER’s STIPIS. The Commission believes that if automatic CPI increases were applied, the ACT scheme could fall out of step with other jurisdictions and the AER’s STIPS.

The Commission has noted that, despite the initial rebates being set in 2000, the rebate values were generally still in line with other jurisdictions. For these reasons, the Commission’s draft decision is that rebate values should be reviewed on an as required basis and that no set review time or process will be outlined in the Code. In making this draft decision, the Commission will monitor GSL arrangements in other jurisdictions and review the rebate values as required.

5 Hardship policies

5.1 Current Code provisions

The current Code requires utilities to provide customers with ‘*information about and referral to, any hardship program offered by the utility*’.⁶⁹ The Code also specifies that accounts must include details of 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.

5.2 Matters raised in the issues paper

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 policy.

Stakeholders were asked if the Code should require water utilities to have a hardship policy and if so, what elements should it cover.

5.3 Issues paper submissions

Four submissions were received on this issue. All submissions supported including provisions to require water utilities to have a hardship policy. ACTCOSS, COTA ACT and Icon Water submitted considerations for 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.

5.4 Commission’s draft decision

There is consensus amongst submissions, including the water utility, that the Code should include a requirement for water utilities to have a hardship policy. The Commission’s draft decision is that the Code will include provisions requiring water utilities to have a hardship policy.

Responsibility for developing the hardship policy will remain with the water utility, which will allow 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

⁶⁹ Clause 13.14(b)

development and application of the hardship policy. The Commission will monitor compliance with the provisions through the annual utility licence reporting process and will also monitor any complaint numbers relating to the hardship policy.

5.4.1 Application of hardship policies for water and sewerage services customers

Icon Water submitted that the hardship policy should only apply to residential customers. The Commission has reviewed the hardship policy provisions in other jurisdictions and has noted that hardship policies are required to cover residential or small customers⁷⁰ only. In this respect, Icon Water’s submission is consistent with other jurisdictions.

The Commission’s draft decision is that the water utility’s hardship policy must apply, as a minimum, to customers at residential premises. The Commission considers that the water utility should consult with its customers on whether its hardship policy should be extended to any non-residential small customers.

5.4.2 Indicators for entry into hardship program

The Commission has considered ACTCOSS’s 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 is that the utility should outline in its hardship policy the measures it will use to proactively identify customers who may be experiencing hardship.

5.4.3 Hardship policy requirements

The Commission has considered COTA ACT’s suggestions 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. Regarding COTA ACT’s proposal that the Code provide for free access to ‘efficiency programs’, the Commission notes that eligibility for these programs is determined by government.

The Commission’s draft decision is 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.

⁷⁰ 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).

5.4.4 Terminology: Financial hardship or payment difficulties

The Commission has considered COTA ACT's submission that use of the term financial hardship can be a barrier to people accessing hardship programs. The Commission notes that, in April 2019, IPART recommended that the term 'financial hardship' be replaced with 'payment difficulty' in the Sydney Water Licence obligations.⁷¹ However, the term financial hardship continues to be widely used in energy and water regulation in Australia.

The Commission has identified a consideration that may favour retaining the use of the term 'hardship', rather than adopting a different term to describe a water hardship policy. 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 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.⁷²

For consistency across utility services, the Commission's draft decision is to retain the use of the term 'hardship' in describing hardship policy requirements in the Code. However, 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.

5.4.5 Draft wording (new Code clause 14)

In accordance with the draft decision that water utilities should be required to have a hardship policy, a new Clause 14 has been included specifying the requirements of the policy.

General provisions requiring all utilities (including NERL retailers) to develop, implement and publish a hardship policy have been included. These provisions align with the requirements of the NERR and provide clarity for consumers that both energy and water retailers are required to have hardship policies in the ACT. Specific requirements for water retail businesses follow on from the general provision and have been informed by the requirements of codes in Queensland, Victoria and Tasmania.⁷³

The Commission's draft decisions on specific issues raised in submissions have been included in the proposed drafting of the Code, where appropriate.

⁷¹ IPART 2019, p 81.

⁷² AER, 2019, p 5.

⁷³ See *Customer Water and Wastewater Code 2017 (QLD)*, *Customer Service Code: Urban Water Business (VIC)* and *Tasmanian Water and Sewerage Industry Customer Service Code*.

6 Other matters

6.1 Consumers requiring life support equipment

In reviewing the Code, the Commission considered that the 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 Code also does not provide any guidance as to minimum contact requirements before disconnecting or removing premises from the register.

The Commission's draft decision is that upon notification, 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. The Commission has updated the provisions in the Code (clause 10 in the draft Code) to provide these additional protections for consumers that require life support equipment. The life support provisions in the draft Code only apply to water utilities and have been updated to be more closely aligned with NERR obligations that cover energy utilities and NERL retailers.

6.2 Reporting

A provision (Clause 4.1) has been included in the draft Code to clarify that the Commission may request that NERL retailers report against Code and GSL compliance. Reporting is required to confirm compliance, as is the case already for energy distribution and water and sewerage service utilities.

6.3 Commencement date

The Commission's draft 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 and adjust systems to implement the changes highlighted in this draft report. 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.

6.4 Updates to clauses and dictionary

The draft Code shows substantive changes only in mark-up. Other drafting updates have been made to the Code to clarify application and improve readability. Some

clauses have moved to improve navigation, and clause numbers may have changed. To ensure stakeholders have a complete understanding of the Code, its application and the changes, stakeholders are encouraged to read the new draft Code as a complete document.

6.5 Electricity Feed-in Code

The Commission notes that the *Utilities (Electricity Feed-in Code) (DI2015-256)* currently quotes several sections of the current Code. After the Commission has made its final determination on the Code, the Electricity Feed-in Code will be updated to ensure it reflects the new Code.

Appendix 1 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.⁷⁴

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).

⁷⁴ S55(2) *Utilities Act 2000*.

Appendix 2 Draft GSL schedules

1 Draft Water and Sewerage Services GSL

The following table appears as Schedule 1 of the draft Code.

	Parameter	GSL Threshold	Rebate
GSL-W1	Customer connection times	Connection not provided by required date	\$60 per day (maximum \$300)
GSL- W2	Responding to Complaints	Upon receiving a Complaint, Utility does not: (a) Acknowledge the complaint immediately or as soon as practicable; and (b) Provide a response addressing the matters in the complaint within 20 business days	\$20
GSL- W3	Notice of planned interruption	Two Business Days' notice not given	\$50
GSL-W4	Duration of interruptions (single event)	An unplanned interruption lasts for 12 hours or longer	\$80
GSL-W5	Frequency of interruptions	Customer experiences more than 9 Unplanned interruptions in a financial year	\$80
GSL-W6	Response time to notification of a fault, problem or concern that affects the premises of the Customer	Utility fails to respond: (a) If the notification relates to damage to, or a fault or problem with the Network which is likely to affect public health, or is causing, or has the potential to cause, substantial damage or harm to a person or property, respond as soon as practicable and in any event within six hours; or (b) In all other cases within 48 hours; and (c) Resolve the problem or concern within the time specified in the response .	\$60 per day (maximum \$300)

2 Draft Energy GSL

The following table appears as Schedule 2 of the draft Code.

	Parameter	GSL Threshold	Rebate
GSL-E1	Customer connection times	Connection not provided by required date	\$60 per day (maximum \$300)
GSL- E2	Wrongful disconnection	Where customer is wrongfully disconnected	\$100
GSL- E3	Responding to Complaints	Upon receiving a Complaint, Utility does not: 1. Acknowledge the complaint immediately or as soon as practicable; and 2. Provide a response addressing the matters in the complaint within 20 business days	\$20
GSL- E4	Notice of planned interruption	1. For Electricity and Gas Distributors , 4 Business Days’ notice not given 2. For NERL retailers , 4 Business Days’ notice not given, unless retailer has obtained consent from customer for a shorter period.	\$50 \$50
GSL-E5	Duration of interruptions (single event) <i>This GSL applies to an electricity or gas distributor only</i>	An unplanned interruption lasts for 12 hours or longer	\$80
GSL-E6	Total duration of interruptions (cumulative) <i>This GSL applies to an electricity or gas distributor only</i>	Total cumulative hours of Unplanned sustained interruptions experienced by Customer in a financial year is equal to or exceeds: Level 1 – 20 hours Level 2 – 30 hours Level 3 – 60 hours	\$100 \$150 \$300
GSL-E7	Frequency of interruptions <i>This GSL applies to an electricity or gas distributor only</i>	Customer experiences more than 9 Unplanned sustained interruptions in a financial year	\$80
GSL-E8	Response time to notification of a fault, problem or concern that	Utility fails to respond: 1. if the notification relates to damage to, or a fault or problem with the Network which is likely	\$60 per day (maximum \$300)

Parameter	GSL Threshold	Rebate
<p>affects the premises of the Customer</p> <p><i>This GSL applies to an electricity or gas distributor only</i></p>	<p>to affect public health, or is causing, or has the potential to cause, substantial damage or harm to a person or property, respond as soon as practicable and in any event within six hours; or</p> <ol style="list-style-type: none"> 2. In all other cases within 48 hours; and 3. Resolve the problem or concern within the time specified in the response. 	

Appendix 3 Summary of submissions received

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)

- it 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. They 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's 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 Retail (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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