

Mr Joe Dimasi  
Senior Commissioner  
Independent Competition & Regulatory Commission

Dear Mr Dimasi

### **ACAT Submission to the Consumer Protection Code Review**

The following submission is made on behalf of the ACT Civil and Administrative Tribunal (ACAT) in response to the Independent Competition & Regulatory Commission (ICRC) November 2018 document titled *Issues Paper, Consumer Protection Code (the Code) Review*.

#### ACAT

Under Part 12 of the *Utilities Act 2000* (the Act), ACAT is responsible for determining hardship applications and non-hardship complaints made by consumers and customers of ACT energy and water utilities. These may include complaints about:

1. Contraventions of a customer contract by a utility;
2. Failure (or potential failure) of a utility to provide a utility service to a consumer or the withdrawal (or potential withdrawal) of a utility service from a consumer, where such failure or withdrawal causes (or would cause) substantial hardship to the consumer;
3. Contraventions by a utility in relation to the protection of personal information;
4. Contravention by a utility of an obligation under the Act in relation to network operations;
5. Acts or omissions of an authorised person for a utility in relation to network operations;
6. The amount of a capital contribution charge imposed by a utility.

The comments which follow in this submission are made in the context of the responsibilities and experience of ACAT as described above.

#### Responses to Questions in CPC Review

##### ***Q1. Do you have any comments on the interaction of the Code with the national electricity customer framework?***

The Code currently has very little interaction for utilities operating within the National Electricity Customer Framework (NECF) as only the minimum service standards apply. ACAT supports the harmonisation of the Code and the NECF. However, where the NECF does not protect ACT consumers, the Code can be an effective tool for ensuring they are protected.

## **ENERGY & WATER**

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**Q2. Should the Code continue to apply to NERL retailers? Please indicate the reasons for your views.**

Yes. The minimum service standards are an important consumer protection for water & energy customers, and provide a mechanism for imposing penalties on utilities for service failures which impact adversely on customers. However, the current rebates are inadequate and should be increased and expanded.

Additionally, when elements of the Code were removed under the NECF changes, a very important customer protection was removed and should be re-instated. Clause 5(1) of the Code states:

- (1) *A Utility must act ethically, fairly and honestly in all its dealings with a Customer or Consumer.*

The Code currently only applies to water utilities in the ACT, with the Code remaining a critically important consumer protection mechanism for water & sewerage customers. However, it is difficult to understand why a water utility in the ACT should be required to act “ethically, fairly and honestly”, but an energy utility operating in the ACT should not.

The ACAT notes as a statutory authority, that we are bound to work within the applicable laws and rules. The rules should be changed to adequately protect all water & energy consumers. Energy consumers in NSW and Victoria are provided a dispute resolution service by industry ombudsman schemes, which are able to make binding decisions on utilities after applying a “fair & reasonable test” or “good industry practice test” in order to resolve disputes. The ICRC should protect ACT consumers by providing a similar basis for the ACAT to resolve disputes when exercising its jurisdictional energy ombudsman role under the NECF.

**Q3. Are there any specific areas of the Code that should be amended in relation to NERL retailers? Where possible**

The minimum service standards should be reviewed and increased to ensure that punitive figures are in line with community expectations. As indicated in the response to question 2, clause 5(1) should be extended to NERL retailers.

The ACAT experiences situations where an ACT-based utility often challenges ACAT’s jurisdiction in a disproportionately legalistic manner which focuses on contraventions of the legislative framework rather than the sensible and expeditious resolution of complaints. This is to the detriment of their customers and the whole of the ACT community. The recent *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* outlined failures of regulators to adequately protect consumers in that sector. The ICRC is encouraged to use the review of the Code as opportunity to promote a system that requires energy utilities that operate in the ACT to act “ethically, fairly and honestly”.

**Q4. Are the rebate values for failure to meet the minimum service standards outlined in schedule 1 of the Code still appropriate?**

As outlined in response to Question 2, ACAT believes these figures should be reviewed and increased.

**Q5. What is an appropriate methodology to review rebate values? What factors should be considered?**

The harmonisation of the penalty amounts and their effectiveness should be considered by the ICRC.

**Q6. The Code currently outlines the same minimum service standards and rebate values for all utility services (e.g. connection times, maximum interruption duration). Should the minimum service standards and rebates be the same for electricity, gas and water services?**

Yes. It is difficult to see a reason for there to be a variation between the different utility services.

**Q7. Are the current minimum service standards appropriate for the ACT? Please indicate where standards may not be appropriate and how they could be improved**

No. The minimum service standards have not been adjusted for inflation or reviewed for their effectiveness since the commencement of the Code in 2001. The amount payable by rebate should be reviewed and adjusted as appropriate. Specific changes suggested for standards 2 and 6 are outlined below:

| Subject of the standard  | Service standard required (Subject to clause 11)   | Rebate payable for failure to meet standard  | Suggested changes   |
|--|--|--|---|
| 2. Responding to <b>Complaints</b><br>(For the purposes of this standard, a <b>Complaint</b> does not include a water quality <b>Complaint</b> under clause 6 of the Water and Sewerage Service Standards Code.) | An <b>Obligated Provider</b> , upon receiving a <b>Complaint</b> from a <b>Customer</b> or <b>Consumer</b> , must:<br>(a) <b>acknowledge</b> the <b>Complaint</b> immediately or as soon as practicable; and<br>(b) respond to the <b>Complaint</b> within 20 <b>Business Days</b> .   | If an <b>Obligated Provider</b> fails to meet the requirements of Standard 2(a) or 2(b), the <b>Complainant</b> may apply for a rebate of \$20.  | 1. The rebate should be increased to \$50<br>2. At point (b) it should be altered to include the words 'provide a substantive response', so it reads 'provide a substantive response to the complaint with 20 business days'. |
| 5. <b>Unplanned Interruptions to Utility services</b><br>(applies only to Gas and <b>Electricity Distributors</b> and <b>Water and Sewerage Utilities</b> )  | When an <b>Unplanned Interruption</b> occurs, a <b>Utility</b> or <b>Electricity Distributor</b> (as the case may be) must take all steps that are reasonable and practicable to restore the supply of the relevant <b>Utility Service</b> to affected <b>Premises</b> as soon as possible and, in any event, within 12 hours. | For each affected <b>Premises</b> supplied under a <b>Customer Contract</b> , the <b>Customer</b> or <b>Consumer</b> may apply for a rebate of \$20 if supply is not restored within 12 hours. | 1. The rebate should be increased to \$80 to better reflect the impact on consumers and harmonise the ACT with other jurisdictions.   |

**Q8. How can customers be made adequately aware of the Code and minimum service standards? How often and who should be responsible for making customers aware and what are the appropriate channels (e.g. website, letter, media)?**

Promotion of the Code could be undertaken on bills, utility standard letters and websites – particularly after a consumer expresses dissatisfaction.

There is little consumer knowledge of the Code and minimum service standards. This general lack of knowledge is aggravated by the Code’s requirement that consumers have to apply for a CPC rebate if a minimum service standard is not met. Consumers cannot apply for a rebate they have no knowledge of. The current system disadvantages consumers and has likely resulted in a substantial under-payment of rebates.

The ACAT proposes that utilities should be required to self-identify situations where they are required to pay a Code rebate and pro-actively pay the rebate. Additionally, to ensure accurate recording and increase consumer knowledge, utilities should be required to identify that payment as a “Code rebate payment” as opposed to a “good will payment” as is currently usually the case.

**Q9. Should utilities be required to automatically make a payment directly to the account-holder (i.e. via the retailer) when they fail to meet a standard, rather than a customer having to be aware of and apply for a rebate?**

Yes. See answer to Question 8.

**Q10. Should the ACT include additional reliability measures into the minimum service standards, similar to those in other jurisdictions? Please suggest any appropriate measures you consider should be included and the benefits of including such measures.**

Yes. There is scope for greater consumer protections, particularly in situations where ACT consumers experience less protection than interstate consumers. In those cases the ICRC should consider providing those protections to ACT consumers. Some suggestions include:

|  |          |
|--|----------|
| Failure to attend an appointment within the required timeframe | \$60.00  |
| A customer has been ‘wrongfully’ disconnected or restricted    | \$200.00 |

We note that these and any other rebate payments are in addition to any applicable compensation payable to the consumer.

***Q.11 Are stakeholders receiving adequate information from ACT utility service providers regarding processes, timelines costs and dispute mechanisms? Please provide comments on the quality of information and communication practices from ACT utility service providers***

At times consumers report having difficulties contacting utilities regarding complaints or getting updates on their complaints. This is always likely to occur and it is difficult to know whether this inconsistent with what consumers experience elsewhere.

We note that some utilities appear not to appreciate the benefits of proactively contacting consumers to clarify and gain an understanding of the customer's complaint directly from the customer. They sometimes appear to regard customer complaints as an affront, rather than as an opportunity for service improvement and customer retention.

***Q12. Should the Code require water utilities to have a hardship policy, and if so what elements should it cover?***

We recommend that the water utilities should be required to have a hardship program. We note that Icon Water currently operates in line with ActewAGL Retail's hardship policy.

***Q13. For consistency across utility retail services, should the undercharging provisions in the Code be reduced to nine months?***

Yes. It would be easier for consumers and utilities to understand the requirements if they were harmonised with the NERL.

***Q14. Are bill smoothing provisions required in the Code, including to cover water services? Please provide reasons for your answer.***

Yes. It would be easier for consumers and utilities to understand the requirements if they were specifically outlined in the Code.

***Q15. Do stakeholders have any specific concerns regarding the current provisions within the Code that relate to the application of concessions?***

We have no specific concerns. Utilities operating in the ACT appear to act responsibly and proactively in relation to concessions.

***Q16. Are there adequate existing mechanisms for customers to request inspection of utility assets on their property? If not, should asset inspection be covered in the Code and what limitations should be placed on the right (e.g. such as number of inspections over a set timeframe, applying to certain types of assets only)?***

A customer should have the right to request inspection of utilities assets on their property. If that right written into the Code, and if there was a dispute between parties, the ACAT could determine appropriate access.

We note that, in our experience, the utilities have been responsive on this issue to date.

***Q17. What type of considerations are relevant to deciding whether there would be a benefit in amending the Code to allow owners' corporations to request water utilities to directly charge usage to unit title owners (similar to the South Australian provisions)?***

Any change will require consideration on how this will operate in practice if a debt is accrued on the account.

Consultation

I am happy to facilitate discussion of this submission with ACAT members and staff or arrange a time to discuss this with you further.

Yours sincerely



Graeme Neate AM  
President  
31 January 2019

