

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment)

Energy Efficiency (Cost of Living) Improvement Amendment Bill 2015

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(Minister for the Environment)

Energy Efficiency (Cost of Living) Improvement Amendment Bill 2015

A Bill for

An Act to amend the *Energy Efficiency (Cost of Living) Improvement Act 2012*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Energy Efficiency (Cost of Living) Improvement Amendment Act 2015*.

2 Commencement

- (1) This Act (other than sections 4 to 6, 10 to 12, 43 and 44) commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Sections 4 to 6, 10 to 12, 43 and 44 commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Legislation amended

This Act amends the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

**4 Energy savings target
Section 7 (2)**

substitute

- (2) A determination must be made—
- (a) if the determination increases the energy savings target—at least 6 months before the start of the compliance period to which the target relates; and
 - (b) in any other case—at least 3 months before the start of the compliance period to which the target relates.

**5 Priority household target
Section 8 (2)**

substitute

- (2) A determination must be made—
- (a) if the determination increases the priority household target—at least 6 months before the start of the compliance period to which the target relates; and
 - (b) in any other case—at least 3 months before the start of the compliance period to which the target relates.

6 Section 9

substitute

9 Emissions multiplier

- (1) The Minister must determine the number of tonnes of carbon dioxide equivalent greenhouse gas emissions attributed to the consumption in the ACT of 1MWh of electricity (the ***emissions multiplier***) for a compliance period.
- (2) In determining the emissions multiplier, the Minister must take into account the condition of, and changes in, the national electricity market.
- (3) A determination must be made—
 - (a) if the determination increases the emissions multiplier—at least 6 months before the start of the compliance period to which the multiplier relates; and
 - (b) in any other case—at least 3 months before the start of the compliance period to which the multiplier relates.

(4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

7 Eligible activities

New section 10 (1A)

insert

(1A) An eligible activity may include an activity undertaken in the Territory under an approved interstate energy efficiency scheme.

Note *Approved interstate energy efficiency scheme*—see s 10A (1).

8 New section 10A

insert

10A Approval of interstate energy efficiency scheme

(1) The Minister may approve an energy efficiency scheme operating in another jurisdiction for the purposes of this Act (an *approved interstate energy efficiency scheme*) if satisfied that—

(a) the approval of the scheme would complement, and not detract from, the achievement of the objects of this Act; and

(b) the arrangements for the monitoring and enforcement of compliance with the scheme are adequate.

Note The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

(2) An approval is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

9 Meaning of *compliance period*
New section 12 (d) to (h)

insert

(d) 1 January 2016 to 31 December 2016;

(e) 1 January 2017 to 31 December 2017;

(f) 1 January 2018 to 31 December 2018;

(g) 1 January 2019 to 31 December 2019;

(h) 1 January 2020 to 31 December 2020.

10 Working out energy savings obligation
Section 13 (2) (b)

omit

factor

substitute

multiplier

11 Section 13 (2), definition of *emissions factor*

omit

12 Section 13 (2), new definition of *emissions multiplier*

insert

emissions multiplier means the emissions multiplier determined for the compliance period.

1 **13 New sections 17A and 17B**

2 *insert*

3 **17A Approved abatement providers**

- 4 (1) A person, other than a NERL retailer or a contractor engaged by a
5 retailer, may apply to the administrator for approval to undertake an
6 eligible activity as an abatement provider.

7 *Note 1* If a form is approved under s 56 for this provision, the form must be
8 used.

9 *Note 2* A fee may be determined under s 55A for this provision.

- 10 (2) The administrator may, in writing, approve the person to undertake
11 a stated eligible activity as an abatement provider (an ***approved***
12 ***abatement provider***), with or without conditions.

- 13 (3) The administrator may cancel the approved abatement provider's
14 approval if the provider fails to comply with the approval or a
15 condition of the approval.

- 16 (4) The administrator must keep a register of approved abatement
17 providers.

- 18 (5) The register—

- 19 (a) must include details of each approved abatement provider; and
20 (b) may be kept in any form, including electronically, that the
21 administrator decides; and
22 (c) may be made available to the public.

- 23 (6) An approved abatement provider commits an offence if—

- 24 (a) the provider's approval is subject to a condition; and
25 (b) the provider fails to comply with the condition.

26 Maximum penalty: 50 penalty units.

17B Approved abatement provider must lodge compliance plan

- (1) An approved abatement provider must give a compliance plan for a compliance period to the administrator before undertaking an eligible activity in the period.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (2) A compliance plan must include the following:

- (a) the proposed number of eligible activities to be undertaken by the provider during the compliance period;
- (b) how the provider plans to meet the health, safety and environmental requirements relating to eligible activities;
- (c) any other information required under an approved code of practice.

Note If a form is approved under s 56 for this provision, the form must be used.

- (3) An approved abatement provider commits an offence if the provider does not give a compliance plan to the administrator in accordance with this section.

Maximum penalty: 10 penalty units.

- (4) An offence against this section is a strict liability offence.

**14 Approval of acquired abatement factor
Section 18 (1)**

omit

another person

substitute

an approved abatement provider or another retailer

15 Compliance with energy savings obligations—retailer energy savings result
Section 20 (9) (b) (iii)

substitute

- (iii) for a shortfall in the compliance period 1 January 2015 to 31 December 2015—10%;
- (iv) for a shortfall in the compliance period 1 January 2016 to 31 December 2016—10%;
- (v) for a shortfall in the compliance period 1 January 2017 to 31 December 2017—10%;
- (vi) for a shortfall in the compliance period 1 January 2018 to 31 December 2018—10%;
- (vii) for a shortfall in the compliance period 1 January 2019 to 31 December 2019—10%;
- (viii) for a shortfall in the compliance period 1 January 2020 to 31 December 2020—nil.

16 Compliance with energy savings obligations—tier 2 retailer contribution for shortfall
Section 20B (2) (b) (iii)

substitute

- (iii) for a shortfall in the compliance period 1 January 2015 to 31 December 2015—10%;
- (iv) for a shortfall in the compliance period 1 January 2016 to 31 December 2016—10%;
- (v) for a shortfall in the compliance period 1 January 2017 to 31 December 2017—10%;
- (vi) for a shortfall in the compliance period 1 January 2018 to 31 December 2018—10%;

(vii) for a shortfall in the compliance period 1 January 2019 to 31 December 2019—10%;

(viii) for a shortfall in the compliance period 1 January 2020 to 31 December 2020—nil.

17 Compliance with priority household obligations—retailer priority household result
Section 21 (8) (b) (iii)

substitute

(iii) for a shortfall in the compliance period 1 January 2015 to 31 December 2015—10%;

(iv) for a shortfall in the compliance period 1 January 2016 to 31 December 2016—10%;

(v) for a shortfall in the compliance period 1 January 2017 to 31 December 2017—10%;

(vi) for a shortfall in the compliance period 1 January 2018 to 31 December 2018—10%;

(vii) for a shortfall in the compliance period 1 January 2019 to 31 December 2019—10%;

(viii) for a shortfall in the compliance period 1 January 2020 to 31 December 2020—nil.

18 Penalties for noncompliance
Section 22 (3) and note

substitute

(3) The amount of a shortfall penalty is the amount per tonne of carbon dioxide equivalent greenhouse gas emissions in the net shortfall determined by the Minister.

Note A shortfall penalty imposed under this Act must be paid to the Territory.

- 1 (3A) In determining an amount under subsection (3), the Minister must
2 take into account the objects of this Act.
- 3 (3B) The Minister must make a determination at least 3 months before
4 the start of the compliance period to which the shortfall penalty
5 relates.
- 6 (3C) A determination is a disallowable instrument.
- 7 *Note* A disallowable instrument must be notified, and presented to the
8 Legislative Assembly, under the [Legislation Act](#).

9 **19 Administrator's functions**
10 **Section 24 (a)**

11 *after*
12 retailers
13 *insert*
14 and approved abatement providers

15 **20 New section 24 (ba)**

16 *insert*
17 (ba) approving, with or without conditions, and cancelling the
18 approval of abatement providers;

19 **21 Codes of practice**
20 **New section 25 (1) (ba) and (bb)**

21 *insert*
22 (ba) the eligibility of approved abatement providers;
23 (bb) the acquisition of approved abatement factors;

22 Record keeping requirements
New section 26 (1A)

insert

(1A) An approved abatement provider must keep—

- (a) the records that are necessary for the administrator to determine whether the provider has complied with any conditions on the approval; and
- (b) any records about an eligible activity undertaken by the provider.

23 Power to destroy etc unsafe things
Section 47 (2) (c), except note

substitute

- (c) if the authorised person believes on reasonable grounds that an eligible activity by a NERL retailer or approved abatement provider relating to the thing is a reason for the matters mentioned in subsection (1) (a) or (b)—the retailer or provider.

24 Section 47 (7) (c)

substitute

- (c) if the authorised person is satisfied on reasonable grounds that the NERL retailer or approved abatement provider is responsible for making the thing unsafe—the retailer or provider.

1 **25 Powers of administrator to address contravention**
2 **Section 49A (1)**

3 *omit*
4 or the retailer's agent,
5 *substitute*
6 the retailer's agent or an approved abatement provider

7 **26 Section 49A (1) (a) and (b)**

8 *omit*
9 retailer or agent
10 *substitute*
11 retailer, agent or provider

12 **27 Section 49A (1) (c)**

13 *after*
14 retailer
15 *insert*
16 or provider

17 **28 Section 49A (1) (d)**

18 *after 1st and 2nd mention of*
19 retailer
20 *insert*
21 or provider

- 1 **29 Section 49A (1) (d)**
- 2 *after 3rd mention of*
- 3 retailer
- 4 *insert*
- 5 or approved abatement provider
- 6 **30 Section 49A (1) (e)**
- 7 *after*
- 8 retailer
- 9 *insert*
- 10 or provider
- 11 **31 Notice before exercising power**
- 12 **Section 49B (3)**
- 13 *after*
- 14 retailer
- 15 *insert*
- 16 or approved abatement provider
- 17 **32 Section 49B (4) and (5)**
- 18 *substitute*
- 19 (4) The notice must—
- 20 (a) state that the administrator will not make a rectification order
- 21 unless the administrator is satisfied that it is appropriate to
- 22 make the order in relation to the NERL retailer or approved
- 23 abatement provider, because of the relationship between the
- 24 retailer or provider and the land owner; and

- 1 (b) if the administrator is not satisfied that it is appropriate to make
2 the order in relation to the NERL retailer or approved
3 abatement provider, because of the relationship between the
4 retailer or provider and the land owner—tell the retailer or
5 provider that the administrator proposes to take action under
6 section 49A (1) (d).
- 7 (5) In this section:
- 8 *relevant person* means a—
- 9 (a) NERL retailer or approved abatement provider; and
- 10 (b) person on whose land the retailer or provider has carried out an
11 activity.

12 **33 Considerations for deciding under s 49B and s 49C**
13 **Section 49D (1)**

14 *after*
15 retailer
16 *insert*
17 or approved abatement provider

18 **34 Rectification orders**
19 **Section 49E (1)**

20 *omit*
21 requiring the retailer
22 *substitute*
23 or approved abatement provider, requiring the retailer or provider

1	35	Section 49E (2) to (4)
2		<i>after</i>
3		retailer
4		<i>insert</i>
5		or approved abatement provider
6	36	Section 49E (6)
7		<i>after</i>
8		retailer
9		<i>insert</i>
10		or approved abatement provider
11	37	Restriction of people—public safety
12		Section 49G (4) (f)
13		<i>after</i>
14		retailer
15		<i>insert</i>
16		or approved abatement provider
17	38	Section 49G (7), definition of <i>person</i>
18		<i>after</i>
19		representative of a retailer
20		<i>insert</i>
21		, or an approved abatement provider

39 New section 55A

insert

55A Determination of fees

- (1) The Minister may determine fees for this Act.

Note The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

40 New part 15

insert

**Part 15 Transitional—Energy Efficiency
(Cost of Living) Improvement
Amendment Act 2015**

100 Meaning of *commencement day*—pt 15

In this part:

commencement day means the day the *Energy Efficiency (Cost of Living) Improvement Amendment Act 2015*, section 18 commences.

101 Penalties for noncompliance

- (1) The repealed section continues to apply to a net shortfall in a compliance period ending before 1 January 2016.

- (2) In this section:

repealed section means this Act, section 22 (3) as in force immediately before the commencement day.

102 Expiry—pt 15

This part expires 1 year after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

41 Reviewable decisions Schedule 1, new items 1A and 1B

before item 1, insert

1A	17A (2)	impose condition	approved abatement provider
1B	17A (3)	cancelling an approval in relation to abatement provider	approved abatement provider

42 Dictionary, new definitions

insert

approved abatement provider—see section 17A.

approved interstate energy efficiency scheme—see section 10A.

43 Dictionary, definition of *emissions factor*

omit

44 Dictionary, new definition of *emissions multiplier*

insert

emissions multiplier—see section 9.

1 **45 Dictionary, definition of *tier 1 NERL retailer***

2 *substitute*

3 ***tier 1 NERL retailer***, for a compliance period, means a NERL
4 retailer that, in the previous compliance period—

- 5 (a) had, at any time during that period, at least 5 000 customers in
6 the ACT; and
- 7 (b) sold at least 500 000MWh of electricity to customers in the
8 ACT.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 4 June 2015.

2 Notification

Notified under the [Legislation Act](#) on 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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