

Australian Capital Territory

# Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2013 (No 1)

Notifiable Instrument NI2013–300

made under the

Energy Efficiency (Cost of Living) Improvement Act 2012, section 10 (Eligible activities)

## EXPLANATORY STATEMENT

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### Overview

The *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act) establishes a requirement for retailers holding a retailer authorisation under the *National Energy Retail Law (ACT)* (NERL retailers) to meet energy savings targets based on their electricity sales in the ACT.

Section 14 of the Act provides that a NERL retailer may meet their target in whole or in part by undertaking eligible activities. Section 10 of the Act provides for the Minister to determine and describe eligible activities intended to reduce the consumption of energy by making a notifiable instrument.

Under subsection 10(3) a determination of an eligible activity must include—

- (a) a description of the activity;
- (b) the minimum specifications for the performance of the activity;
- (c) the abatement factor for the activity;
- (d) the time at which the activity is taken to be completed.

A determination can also include any other matter that the Minister considers relevant. Criteria for eligible activities will need to respond to changes in standards and technologies, associated regulation and as additional information about the greenhouse gas abatement potential of an activity may become available. New activities may also be added during compliance periods.

On 13 September 2012, the Minister for the Environment and Sustainable Development determined eligible activities for the Act. These activities were available only to premises defined as residential premises.

This instrument expands eligibility for certain activities to business premises, which is defined as a building, or part of building, located in the Australian Capital Territory that is:

- not a residential premises; and
- not a new premises; and
- for which the energy consumption is not included in a reporting obligation under of any of the following;
  - a) the *National Greenhouse and Energy Reporting Act 2007* (Commonwealth); or
  - b) the Australian Government's Energy Efficiency in Government Operations Policy; or
  - c) the Carbon Neutral ACT Government Framework.

This allows obligated retailers a greater range of premises in which to conduct eligible activities. As all electricity users in the ACT will pay pass-through costs associated with the fulfilment of obligations under the Act, this also provides greater equity by and giving consumers of electricity in business premises to participate in energy saving activities.

### **Regulatory impact analysis**

Regulatory impact analysis for this notifiable instrument is not required under the Legislation Act, which applies requirements to subordinate laws and disallowable instruments.

Detailed regulatory impact analysis for the Act was undertaken during its development. The regulatory impact analysis was based on the availability of a range of activities such as those allowed under the *Victorian Energy Efficiency Target Act 2007* (Victoria), and calculated an average cost of a Tier 1 retailer complying with the energy savings obligation across that range of activities. Compliance with the activity anticipated compliance with other regulatory requirements for carrying out activities safely and effectively would apply.

A further regulatory impact statement was prepared for the expansion of eligibility to business premises. Both regulatory impact assessments can be found at [http://www.environment.act.gov.au/energy/energy\\_efficiency\\_improvement\\_scheme\\_eeis/the\\_energy\\_efficiency\\_cost\\_of\\_living\\_improvement\\_act\\_2012](http://www.environment.act.gov.au/energy/energy_efficiency_improvement_scheme_eeis/the_energy_efficiency_cost_of_living_improvement_act_2012)

This instrument does not impose new obligations or a requirement to undertake specific activities but provides for a number of activities that a NERL retailer with an energy savings obligation can choose to undertake to generate abatement factors used to acquit the obligation. It is expected that NERL retailers will consider the range of options and choose those activities that are most cost-effective to deliver. This means that each retailer may choose a different set of eligible activities to undertake. Other methods of acquitting an obligation also exist under the Act.

### **Retrospectivity**

Section 76 (1) of the Legislation Act states that a statutory instrument may provide that a non-prejudicial provision of an instrument commences retrospectively. Retrospective commencement requires a clear indication in the instrument.

The instrument has been drafted to be taken to have a commencement date of 1 July 2013. This means that all retailers will be able to offer activities to an expanded group of energy consumers from that date.

Retrospectivity is not expected to be prejudicial because the instrument does not impose an obligation on electricity retailer but provides a greater range of premises in which electricity retailers can carry out eligible activities, which provides more options for complying with their obligations.

The retrospective application will not operate to the disadvantage of a person by adversely affecting the person's rights, or imposing liabilities on the person. Rather, it could be seen as lifting a restriction currently on retailers that constrains them to providing only activities in residential premises. This includes retailers that may have few, or no, residential customers.

## **Detailed explanation of schedules**

### ***Standard provisions***

For each eligible activity an activity definition, minimum performance specifications, minimum installed product requirements, the time the activity is taken to be completed and methods for calculating abatement factors for the activity are prescribed.

The performance specifications establish a clear link between eligibility of the activity under the Act and the other statutory requirements that apply to the activity or product. This is important to make sure that activities undertaken to comply with the Act are completed in a manner that results in installations compliant with all relevant legislation and operating at a level that is capable of achieving greenhouse gas abatement commensurate with that calculated for the activity.

An activity that is undertaken in breach of another Territory or applicable Commonwealth law would be eligible under the Act. Breaches of related legislation could result in a non-compliant installation that may cause health and safety risks or detrimental effects on the operation of the installed product.

Eligible activities must also comply with codes of practice for the activity approved by the administrator that may provide for consumer protection obligations, quality, health, safety and environmental requirements applying to eligible activities, record keeping requirements and reporting requirements. Including other relevant legislation in the performance criteria avoids the need to include all applicable legislative requirements in codes of practice for the activities.

### **Product registers**

A number of the activities will be complemented by registers of products that are deemed to be compliant with applicable product performance requirements. Compliance with a number of product requirements is based on detailed testing and modelling methods that may not be easily analysed and interpreted by installers and

other intermediaries involved in the activity. In these situations product registers will be integral to the effective delivery of activities and assist NERL retailers with product selection. This is consistent with the development and operation of product registers for comparable schemes in other states.

Registers will be developed and maintained by the administrator appointed under section 23 of the Act. Products will be assessed against criteria for the eligible activity defined by the Minister in this instrument or subsequent instruments and be prescribed in the relevant code of practice for the activity. The majority of products used in the scheme will also have product safety and performance requirements that are not energy efficiency or greenhouse related requirements. For example, plumbing products such as water heaters, taps, and shower fixture outlets must be certified in accordance with section G of the Plumbing Code of Australia, which provides for a risk-based scheme to certify products as fit for purpose and for safe use in a plumbing or drainage system. A water heater may also be subject to electrical safety or gas safety certification requirements.

A code of practice may further clarify product requirements, such as by providing references to legislated product safety schemes or product testing methods. A code of practice is a disallowable instrument.

All registers will be made available to obligated NERL retailers either by direct provision or, for selected products, by publication on the Environment and Sustainable Development Directorate website.

### **Schedule 1**

Schedule 1 provides for residential building envelope activities, which are:

- building sealing activities
- exhaust fan sealing activities
- ventilation opening sealing activities
- installing a thermally efficient window
- retrofitting thermally efficient glazing
- installing thermally efficient window coverings
- installing window pelmets

### **Schedule 2**

Schedule 2 provides for residential and business premises space heating and cooling activities, which are:

- replacing a ducted gas space heater with a with a high efficiency ducted gas space heater
- decommission a central electric space heater and install a high efficiency ducted gas heater
- install a gas or liquid petroleum gas space heater
- install a high efficiency ducted gas heater in a new residential premises
- install insulated gas heating ductwork

### **Schedule 3**

Schedule 3 provides for residential and business premises hot water service activities, which are:

- decommission and replace an electric resistance water heater
- decommission a gas or liquefied petroleum gas water heater and install a gas or liquefied petroleum gas boosted solar water heater
- replace an existing shower fixture outlet with a low flow shower fixture outlet
- hot water tap improvements

### **Schedule 4**

Schedule 4 provides for residential and business premises lighting activities, which are to replace lamps and fittings for high energy lamps with low energy lamps and fittings capable of holding low energy lamps.

### **Schedule 5**

Schedule 5 provides for residential and business premises appliance activities, which are:

- decommissioning and disposal of a pre-1996 manufactured refrigerator or freezer
- purchase of a high efficiency refrigerator or freezer
- installing a high efficiency gas clothes dryer
- purchase of a high efficiency electric clothes dryer
- installing a standby power controller
- purchase of a high efficiency television
- installing a high efficiency swimming pool pump

### **Schedule 6**

Schedule 6 provides the dictionary for interpretation of terms in schedules 1 to 5. This includes new definitions *business premises* and *eligible business premises*.