



Australian Capital Territory

# **Energy Efficiency (Cost of Living) Improvement Act 2012**

**A2012-17**

**Republication No 13**

**Effective: 4 October 2019 – 9 April 2020**

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Last amendment made by [A2019-30](#)

## About this republication

### The republished law

This is a republication of the *Energy Efficiency (Cost of Living) Improvement Act 2012* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 4 October 2019. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 4 October 2019.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Energy Efficiency (Cost of Living) Improvement Act 2012

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Australian Capital Territory

# Energy Efficiency (Cost of Living) Improvement Act 2012

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An Act to encourage the efficient use of energy, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

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

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*approved abatement factor*—see section 18.’ means that the term ‘approved abatement factor’ is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Objects

The objects of this Act are to—

- (a) encourage the efficient use of energy; and
- (b) reduce greenhouse gas emissions associated with energy use in the Territory; and
- (c) reduce household and business energy use and costs; and
- (d) increase opportunities for priority households to reduce energy use and costs.

## Part 2 Targets and important concepts

### 7 Energy savings target

- (1) The Minister must determine a target (an *energy savings target*) for the total reduction in greenhouse gas emissions to be achieved by NERL retailers in a compliance period, expressed as a percentage of total electricity sales in the ACT.
- (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.
- (3) A determination is a disallowable instrument.

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

### 8 Priority household target

- (1) The Minister must determine a target (a *priority household target*) for the total reduction in greenhouse gas emissions to be achieved by tier 1 NERL retailers undertaking eligible activities at priority households in a compliance period, expressed as a percentage of the retailer's energy savings obligation of tier 1 NERL retailers in the ACT.
- (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.

- (3) A determination is a disallowable instrument.

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

## 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](#).

## 10 Eligible activities

- (1) The Minister may determine an activity (an *eligible activity*) that is intended to reduce the consumption of energy.
- (2) 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).

- (3) In determining an eligible activity, the Minister must take into account—
- (a) the objects of this Act; and
  - (b) the likelihood that the activity will contribute to a reduction in greenhouse gas emissions in the ACT.
- (4) A determination of an eligible activity must include the following:
- (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.
- (5) A determination may include any other matter that the Minister considers relevant.
- (6) A determination is a notifiable instrument.
- Note* A notifiable instrument must be notified under the [Legislation Act](#).
- (7) A determination may apply, adopt or incorporate a law of another jurisdiction or instrument as in force from time to time.
- (8) The [Legislation Act](#), section 47 (5) or (6) does not apply in relation to the law of another jurisdiction or instrument applied, adopted or incorporated under a determination.
- Note* Laws of another jurisdiction and instruments mentioned in s (8) do not need to be notified under the [Legislation Act](#) because s 47 (5) and (6) do not apply (see [Legislation Act](#), s 47 (7)).
- (9) In this section:
- law of another jurisdiction***—see the [Legislation Act](#), section 47 (10).

**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](#).

**11 Energy savings contribution**

- (1) The Minister must determine a contribution (an *energy savings contribution*) payable by tier 2 NERL retailers for a compliance period in place of the retailer's requirement to achieve a retailer's energy savings obligation for the period, expressed as an amount in dollars per tonne of carbon dioxide equivalent greenhouse gas emissions.
- (2) In determining an energy savings contribution, the Minister must take into account—
- (a) the impact of the contribution on levels of competition in the retail electricity market in the ACT; and

- (b) the cost of achieving the equivalent abatement of greenhouse gas emissions through other means including energy efficiency measures and the purchase of renewable energy.
- (3) A determination is a disallowable instrument.

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

## 12 **Meaning of *compliance period***

For this Act, *compliance period* means each calendar year within the period beginning 1 January 2013 and ending 31 December 2030.



## Part 3 Energy savings

### 13 Working out energy savings obligation

- (1) A NERL retailer must work out the retailer's energy savings obligation (an *energy savings obligation*) for a compliance period under this section.
- (2) A NERL retailer's energy savings obligation must be—
  - (a) expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions; and
  - (b) worked out as follows:  
 $EST \times (\text{electricity sales} \times \text{emissions multiplier})$

*electricity sales* means the NERL retailer's total electricity sales in MWh in the ACT for the compliance period.

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

*EST* means the energy savings target determined for the compliance period.

- (3) A NERL retailer's energy savings obligation for a compliance period may be modified by including a retailer energy savings result shortfall or surplus carried over from a prior compliance period.

### 14 Achieving energy savings obligations

- (1) A NERL retailer must achieve the retailer's energy savings obligation for a compliance period.
- (2) A tier 1 NERL retailer achieves the retailer's energy savings obligation for the compliance period if, in the period—
  - (a) the retailer—
    - (i) undertakes eligible activities that comply with a relevant approved code of practice; or

- (ii) acquires approved abatement factors that comply with a relevant approved code of practice; and
  - (b) the total of the abatement factors for the eligible activities undertaken and acquired achieve the obligation.
- (3) A tier 2 NERL retailer achieves the retailer's energy savings obligation for the compliance period if, in the period—
- (a) the retailer—
    - (i) undertakes eligible activities that comply with a relevant approved code of practice; or
    - (ii) acquires approved abatement factors that comply with a relevant approved code of practice; or
    - (iii) pays an energy savings contribution to the Territory for all or part of the obligation; and
  - (b) the total of the abatement factors for the eligible activities undertaken and acquired, and the energy savings contribution achieve the obligation.

*Note 1* **Energy savings contribution**—see s 11.

*Note 2* An energy savings contribution imposed under this Act must be paid to the Territory.

- (4) However, if a NERL retailer starts an eligible activity in a compliance period before the retailer gives a compliance plan for the compliance period to the administrator under section 17, the eligible activity is taken not to comply with the relevant code of practice.

## 15 Working out priority household obligation

- (1) A tier 1 NERL retailer must work out the retailer's priority household obligation (a *priority household obligation*) for a compliance period under this section.
- (2) A NERL retailer's priority household obligation must be—
  - (a) expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions; and
  - (b) worked out as follows:

$$\text{RESO} \times \text{PHT}$$

**PHT** means the priority household target determined for the compliance period.

**RESO** means the tier 1 NERL retailer's energy savings obligation for the compliance period.

- (3) A NERL retailer's priority household obligation for a compliance period may be modified by including a retailer priority household result shortfall or surplus carried over from a prior compliance period.

## 16 Achieving priority household obligations

- (1) A tier 1 NERL retailer must achieve the retailer's priority household obligation for a compliance period.
- (2) A tier 1 NERL retailer achieves the retailer's priority household obligation for a compliance period if, in the period—
  - (a) the retailer—
    - (i) undertakes eligible activities in priority households that comply with a relevant approved code of practice; or
    - (ii) acquires approved abatement factors in relation to priority households that comply with a relevant approved code of practice; and

- (b) the total of the abatement factors for the eligible activities undertaken and acquired achieve the obligation.
- (3) However, if a NERL retailer starts an eligible activity in a compliance period before the retailer gives a compliance plan for the compliance period to the administrator under section 17, the eligible activity is taken not to comply with the relevant code of practice.

### **17 NERL retailer must lodge compliance plan**

- (1) A NERL retailer must give a compliance plan for a compliance period to the administrator before undertaking eligible activities in the compliance period.

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

- (2) A compliance plan must include the following:
  - (a) how the retailer plans to achieve the retailer's energy savings obligation and priority household obligation (if required);
  - (b) how the retailer plans to meet 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) A NERL retailer commits an offence if the retailer does not give a compliance plan to the administrator in accordance with this section.

Maximum penalty: 10 penalty units.

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

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

**17A Approved abatement providers**

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

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

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

- (2) The administrator may, in writing, approve the person to undertake a stated eligible activity as an abatement provider (an ***approved abatement provider***), with or without conditions.
- (3) The administrator may cancel the approved abatement provider's approval if the provider fails to comply with the approval or a condition of the approval.
- (4) The administrator must keep a register of approved abatement providers.
- (5) The register—
- (a) must include details of each approved abatement provider; and
  - (b) may be kept in any form, including electronically, that the administrator decides; and
  - (c) may be made available to the public.
- (6) An approved abatement provider commits an offence if—
- (a) the provider's approval is subject to a condition; and
  - (b) the provider fails to comply with the condition.

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.

**18 Approval of acquired abatement factor**

- (1) A NERL retailer may apply to the administrator for approval of the acquisition of an abatement factor (an *approved abatement factor*) from an approved abatement provider or another retailer.

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

- (2) The administrator must approve an acquisition if satisfied that—
- (a) the acquisition occurred; and
  - (b) the acquired abatement factor relates to an eligible activity in the ACT; and
  - (c) the acquired abatement factor has not been used to achieve another retailer's energy savings obligations.
- (3) If the administrator approves an acquisition, the retailer may apply the acquired abatement factor to the retailer's energy savings obligation.

**19 Information to be given to administrator**

- (1) This section applies to a NERL retailer in a compliance period unless, during the compliance period the retailer did not—
- (a) have electricity sales in the ACT; and
  - (b) undertake eligible activities, including to complete eligible activities commenced in a previous compliance period; and
  - (c) acquire or apply for approval to acquire an abatement factor under section 18; and
  - (d) have a carried forward shortfall or surplus from a previous compliance period.

- (2) A NERL retailer must give the administrator the following information in relation to a compliance period not later than 3 months after the end of the compliance period:
- (a) the retailer's total electricity sales in the ACT;
  - (b) the eligible activities undertaken by the retailer in the ACT that comply with a relevant approved code of practice;
  - (c) the approved abatement factors acquired by the retailer, that comply with a relevant approved code of practice;
  - (d) the total abatement factors for the eligible activities undertaken or acquired by the retailer that comply with a relevant approved code of practice;
  - (e) for a tier 1 NERL retailer—the total abatement factors for eligible activities undertaken in, or acquired in relation to, priority households by the retailer that comply with a relevant approved code of practice;
  - (f) for a tier 2 NERL retailer—the extent to which the retailer's energy savings obligation will be achieved by paying an energy savings contribution;
- Note* For par (f), the energy savings contribution may be expressed as a percentage of the retailer's energy savings obligation.
- (g) any other information reasonably required by the administrator to help the administrator work out if a retailer has met the retailer's obligations.

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

*Note 2* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

*Note 3* For how documents may be given, see the [Legislation Act](#), pt 19.5.



- (3) The administrator may also require—
- (a) an independent audit of some or all of the information provided; and
  - (b) any other information that the administrator reasonably requires.
- (4) A NERL retailer commits an offence if the retailer does not comply with this section.

Maximum penalty: 50 penalty units.

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

## 20 Compliance with energy savings obligations—retailer energy savings result

- (1) This section applies to—
- (a) a tier 1 retailer; and
  - (b) a tier 2 retailer that tells the administrator under section 19 (2) (f) that the retailer energy saving obligation will not include an energy savings contribution.
- (2) The administrator must determine the result (a **retailer energy savings result**) of a NERL retailer's compliance with the retailer's energy savings obligation, expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions.
- (3) A retailer energy savings result for a NERL retailer must be worked out as follows:

$$(\text{RESO} + \text{CFS}) - (\text{A} + \text{S})$$

**A** means the total abatement factors for eligible activities undertaken or acquired in the compliance period.

**CFS** means the carried forward shortfall.

**RESO** means the retailer's energy savings obligation.

**S** means the carried forward surplus.

- (4) The administrator may exclude from the calculation of a retailer energy savings result the abatement factor for an eligible activity reported by the retailer under section 19 if the administrator is not satisfied that the activity complies with a relevant approved code of practice.
- (5) If the administrator excludes data from a calculation under subsection (4), the administrator may substitute data that the administrator believes on reasonable grounds is correct.

**Example—reason for excluding an abatement factor**

the abatement factor has been miscalculated

- (6) A retailer energy savings result is—
  - (a) if the result is a positive number—a shortfall; and
  - (b) if the result is a negative number—a surplus.
- (7) The administrator must give a NERL retailer written notice of the retailer's retailer energy savings result.

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

- (8) If the NERL retailer has a surplus, the notice must show the surplus to be carried forward to the next compliance period.
- (9) If the NERL retailer has a shortfall, the notice must give the retailer the following information:
  - (a) the shortfall;
  - (b) the maximum percentage of the retailer's retailer energy savings result that the retailer may carry forward to the next compliance period being the following:
    - (i) for a shortfall in the compliance period 1 January 2013 to 31 December 2029—10%;
    - (ii) for a shortfall in the compliance period 1 January 2030 to 31 December 2030—nil.

- (10) Not later than 10 working days after receiving a notice mentioned in subsection (9), the NERL retailer must give the administrator written notice of the percentage of the retailer's retailer energy savings result that the retailer elects to carry forward to the next compliance period.
- (11) Not later than 10 working days after receiving a notice mentioned in subsection (10), the administrator must give the NERL retailer written notice of—
  - (a) the amount of the retailer's retailer energy savings result to be carried forward to the next compliance period; and
  - (b) the shortfall penalty payable by the retailer.

**20A Compliance with energy savings obligations—tier 2 retailer energy savings result and contribution**

- (1) This section applies to a tier 2 retailer that tells the administrator under section 19 (2) (f) that the retailer energy saving obligation will include an energy savings contribution.
- (2) The administrator must determine the result (a *retailer energy savings result*) of a NERL retailer's compliance with the retailer's energy savings obligation, expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions.
- (3) A retailer energy savings result for a NERL retailer must be worked out as follows:

$$(\text{RESO} + \text{CFS}) - (\text{A} + \text{S})$$

*A* means the total abatement factors for eligible activities undertaken or acquired in the compliance period.

*CFS* means the carried forward shortfall.

*RESO* means the retailer's energy savings obligation.

*S* means the carried forward surplus.

- (4) The administrator may exclude from the calculation of a retailer energy savings result the abatement factor for an eligible activity reported by the retailer under section 19 if the administrator is not satisfied that the activity complies with a relevant approved code of practice.
- (5) If the administrator excludes data from a calculation under subsection (4), the administrator may substitute data that the administrator believes on reasonable grounds is correct.
- (6) A retailer energy savings result is—
  - (a) if the result is a positive number—a notional shortfall; and
  - (b) if the result is a negative number—a surplus.
- (7) The administrator must give a NERL retailer written notice of the retailer’s retailer energy savings result.

*Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.
- (8) If the NERL retailer has a surplus, the notice must show the surplus to be carried forward to the next compliance period.

**20B Compliance with energy savings obligations—tier 2 retailer contribution for shortfall**

- (1) This section applies if a tier 2 NERL retailer’s retailer energy savings result is a notional shortfall.
- (2) The administrator’s notice under section 20A (7) must give the retailer the following information:
  - (a) the notional shortfall;
  - (b) the maximum percentage of the retailer’s retailer energy savings result that the retailer may carry forward to the next compliance period being the following:
    - (i) for a shortfall in the compliance period 1 January 2013 to 31 December 2029—10%;

- (ii) for a shortfall in the compliance period 1 January 2030 to 31 December 2030—nil.
  - (c) the amount of energy savings contribution the retailer told the administrator would be paid to meet the retailer's energy savings obligation;
  - (d) the amount of energy savings contribution that the retailer must pay to—
    - (i) have no shortfall; or
    - (ii) if the notional shortfall exceeds the amount that the retailer may carry forward to the next compliance period—carry forward the maximum shortfall that may be carried forward (the *minimum payment*);
  - (e) if the retailer does not pay the energy savings contribution—the shortfall penalty payable by the retailer.
- (3) Not later than 10 working days after receiving a notice under section 20A (7), the NERL retailer must give the administrator written notice of—
- (a) the percentage of the retailer's retailer energy savings result that the retailer elects to carry forward to the next compliance period; and
  - (b) the amount of energy savings contribution that the retailer will pay; and
  - (c) acknowledgement that a shortfall penalty is payable for any shortfall not paid for by the energy savings contribution.

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

- (4) Not later than 10 working days after receiving a notice mentioned in subsection (3), the administrator must give the NERL retailer written notice of—
- (a) the amount of the retailer's retailer energy savings result to be carried forward to the next compliance period; and
  - (b) the amount of the energy savings contribution payment; and
  - (c) the method of payment; and
  - (d) the period, of at least 28 days, within which the payment must be made; and
- Note* A payment invoice issued to a tier 2 retailer for an energy savings contribution may form part of the written notice.
- (e) the shortfall penalty payable by the retailer if the retailer does not pay the energy savings contribution.

**20C Compliance with energy savings obligations—tier 2 retailer failure to pay energy saving contribution**

- (1) This section applies if a tier 2 NERL retailer fails to pay the retailer's energy savings contribution within the period stated in the notice to the retailer under section 20B (4) (d).
- (2) For section 22 (Penalties for noncompliance), the NERL retailer's energy saving contribution is taken to be 0.

**20D Redetermining energy savings result**

- (1) If the administrator believes on reasonable grounds that the determination of a NERL retailer's retailer energy savings result is not correct, the administrator may make a new determination of the retailer's retailer energy savings result under section 20 or section 20A.
- (2) A new determination under section 20 or section 20A must not be made more than 5 years after the day on which the compliance period, for which the original determination was made, ends.

- (3) The following provisions apply to a new determination of the retailer's retailer energy savings result:
- (a) if the new determination is made under section 20—section 20 (6) to (10) and section 22;
  - (b) if the new determination is made under section 20A—section 20A (6) to (8) and section 22.

**21 Compliance with priority household obligations—retailer priority household result**

- (1) The administrator must determine the result (a *retailer priority household result*) of a tier 1 NERL retailer's compliance with the retailer's priority household obligation, expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions.
- (2) A retailer priority household result for a tier 1 NERL retailer must be worked out as follows:

$$(PHO + CFS) - (A + S)$$

*A* means the total abatement factors for eligible activities undertaken in priority households or acquired in relation to priority households in the compliance period.

*CFS* means the carried forward shortfall.

*PHO* means the retailer's priority household obligation.

*S* means the carried forward surplus.

- (3) The administrator may exclude from the calculation of a retailer priority household result the abatement factor for an eligible activity reported by the retailer under section 19 if the administrator is not satisfied that the activity complies with a relevant approved code of practice.
- (4) If the administrator excludes data from a calculation under subsection (3), the administrator may substitute data that the administrator believes on reasonable grounds is correct.

- (5) A retailer priority household result is—
- (a) if the result is a positive number—a shortfall; and
  - (b) if the result is a negative number—a surplus.
- (6) The administrator must give a tier 1 NERL retailer written notice of the retailer’s retailer priority household result.
- Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.
- (7) If the tier 1 NERL retailer has a surplus, the notice must show the surplus to be carried forward to the next compliance period.
- (8) If the tier 1 NERL retailer has a shortfall, the notice must give the retailer the following information:
- (a) the shortfall;
  - (b) the maximum percentage of the retailer’s retailer priority household result that the retailer may carry forward to the next compliance period being the following:
    - (i) for a shortfall in the compliance period 1 January 2013 to 31 December 2029—10%;
    - (ii) for a shortfall in the compliance period 1 January 2030 to 31 December 2030—nil.
- (9) Not later than 10 working days after receiving a notice mentioned in subsection (8), the tier 1 NERL retailer must give the administrator written notice of the percentage of the retailer’s retailer priority household result that the retailer elects to carry forward to the next compliance period.



- (10) Not later than 10 working days after receiving a notice mentioned in subsection (9), the administrator must give the tier 1 NERL retailer written notice of—
- (a) the amount of the retailer's retailer priority household result to be carried forward to the next compliance period; and
  - (b) the shortfall penalty payable by the retailer.

### **21A Redetermining priority household result**

- (1) If the administrator believes on reasonable grounds that the determination of a NERL retailer's retailer priority household result is not correct, the administrator may make a new determination of the retailer's retailer priority household result under section 21.
- (2) A new determination under section 21 must not be made more than 5 years after the day on which the compliance period, for which the original determination was made, ends.
- (3) Section 21 (5) to (10) and section 22 apply to a new determination of the retailer's retailer priority household result.

### **22 Penalties for noncompliance**

- (1) If a NERL retailer's retailer energy savings result is a net shortfall, the retailer is liable to pay a penalty (a *shortfall penalty*) to the Territory.
- (2) If a tier 1 NERL retailer's retailer priority household result is a net shortfall, the retailer is liable to pay a shortfall penalty to the Territory.
- (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.

- (4) In determining an amount under subsection (3), the Minister must take into account the objects of this Act.

(5) The Minister must make a determination at least 3 months before the start of the compliance period to which the shortfall penalty relates.

(6) A determination is a disallowable instrument.

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

(7) In this section:

***net shortfall*** means—

(a) for a tier 1 NERL retailer—the total of the retailer’s—

(i) retailer energy savings result shortfall less the amount of the shortfall that the retailer carries forward to the next compliance period; or

(ii) retailer priority household result shortfall less the amount of the shortfall that the retailer carries forward to the next compliance period; and

(b) for a tier 2 NERL retailer—the total of the retailer’s retailer energy savings result shortfall, less—

(i) the amount of the shortfall that the retailer carries forward to the next compliance period; and

(ii) the retailer’s energy savings contribution.

## Part 4 Administration

### 23 Administrator

The Minister must appoint a person as administrator for this Act.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

### 24 Administrator's functions

The administrator has the following functions:

- (a) establishing reporting and record keeping requirements for NERL retailers and approved abatement providers;
- (b) determining NERL retailers' compliance with the retailer's energy savings obligations;
- (c) approving, with or without conditions, and cancelling the approval of abatement providers;
- (d) approving acquisition of abatement factors;
- (e) approving codes of practice;
- (f) preparing annual reports;
- (g) reporting to the Minister, at the Minister's request, on anything relating to the operation or administration of this Act.

### 24A Delegation

The administrator may delegate the administrator's functions under this Act to a public servant.

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

## 25 Codes of practice

- (1) The administrator may approve a code of practice (an *approved code of practice*) for the following:
- (a) consumer protection obligations;
  - (b) quality, health, safety and environmental requirements applying to eligible activities;
  - (c) the eligibility of approved abatement providers;
  - (d) the acquisition of approved abatement factors;
  - (e) record keeping requirements;
  - (f) reporting requirements;
  - (g) carrying out an audit of information given to the administrator under section 19 (Information to be given to administrator), including the following:
    - (i) purpose of the audit;
    - (ii) qualifications of auditors;
    - (iii) appointment of auditors;
    - (iv) removal of auditors;
    - (v) obligations of auditors;
    - (vi) reporting requirements for auditors.

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

- (2) An approved code of practice is a disallowable instrument.

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

- (3) An approved code of practice may apply, adopt or incorporate an instrument, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

## **26 Record keeping requirements**

- (1) A NERL retailer must keep the records that are necessary for the administrator to determine whether the retailer's energy savings obligations have been complied with.
- (2) 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.
- (3) A record must be kept for at least 5 years after the end of the compliance year to which the record relates.

Maximum penalty: 20 penalty units

- (4) Records must be kept in accordance with a relevant approved code of practice.

**27 Annual report by administrator**

The administrator must provide an annual report to the Minister on the operation and administration of this Act including—

- (a) NERL retailer compliance with this Act; and
- (b) the number and type of eligible activities undertaken under this Act.

**28 Contributions, shortfalls and penalties**

The Territory must ensure that an amount equivalent to the amount paid to the Territory as an energy savings contribution, shortfall penalty, or penalty under this Act is appropriated to support initiatives or undertake activities consistent with the objects of this Act.

*Note* An amount paid to the Territory as an energy savings contribution, shortfall penalty, or penalty under this Act is public money for the [Financial Management Act 1996](#).

## Part 4A Information sharing

### 28A Definitions—pt 4A

In this part:

**compliance information** means information that—

- (a) the administrator has as a result of exercising a function under this Act; or
- (b) a regulatory agency has—
  - (i) as a result of exercising a function under a territory law; and
  - (ii) that is relevant to a function of the administrator under this Act.

**non-territory agency** means an agency of the Commonwealth or a State that promotes energy efficiency or greenhouse gas abatement or that exercises functions corresponding to those exercised by a regulatory agency.

*Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

**regulatory agency** means any of the following:

- (a) the construction occupations registrar;
- (b) the planning and land authority;
- (c) the environment protection authority;
- (d) the commissioner appointed under the *Fair Trading (Australian Consumer Law) Act 1992*;
- (e) the director-general responsible for the *Fair Trading (Australian Consumer Law) Act 1992*;
- (f) the director-general responsible for the *Work Health and Safety Act 2011*;

- (g) the commissioner appointed under the *Work Health and Safety Act 2011*;
- (h) the independent competition and regulatory commission;
- (i) the chief executive officer appointed under the *Independent Competition and Regulatory Commission Act 1997*;
- (j) an entity prescribed by regulation.

### **28B Sharing information—territory agencies**

- (1) The administrator may—
  - (a) give compliance information to a regulatory agency; and
  - (b) impose conditions on how the regulatory agency uses, stores or shares the information.

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

- (2) The administrator may request compliance information from a regulatory agency.
- (3) A regulatory agency that receives a request under subsection (2) may—
  - (a) give the information to the administrator; and
  - (b) impose conditions on how the administrator uses, stores or shares the information.
- (4) However, compliance information must not be given under this section unless the entity that gives the information is satisfied that—
  - (a) the entity that receives the information (the *recipient*) will use the information to exercise a function the recipient has under a territory law; and



- (b) giving or receiving the information will not compromise the exercise of a function under a territory law.

**Example—instance where exercise of function could be compromised**

XYZ Pty Ltd carries out an eligible activity under this Act. The work safety commissioner (the *commissioner*) is investigating XYZ for possible breaches of the *Work Health and Safety Act 2011*. The commissioner receives a request for compliance information from the administrator. The commissioner believes that giving the administrator the information could jeopardise the investigation. The commissioner may refuse the request.

## 28C Sharing information—non-territory agencies

- (1) The administrator may give compliance information to a non-territory agency if the administrator believes on reasonable grounds that—
- (a) the information relates to the undertaking of eligible activities; and
- (b) the information relates to compliance with a law of another jurisdiction that makes provision for energy efficiency or greenhouse gas abatement.

*Note 1* **Law of another jurisdiction**—see s 10 (9).

*Note 2* For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (2) The administrator may impose conditions on how the non-territory agency uses, stores or shares the information.
- (3) However, the administrator must not give compliance information under this section unless the administrator is satisfied that—
- (a) the entity that receives the information (the *recipient*) will use the information to exercise a function the recipient has under a law mentioned in subsection (1) (b); and
- (b) giving the information will not compromise the exercise of a function under a territory law.

## Part 5                            Enforcement

### Division 5.1                  General

#### 29            Definitions—pt 5

In this part:

*connected*—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

### Division 5.2                  Authorised people

#### 30            Appointment of authorised people

The administrator may appoint a public servant as an authorised person for this Act.

*Note 1*    For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2*    In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

### **31 Identity cards**

- (1) The administrator must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
  - (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
  - (a) the person stops being an authorised person; and
  - (b) the person does not return the person's identity card to the administrator as soon as practicable, but not later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 5 penalty units.

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

## **Division 5.3 Powers of authorised people**

### **32 Power to enter premises**

- (1) For this Act, an authorised person may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time, enter premises with the occupier's consent; or
  - (c) enter premises in accordance with a search warrant; or

- (d) at any time, enter premises if the authorised person believes on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary.

**Example—par (d)**

an imminent risk to the health or safety of a person

*Note* An authorised person who enters premises may seize anything at the premises in accordance with s 36 (3) and (4). The authorised person has the power to make a direction to destroy or otherwise dispose of the thing, or make the thing safe or arrange for someone else to make it safe in accordance with s 47.

- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised person may, without the consent of the occupier, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) In this section:

*at any reasonable time* includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

**33 Production of identity card**

An authorised person must not remain at premises entered under this part if the authorised person does not produce the authorised person's identity card when asked by the occupier.

**34 Consent to entry**

- (1) When seeking the consent of an occupier to enter premises under section 32 (1) (b), an authorised person must—
- (a) produce the authorised person's identity card; and

- (b) tell the occupier—
  - (i) the purpose of the entry; and
  - (ii) that anything found and seized under this part may be used in evidence in court; and
  - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

### **35 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
- (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples;
  - (d) take photographs, films, or audio, video or other recordings;
  - (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

### **36 Power to seize things**

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—
- (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.

- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Also, an authorised person who enters premises under this part (whether with the consent of a person in charge of the premises, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (5) The powers of an authorised person under subsections (3) and (4) are additional to any powers of the authorised person under subsections (1) or (2) or any other territory law.
- (6) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (7) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6); and
  - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

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

## Division 5.4            Search warrants

### 37            Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
  - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 7 days after the day of the warrant's issue, the warrant ends.



**38 Warrants—application made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
  - (a) the magistrate must—
    - (i) tell the authorised person the terms of the warrant; and
    - (ii) tell the authorised person the date and time the warrant was issued; and
  - (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.

- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

### **39 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
  - (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the authorised person or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**40 Details of search warrant to be given to occupier etc**

If the occupier, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**41 Occupier entitled to be present during search etc**

- (1) If the occupier, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

## **Division 5.5                    Return and forfeiture of things seized**

### **42                    Receipt for things seized**

- (1) As soon as practicable after an authorised person seizes a thing under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 36 (Power to seize things).
- (3) A receipt must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

### **43                    Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

- (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
    - (b) the occupier of the premises agrees in writing.
  - (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
  - (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
  - (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
    - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
    - (b) allow the occupier or the occupier’s representative to be present during the examination or processing.
  - (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

**44 Access to things seized**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

**45 Return of things seized**

(1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if before the thing is forfeited to the Territory under section 46, the administrator—

- (a) becomes satisfied that there has been no offence against this Act with which the thing was connected; or
- (b) decides not to proceed in relation to an offence.

(2) However, this section does not apply—

- (a) to a thing seized under section 36 (4) (which is about the seizure of things that pose a risk to the health or safety of people or of damage to property or the environment); or
- (b) to a thing if the administrator believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
- (c) to a thing if possession of it by its owner would be an offence.

## **46 Forfeiture of seized things**

- (1) This section applies if—
  - (a) anything seized under this part has not been destroyed or otherwise disposed of under section 47 or returned under section 45; and
  - (b) an application for disallowance of the seizure under section 48—
    - (i) has not been made within 10 working days after the day of the seizure; or
    - (ii) has been made within that period, but the application has been refused or has been withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
  - (a) it is forfeited to the Territory; and
  - (b) it may be sold, destroyed or otherwise disposed of as the administrator directs.

## **47 Power to destroy etc unsafe things**

- (1) This section applies to anything inspected or seized under this part by an authorised person if the person is satisfied on reasonable grounds that the thing—
  - (a) puts the health or safety of people at risk; or
  - (b) is likely to cause damage to property or the environment.
- (2) The authorised person may give a written direction to any of the following to destroy or otherwise dispose of the thing, or make the thing safe:
  - (a) a person who owned the thing;
  - (b) a person in charge of the premises where the thing is;

- (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.

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

- (3) The direction may state 1 or more of the following:
  - (a) what action must be taken;
  - (b) how the thing must be kept until the action is taken;
  - (c) the period within which the action must be taken.
- (4) A person must comply with a direction given to the person under subsection (2).

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) Alternatively, if the thing has been seized under this part, the authorised person may—
  - (a) destroy or otherwise dispose of the thing; or
  - (b) make the thing safe.
- (7) Costs incurred by the Territory in relation to an action under subsection (6) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
  - (a) if the authorised person is satisfied on reasonable grounds that the owner is responsible for making the thing unsafe—the owner of the thing;
  - (b) if the authorised person is satisfied on reasonable grounds that a person in control of the premises where the thing was is responsible for making the thing unsafe—the person in control of the premises who is responsible for making the thing unsafe;



- (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.

#### **48 Application for order disallowing seizure**

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 working days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the administrator.

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

- (3) The administrator is entitled to appear as respondent at the hearing of the application.

#### **49 Order for return of seized thing**

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 48 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if the court is satisfied that—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
  - (b) the thing is not connected with an offence against this Act; and
  - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.

- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
- (a) an order directing the administrator to return the thing to the applicant or to someone else who appears to be entitled to it;
  - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
  - (c) an order about the payment of costs in relation to the application.

## **Division 5.5A Contravention of code of practice**

### **49A Powers of administrator to address contravention**

- (1) If the administrator believes on reasonable grounds that a NERL retailer, the retailer's agent or an approved abatement provider has contravened a code of practice, the administrator may do any of the following:
- (a) require the retailer, agent or provider to complete a stated course of training to the satisfaction of the administrator;
  - (b) restrict or place a condition on the performance of an activity by the retailer, agent or provider;  
**Examples—condition**
    - 1 retailer must notify administrator before performing an activity
    - 2 retailer must arrange for independent quality assurance
    - 3 retailer must report more often
  - (c) require the retailer or provider to rectify the contravention within a stated time;

- (d) if the administrator is satisfied that it would not be appropriate to require the retailer or provider to rectify the contravention because of the relationship between the retailer or provider and the land owner—authorise someone else to rectify the contravention, and require the NERL retailer or approved abatement provider to pay for the work;

**Example where relationship requires another party to do work**

A NERL retailer installed an article on land owned by another person (the *owner*). The owner has been seeking redress for bad workmanship from the retailer in relation to this and/or other installations on the land. The owner has no confidence in the retailer's ability to properly carry out the work. It would not be appropriate to require the retailer to do the work.

- (e) require the retailer or provider to pay a financial penalty of not more than \$1 000 in relation to each contravention.

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

- (2) If the administrator requires a person to complete training under subsection (1) (a), the person must pay—
  - (a) for the training; and
  - (b) if the Territory incurs expense in arranging the training—the Territory the amount of expense incurred.
- (3) However, if the person who is required to complete training under subsection (1) (a) is a retailer's agent, the retailer must pay the costs mentioned in subsection (2).

## **49B Notice before exercising power**

- (1) The administrator must not take action under section 49A unless the administrator has given notice in relation to the following matters to a relevant person:
  - (a) details of the action that may be taken;
  - (b) an explanation of why the administrator intends to take the action;

- (c) that the person may make submissions about the proposed action during a period stated in the notice that is not less than 5 working days after the day the person receives the notice.
- (2) However, the administrator must not give notice of action to be taken under section 49A to an owner of land unless the action requires work to be carried out on the land.
- (3) Subsection (4) applies if the rectification work must be carried out on land that is not owned or occupied by the NERL retailer or approved abatement provider.
- (4) The notice must—
  - (a) state that the administrator will not make a rectification order unless the administrator is satisfied that it is appropriate to make the order in relation to the NERL retailer or approved abatement provider, because of the relationship between the retailer or provider and the land owner; and
  - (b) if the administrator is not satisfied that it is appropriate to make the order in relation to the NERL retailer or approved abatement provider, because of the relationship between the retailer or provider and the land owner—tell the retailer or provider that the administrator proposes to take action under section 49A (1) (d).
- (5) In this section:  
*relevant person* means a—
  - (a) NERL retailer or approved abatement provider; and
  - (b) person on whose land the retailer or provider has carried out an activity.

## **49C When rectification order may be made**

- (1) This section applies if—
- (a) the administrator has given a relevant person notice under section 49B; and
  - (b) the person carried out the activity to which the notice relates; and
  - (c) after considering any submissions made within the time mentioned in the notice, the administrator is satisfied—
    - (i) the person is contravening, or has contravened, this Act; and
    - (ii) it is appropriate to make a rectification order in relation to the person.

*Note 1* If deciding under this section whether it is appropriate to make a rectification order, the registrar must consider the considerations mentioned in s 49D.

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The administrator may make an order under section 49E (Rectification orders) in relation to the person.
- (3) If the administrator receives a submission within the period stated in subsection (1) (c), the administrator may not make an order under section 49E if a submission is made that satisfies the administrator that the act that caused the contravention happened, or ended, more than 10 years before the day the registrar proposes to make the order.
- (4) The following do not prevent the administrator making an order under section 49D:
- (a) a report has been accepted;

- (b) a retailer energy savings result has been determined under section 20 (Compliance with energy savings obligations—retailer energy savings result) or section 20A (Compliance with energy savings obligations—tier 2 retailer energy savings result and contribution);
- (c) a retailer priority household result has been determined under section 21 (Compliance with priority household obligations—retailer priority household result);
- (d) a penalty notice has been issued.

#### **49D Considerations for deciding under s 49B and s 49C**

- (1) In deciding whether it is, or may be, appropriate to make a rectification order in relation to a NERL retailer or approved abatement provider that is contravening, or has or may have contravened, this Act, the administrator must consider the following:
  - (a) any injury or damage caused, or that could be caused, by the contravention;
  - (b) if a rectification order is proposed—how the proposed order may affect people affected by the contravention.  
**Example—effect of contravention, including injury and damage**  
adverse effect on health of user of thing affected by contravention
- (2) The administrator may not make a rectification order if an order has been made under another Territory law that requires a person to carry out work that would address the matters that the rectification order would cover.
- (3) Also, if there is another Territory law that could address the matters that the rectification order would cover, the administrator—
  - (a) must refer the matter to the administrative unit responsible for the law; and

- (b) may make a rectification order only if the administrator remains satisfied that injury or damage is, or could be, caused by the contravention.

#### **49E Rectification orders**

- (1) The administrator may make an order (a *rectification order*) in relation to a NERL retailer or approved abatement provider, requiring the retailer or provider—
  - (a) to take stated action to rectify work done as part of an eligible activity or the retailer’s operations under this Act; or
  - (b) to start or finish stated work in relation to which an eligible activity or operation of the retailer has been, is being or was proposed to be provided.

**Example—stated action**

rectify work to comply with a stated performance requirement of the Building Code of Australia

- (2) The rectification order may also require the NERL retailer or approved abatement provider to give the administrator written information about a thing required to be done under the order.

**Example**

an engineer’s report about whether rectified work complies with relevant standards

- (3) Subsection (4) applies if—
  - (a) the order requires the NERL retailer or approved abatement provider to do a thing; and
  - (b) the NERL retailer or approved abatement provider—
    - (i) is not licensed, authorised or qualified to do the thing; or
    - (ii) if a licence, authorisation or qualification is not required to do the thing—does not have appropriate experience and skill to do the thing.

- (4) The NERL retailer or approved abatement provider must arrange, and pay for, the thing to be done by someone who—
  - (a) is licensed, authorised or qualified to do the thing; or
  - (b) if a licence, authorisation or qualification is not required to do the thing—has appropriate experience and skill to do the thing.

**Example**

A rectification order requires Freddie to take stated action to rectify work he has done. The action includes having to provide written information about whether the rectified work complies with relevant standards. Freddie is not qualified to provide the information so he must arrange, and pay for, a qualified person to prepare a report about the rectified work.

- (5) The rectification order must state a period within which what is required to be done must be done.
- (6) The stated period for a rectification order must not be less than 1 month after the day the rectification order is given to the NERL retailer or approved abatement provider.
- (7) A copy of the rectification order must be given to the land owner.

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

**49F Failure to comply with order**

- (1) This section applies if an entity (the *ordered entity*) in relation to whom a rectification order is made contravenes the rectification order.
- (2) The Territory may, in writing, authorise a person to enter the land where the work to which the rectification order relates is to be done and—
  - (a) take the action stated in the rectification order; or
  - (b) start or finish the work stated in the rectification order.



- (3) The authorised person must—
- (a) give the owner of the land written notice that the person intends to enter the land at least 24 hours before the person enters the land; and
  - (b) give a copy of the notice to the ordered entity before entering the land.

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

- (4) However, the Territory must not authorise someone until—
- (a) if the ordered entity applied for review of the decision within the period for review (the *review period*) of the decision to make the rectification order allowed under the [ACT Civil and Administrative Tribunal Act 2008](#)—the review is finally disposed of; or
  - (b) the review period has ended.
- (5) The ordered entity is liable for the reasonable cost incurred in doing anything under subsection (2) and the cost is taken to be a debt owing to the Territory.

## Division 5.5B Public safety restrictions

### 49G Restriction of people—public safety

- (1) This section applies if the administrator believes on reasonable grounds that a person has engaged in conduct, or demonstrated insufficient skills and knowledge in carrying out an eligible activity, that presents or is likely to present a risk of death or injury to a person, significant harm to the environment or significant damage to property.

#### Examples

- 1 An installer authorised by a retailer to carry out eligible activities is not an electrician but nevertheless undertakes electrical wiring work in consumer's premises.
  - 2 An inspection of the installation of sealing to a ventilation opening shows that a person has undertaken the work without the required building approval and has sealed a room in which there is a flueless gas heater. When questioned by the administrator, it is apparent that the person is not familiar with the requirements of the building code or the standards for ventilation for gas appliances and has undertaken a number of installations that are not compliant and may cause carbon monoxide poisoning or other problems for the occupants.
  - 3 An installer is replacing a window and frame and disturbs friable asbestos. Although the installer has taken an asbestos awareness course, the installer is not a licensed asbestos assessor or an asbestos removalist. The installer attempts to remove the asbestos himself and places the removed asbestos in a normal garbage bin, releasing asbestos fibres into the air and causing a potential health problem to residents and other members of the public.
  - 4 A retailer or contractor engaged by a retailer employs unlicensed people to undertake gasfitting work.
- (2) The administrator may place a restriction on a person that—
- (a) prevents the person from undertaking an eligible activity; or
  - (b) prevents the person from undertaking certain prescribed activity requirements; or
  - (c) prevents the person from undertaking eligible activities or certain prescribed activity requirements without supervision; or

- (d) requires the person to undertake specific training, assessment or other remedial activity.

**Examples**

- 1 After undertaking inspections on a number of solar water heater installations, the administrator determines that a number of installers employed by an authorised contractor have failed to install appropriate tempering devices, making the installations unsafe. The administrator restricts the authorised contractor from undertaking solar water heater installations until its installers undertake remedial training and the contractor puts in place a quality assurance system for checking installations.
  - 2 A retailer has been permitting unlicensed people to undertake degassing of refrigerators. The administrator may prevent the retailer from undertaking activities requiring the degassing of refrigerators until it can demonstrate that it has engaged suitably licensed people to undertake the work.
- (3) A restriction mentioned in subsection (2) does not make it unlawful for the person to undertake an eligible activity, but the eligible activity is taken to generate no abatement factor for this Act.
- (4) The restriction mentioned in subsection (2) applies when the administrator gives the person a notice that includes—
- (a) the name of the person to whom the restriction applies; and
  - (b) the nature of the conduct or deficiency; and
  - (c) the nature of the risk; and
  - (d) the duration of the restriction; and
  - (e) the eligible activities, or prescribed activity requirements the restriction applies to; and
  - (f) a statement that the retailer or approved abatement provider may apply in writing to the administrator to revoke the restriction.
- (5) The administrator may give the notice orally or in writing.

- (6) However, if the administrator gives the notice orally, the administrator must give the notice in writing not later than 2 days after the day the administrator gave the notice orally.

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

- (7) In this section:

*person*, in relation to a restriction, means a retailer, an agent or a representative of a retailer, or an approved abatement provider that arranges or carries out eligible activities or certain actions required as part of an eligible activity under this Act.

#### **49H End of restriction**

- (1) This section applies if a restriction has been placed on a person under section 49G.
- (2) The administrator must end the restriction if satisfied that the reason for placing the restriction on the person no longer exists.
- (3) The administrator may end the restriction if the administrator believes on reasonable grounds that ending the restriction on the person will not put consumers of the person's services at greater risk from using the services than if the restriction continued in force.
- (4) The administrator must review the restriction not later than 3 months after the day the restriction is placed on the person, unless the restriction ends earlier.
- (5) A restriction under section 49G continues in force after the 3 months mentioned in subsection (4) if—
- (a) the administrator is not satisfied that the reason for placing the restriction on the person no longer exists; or
  - (b) the person has not complied with the restriction.

## **Division 5.5C      Information requirements**

### **49I      Meaning of *information requirement*—div 5.5C**

In this division:

*information requirement*—see section 49J (2).

### **49J      Information requirements**

- (1) This section applies if the administrator believes on reasonable grounds that a person—
  - (a) has information (the *required information*) reasonably required by the administrator for the administration or enforcement of this Act; or
  - (b) has possession or control of a document containing the required information.
- (2) The administrator may give the person a notice (an *information requirement*) requiring the person to give the information, or produce the document, to the administrator.

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

- (3) The information requirement must be in writing and must include details of the following:
  - (a) the identity of the person to whom it is given;
  - (b) why the information is required;
  - (c) the time by which the notice must be complied with.
- (4) A person does not incur any civil or criminal liability only because the person gives information, or produces a document, to the administrator in accordance with an information requirement.

**49K        Treatment of documents provided under information requirement**

- (1) The administrator must return a document produced in accordance with an information requirement to the person who produced the document as soon as practicable.
- (2) Before returning the document, the administrator may make copies of, or take extracts from, the document.

**Division 5.6            Miscellaneous**

**50            Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

**51            Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person or a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or

- (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## Part 6 Notification and review of decisions

### 52 Meaning of *reviewable decision*—pt 6

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 53 Reviewable decision notices

If the administrator makes a reviewable decision, the administrator must give a reviewable decision notice to each person mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The administrator must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

*Note 2* The requirements for a reviewable decision notice are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

### 54 Applications for review

The following people may apply to the ACAT for review of a reviewable decision:

- (a) a person mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for the application, the form must be used.



## Part 7 Miscellaneous

### 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](#).

### 56 Approved forms

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

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

### 57 Regulation-making power

- (1) The Executive may make regulations for this Act.

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

- (2) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

## Schedule 1 Reviewable decisions

(see pt 6)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	17A (2)	impose condition	approved abatement provider
2	17A (3)	cancelling an approval in relation to abatement provider	approved abatement provider
3	18	approving an application in relation to acquisition of abatement factors	NERL retailer applying for the approval
4	20	determining retailer energy savings result	NERL retailer receiving the result
5	20A	determining retailer energy savings result	NERL retailer receiving the result
6	20B	determining minimum payment for tier 2 retailer	NERL retailer receiving the result
7	21	determining retailer priority household result	tier 1 NERL retailer receiving the result
8	49A	making requirement, imposing restriction or condition	person to whom requirement, restriction or condition applies

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>
9	49H	refusing to end restriction under s 49G	person to whom restriction applies

## Schedule 2 Greenhouse gases

(see dict, def *greenhouse gas*)

column 1 item	column 2 greenhouse gas	column 3 chemical formula
1	carbon dioxide	CO <sub>2</sub>
2	methane	CH <sub>4</sub>
3	nitrous Oxide	N <sub>2</sub> O
4	sulphur hexafluoride	SF <sub>6</sub>
5	hydrofluorocarbon-23	CHF <sub>3</sub>
6	hydrofluorocarbon-32	CH <sub>2</sub> F <sub>2</sub>
7	hydrofluorocarbon-41	CH <sub>3</sub> F
8	hydrofluorocarbon-43-10mee	C <sub>5</sub> H <sub>2</sub> F <sub>10</sub>
9	hydrofluorocarbon-125	C <sub>2</sub> HF <sub>5</sub>
10	hydrofluorocarbon-134	C <sub>2</sub> H <sub>2</sub> F <sub>4</sub> (CHF <sub>2</sub> CHF <sub>2</sub> )
11	hydrofluorocarbon-134a	C <sub>2</sub> H <sub>2</sub> F <sub>4</sub> (CH <sub>2</sub> FCF <sub>3</sub> )
12	hydrofluorocarbon-143	C <sub>2</sub> H <sub>3</sub> F <sub>3</sub> (CHF <sub>2</sub> CH <sub>2</sub> F)
13	hydrofluorocarbon-143a	C <sub>2</sub> H <sub>3</sub> F <sub>3</sub> (CF <sub>3</sub> CH <sub>3</sub> )
14	hydrofluorocarbon-152a	C <sub>2</sub> H <sub>4</sub> F <sub>2</sub> (CH <sub>3</sub> CHF <sub>2</sub> )
15	hydrofluorocarbon-227ea	C <sub>3</sub> HF <sub>7</sub>
16	hydrofluorocarbon-236fa	C <sub>3</sub> H <sub>2</sub> F <sub>6</sub>
17	hydrofluorocarbon-245ca	C <sub>3</sub> H <sub>3</sub> F <sub>5</sub>
18	perfluoromethane (tetrafluoromethane)	CF <sub>4</sub>
19	perfluoroethane (hexafluoroethane)	C <sub>2</sub> F <sub>6</sub>
20	perfluoropropane	C <sub>3</sub> F <sub>8</sub>
21	perfluorobutane	C <sub>4</sub> F <sub>10</sub>
22	perfluorocyclobutane	c-C <sub>4</sub> F <sub>8</sub>

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<b>column 1 item</b>	<b>column 2 greenhouse gas</b>	<b>column 3 chemical formula</b>
23	perfluoropentane	C <sub>5</sub> F <sub>12</sub>
24	perfluorohexane	C <sub>6</sub> F <sub>14</sub>

## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- commencement
- disallowable instrument (see s 9)
- Minister (see s 162).

***abatement factor*** means the number of tonnes of carbon dioxide equivalent emissions that an eligible activity is taken to save.

***administrator*** means a person appointed as administrator under section 23.

***approved abatement factor***—see section 18.

***approved abatement provider***—see section 17A.

***approved code of practice***—see section 25.

***approved interstate energy efficiency scheme***—see section 10A.

***authorised person*** means a person appointed as an authorised person under section 30.

***carbon dioxide equivalent***, of greenhouse gas emissions, means the mass of carbon dioxide measured in tonnes that has the same global warming potential as the gas emissions.

***compliance information***, for part 4A (Information sharing)—see section 28A.

***compliance period***—see section 12.

***connected***, with an offence, for part 5 (Enforcement)—see section 29.

***eligible activity***—see section 10.

***emissions multiplier***—see section 9.

**energy** includes electricity and gas.

**energy savings contribution**—see section 11.

**energy savings obligation**—see section 13.

**energy savings target**—see section 7.

**greenhouse gas** means a gas mentioned in schedule 2, column 2.

**information requirement**, for division 5.5C (Information requirements)—see section 49J (2).

**NERL retailer** means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)* to sell electricity to premises in the ACT for consumption.

**non-territory agency**, for part 4A (Information sharing)—see section 28A.

**occupier**, of premises, for part 5 (Enforcement)—see section 29.

**offence**, for part 5 (Enforcement)—section 29.

**priority household** means residential premises in which 1 person who lives at the premises—

- (a) is a recipient of an ACT Government energy concession; or
- (b) holds a Commonwealth pensioner concession card or health care card; or
- (c) holds a Department of Veterans Affairs pensioner concession card, TPI gold repatriation health care card, war widows repatriation health care card, or gold repatriation health care card; or
- (d) is within a class of people prescribed by regulation.

**priority household obligation**—see section 15.

**priority household target**—see section 8.

**rectification order**—see section 49E (Rectification orders).

**regulatory agency**, for part 4A (Information sharing)—see section 28A.

**retailer energy savings result**—see section 20.

**retailer priority household result**—see section 21.

**reviewable decision**, for part 6 (Notification and review of decisions)—see section 52.

**shortfall penalty**—see section 22 (1).

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

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

**tier 2 NERL retailer** means a NERL retailer that is not a tier 1 NERL retailer.



## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Energy Efficiency (Cost of Living) Improvement Act 2012 A2012-17**

notified LR 16 May 2012

s 1, s 2 commenced 16 May 2012 (LA s 75 (1))

remainder commenced 17 May 2012 (s 2)

as amended by

#### **National Energy Retail Law (Consequential Amendments) Act 2012 A2012-32 pt 8**

notified LR 14 June 2012

s 1, s 2 commenced 14 June 2012 (LA s 75 (1))

pt 8 commenced 1 July 2012 (s 2 (1) and see [National Energy Retail Law \(ACT\) Act 2012 A2012-31, s 2 \(1\)](#) and [CN2012-12](#))

#### **Construction and Energy Efficiency Legislation Amendment Act 2013 A2013-31 pt 9**

notified LR 26 August 2013

s 1, s 2 commenced 26 August 2013 (LA s 75 (1))

pt 9 commenced 27 August 2013 (s 2 (3))

#### **Construction and Energy Efficiency Legislation Amendment Act 2014 A2014-2 pt 7**

notified LR 5 March 2014

s 1, s 2 commenced 5 March 2014 (LA s 75 (1))

pt 7 commenced 6 March 2014 (s 2)

#### **Construction and Energy Efficiency Legislation Amendment Act 2014 (No 2) A2014-10 pt 5**

notified LR 17 April 2014

s 1, s 2 commenced 17 April 2014 (LA s 75 (1))

pt 5 commenced 18 April 2014 (s 2)

#### **Statute Law Amendment Act 2014 (No 2) A2014-44 sch 3 pt 3.4**

notified LR 5 November 2014

s 1, s 2 commenced 5 November 2014 (LA s 75 (1))

sch 3 pt 3.4 commenced 19 November 2014 (s 2)

**Energy Efficiency (Cost of Living) Improvement Amendment Act 2015  
A2015-24**

notified LR 18 August 2015  
s 1, s 2 commenced 18 August 2015 (LA s 75 (1))  
ss 4-6, ss 10-12, s 43, s 44 commenced 18 February 2016 (s 2 (2) and  
LA s 79)  
remainder commenced 19 August 2015 (s 2 (1))

**Statute Law Amendment Act 2017 A2017-4 sch 3 pt 3.11**

notified LR 23 February 2017  
s 1, s 2 commenced 23 February 2017 (LA s 75 (1))  
sch 3 pt 3.11 commenced 9 March 2017 (s 2)

**Planning, Building and Environment Legislation Amendment  
Act 2017 (No 2) A2017-20 pt 5**

notified LR 15 June 2017  
s 1, s 2 commenced 15 June 2017 (LA s 75 (1))  
pt 5 commenced 16 June 2017 (s 2)

**Energy Efficiency (Cost of Living) Improvement Amendment Act 2019  
A2019-30**

notified LR 3 October 2019  
s 1, s 2 commenced 3 October 2019 (LA s 75 (1))  
s 3, s 5, s 14, s 21, s 23, s 25, s 28 commenced 4 October 2019  
(s 2 (1))  
s 4 (1), s 11, s 27 awaiting commencement  
remainder awaiting commencement

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Commencement

s 2 om LA s 89 (4)

#### Dictionary

s 3 am [A2012-32](#) s 40

#### Objects

s 6 am [A2019-30](#) s 5

#### Energy savings target

s 7 am [A2012-32](#) s 51; [A2015-24](#) s 4

#### Priority household target

s 8 am [A2012-32](#) s 51; [A2015-24](#) s 5

#### Emissions multiplier

s 9 sub [A2015-24](#) s 6

#### Eligible activities

s 10 am [A2013-31](#) s 77  
(9)-(11) exp 27 August 2014 (s 10 (11))  
am [A2015-24](#) s 7; ss renum R8 LA

#### Approval of interstate energy efficiency scheme

s 10A ins [A2015-24](#) s 8

#### Energy savings contribution

s 11 am [A2012-32](#) s 51

#### Meaning of *compliance period*

s 12 am [A2015-24](#) s 9  
sub [A2019-30](#) s 14

#### Working out energy savings obligation

s 13 am [A2012-32](#) s 51; [A2015-24](#) ss 10-12

#### Achieving energy savings obligations

s 14 am [A2012-32](#) s 51; [A2014-10](#) s 42

#### Working out priority household obligation

s 15 am [A2012-32](#) s 41, s 42, s 51

#### Achieving priority household obligations

s 16 am [A2012-32](#) s 51; [A2014-10](#) s 43

#### NERL retailer must lodge compliance plan

s 17 hdg am [A2012-32](#) s 51  
s 17 am [A2012-32](#) s 51; [A2014-10](#) s 44; [A2014-44](#) amdt 3.24

#### Approved abatement providers

s 17A ins [A2015-24](#) s 13

**Approved abatement provider must lodge compliance plan**s 17B ins [A2015-24](#) s 13**Approval of acquired abatement factor**s 18 am [A2012-32](#) s 51; [A2015-24](#) s 14**Information to be given to administrator**s 19 am [A2012-32](#) s 51; [A2014-2](#) s 33, s 34; ss renum R4 LA; [A2014-44](#) amdt 3.18**Compliance with energy savings obligations—retailer energy savings result**s 20 hdg am [A2012-32](#) s 51s 20 am [A2012-32](#) s 43, s 44, s 51; [A2014-2](#) s 35, s 36; ss renum R4 LA; [A2014-10](#) s 45; ss renum R5 LA; [A2014-44](#) amdt 3.24; [A2015-24](#) s 15; [A2019-30](#) s 21**Compliance with energy savings obligations—tier 2 retailer energy savings result and contribution**s 20A ins [A2014-2](#) s 37am [A2014-10](#) s 46; ss renum R5 LA; [A2014-44](#) amdt 3.24**Compliance with energy savings obligations—tier 2 retailer contribution for shortfall**s 20B ins [A2014-2](#) s 37am [A2014-44](#) amdt 3.24; [A2015-24](#) s 16; [A2019-30](#) s 23**Compliance with energy savings obligations—tier 2 retailer failure to pay energy saving contribution**s 20C ins [A2014-2](#) s 37**Redetermining energy savings result**s 20D ins [A2014-10](#) s 47**Compliance with priority household obligations—retailer priority household result**s 21 hdg am [A2012-32](#) s 51s 21 am [A2012-32](#) s 51; [A2014-2](#) s 38; [A2014-10](#) s 48; ss renum R5 LA; [A2014-44](#) amdt 3.24; [A2015-24](#) s 17; [A2019-30](#) s 25**Redetermining priority household result**s 21A ins [A2014-10](#) s 49**Penalties for noncompliance**s 22 am [A2012-32](#) s 51sub [A2014-2](#) s 39am [A2015-24](#) s 22; ss renum R8 LA**Administrator's functions**s 24 am [A2012-32](#) s 51; [A2015-24](#) s 19, s 20; pars renum R8 LA**Delegation**s 24A ins [A2014-2](#) s 40

## Endnotes

### 4 Amendment history

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#### **Codes of practice**

s 25 am [A2014-10](#) s 50; [A2014-44](#) amdt 3.19; [A2015-24](#) s 21; pars  
renum R8 LA

#### **Record keeping requirements**

s 26 am [A2012-32](#) s 51; [A2015-24](#) s 22; ss renum R8 LA

#### **Annual report by administrator**

s 27 am [A2012-32](#) s 51

#### **Information sharing**

pt 4A hdg ins [A2014-10](#) s 51

#### **Definitions—pt 4A**

s 28A ins [A2014-10](#) s 51  
def **compliance information** ins [A2014-10](#) s 51  
def **non-territory agency** ins [A2014-10](#) s 51  
sub [A2019-30](#) s 28  
def **regulatory agency** ins [A2014-10](#) s 51

#### **Sharing information—territory agencies**

s 28B ins [A2014-10](#) s 51  
am [A2014-44](#) amdt 3.24

#### **Sharing information—non-territory agencies**

s 28C ins [A2014-10](#) s 51  
am [A2014-44](#) amdt 3.20; [A2017-20](#) s 12

#### **Power to enter premises**

s 32 am [A2014-2](#) s 41

#### **Production of identity card**

s 33 am [A2017-4](#) amdt 3.56

#### **Consent to entry**

s 34 am [A2017-4](#) amdt 3.56

#### **Moving things to another place for examination or processing under search warrant**

s 43 am [A2014-44](#) amdt 3.24

#### **Forfeiture of seized things**

s 46 am [A2014-2](#) s 42

#### **Power to destroy etc unsafe things**

s 47 sub [A2014-2](#) s 43  
am [A2014-44](#) amdt 3.24; [A2015-24](#) s 23, s 24

#### **Application for order disallowing seizure**

s 48 am [A2014-2](#) s 44; [A2014-44](#) amdt 3.21

#### **Contravention of code of practice**

div 5.5A hdg ins [A2014-10](#) s 52

**Powers of administrator to address contravention**

s 49A ins [A2014-10](#) s 52  
am [A2015-24](#) ss 25-30

**Notice before exercising power**

s 49B ins [A2014-10](#) s 52  
am [A2015-24](#) s 31, s 32

**When rectification order may be made**

s 49C ins [A2014-10](#) s 52

**Considerations for deciding under s 49B and s 49C**

s 49D ins [A2014-10](#) s 52  
am [A2015-24](#) s 33

**Rectification orders**

s 49E ins [A2014-10](#) s 52  
am [A2014-44](#) amdt 3.24; [A2015-24](#) ss 34-36

**Failure to comply with order**

s 49F ins [A2014-10](#) s 52  
am [A2014-44](#) amdt 3.24

**Public safety restrictions**

div 5.5B hdg ins [A2014-10](#) s 52

**Restriction of people—public safety**

s 49G ins [A2014-10](#) s 52  
am [A2014-44](#) amdt 3.24; [A2015-24](#) s 37, s 38

**End of restriction**

s 49H ins [A2014-10](#) s 52

**Information requirements**

div 5.5C hdg ins [A2014-10](#) s 52

**Meaning of *information requirement*—div 5.5C**

s 49I ins [A2014-10](#) s 52

**Information requirements**

s 49J ins [A2014-10](#) s 52  
am [A2014-44](#) amdt 3.24

**Treatment of documents provided under information requirement**

s 49K ins [A2014-10](#) s 52

**Review of Act**

s 55 om [A2017-4](#) amdt 3.57

**Determination of fees**

s 55A ins [A2015-24](#) s 39

## Endnotes

4 Amendment history

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### Transitional—Energy Efficiency (Cost of Living) Improvement Amendment Act 2015

pt 15 hdg ins [A2015-24](#) s 40  
exp 19 August 2016 (s 102)

### Meaning of *commencement day*—pt 15

s 100 ins [A2015-24](#) s 40  
exp 19 August 2016 (s 102)

### Penalties for noncompliance

s 101 ins [A2015-24](#) s 40  
exp 19 August 2016 (s 102)

### Expiry—pt 15

s 102 ins [A2015-24](#) s 40  
exp 19 August 2016 (s 102)

### Reviewable decisions

sch 1 am [A2012-32](#) s 51; [A2014-2](#) s 45; items renum R4 LA  
sub [A2014-10](#) s 53  
am [A2015-24](#) s 41; items renum R8 LA

### Dictionary

dict def **approved abatement provider** ins [A2015-24](#) s 42  
def **approved interstate energy efficiency scheme** ins [A2015-24](#) s 42  
def **auditor** om [A2014-10](#) s 54  
def **compliance information** ins [A2014-10](#) s 55  
def **electricity supplier** om [A2012-32](#) s 45  
def **emissions factor** om [A2015-24](#) s 43  
def **emissions multiplier** ins [A2015-24](#) s 44  
def **information requirement** ins [A2014-10](#) s 55  
sub [A2014-44](#) amdt 3.22  
def **NERL retailer** ins [A2012-32](#) s 46  
def **non-territory agency** ins [A2014-10](#) s 55  
def **rectification order** ins [A2014-10](#) s 55  
def **regulatory agency** ins [A2014-10](#) s 55  
def **retailer energy savings result** ins [A2012-32](#) s 46  
def **retailer priority household result** ins [A2012-32](#) s 46  
def **shortfall penalty** ins [A2014-44](#) amdt 3.23  
def **supplier energy savings result** om [A2012-32](#) s 47  
def **supplier priority household result** om [A2012-32](#) s 47  
def **tier 1 electricity supplier** om [A2012-32](#) s 48  
def **tier 1 NERL retailer** ins [A2012-32](#) s 48  
sub [A2015-24](#) s 45  
def **tier 2 electricity supplier** om [A2012-32](#) s 49  
def **tier 2 NERL retailer** ins [A2012-32](#) s 49  
def **utility** om [A2012-32](#) s 50



## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 17 May 2012	17 May 2012– 30 June 2012	not amended	new Act
R2 1 July 2012	1 July 2012– 26 Aug 2013	<a href="#">A2012-32</a>	amendments by <a href="#">A2012-32</a>
R3 27 Aug 2013	27 Aug 2013– 5 Mar 2014	<a href="#">A2013-31</a>	amendments by <a href="#">A2013-31</a>
R4 6 Mar 2014	6 Mar 2014– 17 Apr 2014	<a href="#">A2014-2</a>	amendments by <a href="#">A2014-2</a>
R5 18 Apr 2014	18 Apr 2014– 27 Aug 2014	<a href="#">A2014-10</a>	amendments by <a href="#">A2014-10</a>
R6 28 Aug 2014	28 Aug 2014– 18 Nov 2014	<a href="#">A2014-10</a>	expiry of provision (s 10 (9)-(11))
R7 19 Nov 2014	19 Nov 2014– 18 Aug 2015	<a href="#">A2014-44</a>	amendments by <a href="#">A2014-44</a>
R8 19 Aug 2015	19 Aug 2015– 17 Feb 2016	<a href="#">A2015-24</a>	amendments by <a href="#">A2015-24</a>
R9 18 Feb 2016	18 Feb 2016– 19 Aug 2016	<a href="#">A2015-24</a>	amendments by <a href="#">A2015-24</a>
R10 20 Aug 2016	20 Aug 2016– 8 Mar 2017	<a href="#">A2015-24</a>	expiry of transitional provisions (pt 15)
R11 9 Mar 2017	9 Mar 2017– 15 June 2017	<a href="#">A2017-4</a>	amendments by <a href="#">A2017-4</a>
R12 16 June 2017	16 June 2017– 3 Oct 2019	<a href="#">A2017-20</a>	amendments by <a href="#">A2017-20</a>

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