

Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2017

Disallowable Instrument DI2017–309

made under the

Energy Efficiency (Cost of Living) Improvement Act 2012, s25 (Codes of practice)

1 Name of instrument

This instrument is the *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2017*.

2 Commencement

This instrument commences on 1 January 2018.

3 Code of practice

I approve the ‘Record Keeping and Reporting Code of Practice’ at the schedule.

4 Disapplication of Legislation Act, s47 (5) and 47 (6)

The *Legislation Act 2001*, sections 47 (5) and 47 (6) do not apply in relation to an instrument applied, adopted or incorporated under this instrument.

5 Referenced documents

- (1) Australian Standards are available for purchase at www.standards.org.au.
- (2) A copy of the National Construction Code is available for inspection by members of the public between 9am and 4.30pm on business days at the Access Canberra shopfront, Dame Pattie Menzies House, 16 Challis Street, Dickson, or for purchase at www.abcb.gov.au.

6 Revocation

The *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2016 (No 2)* (DI2016-303) is revoked.

Jon Sibley
Administrator
15 December 2017



Australian Capital Territory

Record Keeping and Reporting Code of Practice

December 2017

made under the

Energy Efficiency (Cost of Living) Improvement Act 2012

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Part 1 Preliminary

1 Name of code

This code is the *Record Keeping and Reporting Code of Practice*.

2 Dictionary

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

Note 1 The dictionary at the end of this code defines certain terms used in this Code and may include references (*signpost definitions*) to other terms defined elsewhere in this Code.

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

Note 3 See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

3 Offences and other consequences of contravening this code

The *Energy Efficiency (Cost of Living) Improvement Act 2012* provides offence and other enforcement mechanisms that can result from a contravention of this code.

Offences, other enforcement mechanisms and criminal and civil penalties may apply under other relevant legislation to the recording and reporting of information, such as for fair trading or trade practices, contracts, financial arrangements with consumers, or the undertaking of regulated activities and can result from a contravention of this code.

Note 1 The Criminal Code, ch 2 applies to all offences against the 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 (e.g. conduct, intention, recklessness and strict liability).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

Note 3 See the dictionary to this code for the definition of *relevant legislation*.

Part 2 Important concepts

4 Object of code

The object of this code is to prescribe requirements for record keeping and reporting obligations for retailers under the *Energy Efficiency (Cost of Living) Improvement Act 2012 (the Act)*. Obligations may also apply to authorised contractors, authorised sellers, authorised installers and consumers to record or report certain information in accordance with this code. A retailer is responsible for the compliance of records and other relevant information made or given by parties contracted or employed by the retailer.

Section 26 of the Act provides that 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. Records must be kept for at least 5 years after the end of the compliance period to which the record relates. Records must be kept in accordance with a relevant approved code of practice. The maximum penalty prescribed for failing to keep records for the required amount of time is 20 penalty units.

This code provides for record keeping and reporting requirements for the Act and for determining compliance with energy savings obligations, including for—

- (a) compliance plans;
- (b) eligible activities;
- (c) compliance period reporting;
- (d) periodic activity reporting;
- (e) independent information audits; and
- (f) information and reporting requests from the administrator.

Note Enquiries about the obligations of retailers under this code should be directed to the administrator at EPD-EEIS@act.gov.au.

This code is one of a number of instruments, including the Act and the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination*, which should be read in conjunction with each other. In the event of inconsistency between this code and the Act, the Act takes precedence to the extent of the inconsistency. All applicable instruments can be found at <http://www.legislation.act.gov.au/a/2012-17/default.asp>.

5 Application to retailers

In this code a reference to a **retailer** means a NERL retailer as defined in the *Energy Efficiency (Cost of Living) Improvement Act 2012* in circumstances where an obligation to keep or provide a record, report or other information relating to a retailer's compliance with that Act applies.

6 Application to authorised contractors

In this code a reference to an *authorised contractor* is a reference to an entity that is directly contracted by a retailer to provide or arrange the undertaking of eligible activities, other than an employee of a retailer, where an obligation to record or report information under this code applies.

Note An authorised contractor may be an individual (sole trader), company or other business but does not include an employee of the retailer.

7 Application to authorised installers

In this code a reference to an *authorised installer* is a reference to an individual, whether an employee of, or under direct contract to, a retailer or an authorised contractor, who undertakes an eligible activity on behalf of a retailer, where an obligation to record or report information under this code applies.

Note An authorised installer can only be a natural person. An individual may be both an authorised contractor and an authorised installer.

8 Application to authorised sellers

In this code a reference to an *authorised seller* is a reference to a business entity that under contract or by other direct arrangement with a retailer or an authorised contractor undertakes an eligible activity that specifically refers to the purchase of a compliant product but does not require the installation of the product for the activity to be considered complete, where an obligation to record or report information under this code applies.

Note 1 An authorised seller may be an individual (sole trader), company or other business but does not include an employee of the retailer or business.

Note 2 Activities that specifically refer to the purchase of a product are Activity 5.2 Purchase of high efficiency refrigerator or freezer, Activity 5.3 Purchase of high efficiency electric clothes dryer, and Activity 5.5 Purchase of a high efficiency television. These activities do not require an authorised installer to install the product or for the product to be installed for the activity to be considered complete.

9 Meaning of certain terms—correlation with Act

A term used in this code has the same meaning as the term has in the *Energy Efficiency (Cost of Living) Improvement Act 2012*, unless this code provides a different meaning for the term.

Note 1 A reference to a section or subsection is a reference to a section or subsection in this code unless otherwise indicated.

10 Meaning of consumer

In this code a reference to a *consumer* is a reference to—

- (a) for eligible activities that do not require the installation of a product by an authorised installer, an individual who is a resident of the ACT that purchases the compliant product; or
- (b) for eligible activities that do not require the installation of a product by an authorised installer, an individual who is an appropriate person representing a small to medium enterprise (SME) that purchases the compliant product; or
- (c) for eligible activities that require the installation of a product by an authorised installer, an individual who is—
 - (i) a party to a residential tenancy agreement for the premises; or
 - (ii) a lessee of the residential premises; or
 - (iii) an occupier of the residential premises at least 18 years of age; or
 - (iv) the agent of the lessee of a residential premises; or
- (d) for eligible activities that require the installation of a product by an authorised installer, an individual who is—
 - (i) an appropriate person representing an SME; or
 - (ii) a lessee of the non-residential premises; or
 - (iii) the agent of the lessee of a non-residential premises.

Note 1 For the definition of an appropriate person see the dictionary at the end of this code.

Note 2 A consumer is not limited to the person that holds the electricity or gas account for the premises or the lessee (owner). The person named on the individual activity record will generally be determined by which person is involved in contracting for the eligible activity, or is authorised to sign that the eligible activity has been undertaken. For example, if a tenant engages an authorised installer to decommission a refrigerator, install a standby power controller or has permission to arrange for or sign for the installation of a water heater the tenant may be recognised as the consumer. If the lessee (owner) contracts the installation of a water heater in a tenanted property, the lessee may be the consumer.

Note 3 A premises owner may come to an arrangement with a tenant for the undertaking of eligible activities. An authorised installer is not required to view or witness the authorisation provided by a lessee to a tenant.

Note 4 For the definition of an appropriate person see the Dictionary at the end of this code.

Examples of consumers

1. A tenant of a premises in which eligible activities are undertaken.
2. A lessee (owner) of a premises in which eligible activities are undertaken.
3. A lessee (owner) of a premises being constructed or renovated.
4. A resident of the ACT who purchases a high efficiency television for use in a residential premises.
5. A company secretary of an SME in premises in which eligible activities are undertaken.
6. The company secretary of an SME purchasing a high efficiency refrigerator for use in a non-residential premises.

11 Meaning of *lessee*

In this code a reference to a *lessee* is a reference to an entity who is a proprietor of the crown lease for the relevant parcel of land on which a premises is located.

Note The ACT operates a leasehold system of land tenure. A lessee is an entity who holds the lease for the land. The term lessee does not refer to a tenant, renter or occupier of a premises under a tenancy or other occupancy agreement.

12 Meaning of activity record form

In this code a reference to an *activity record form* means a form containing one or more individual activity records.

13 Code does not limit other obligations

This code does not limit the operation of other legislation relating to the record keeping or reporting requirements applying to a retailer, or modify the obligations of a retailer, under any other relevant law.

Part 3 General obligations

14 Application of Part 3

This part applies to the general requirements for record keeping and reporting under the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

Note 1 Section 26 of the Act provides that 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. Records must be kept for at least 5 years after the end of the compliance period to which the record relates. Records must be kept in accordance with a relevant approved code of practice. The maximum penalty prescribed for failing to keep records for the required amount of time is 20 penalty units.

15 Nomination of record keeping and reporting contact

- (1) Within one month of the commencement of this code, or of an entity becoming a NERL retailer if it is not a NERL retailer at the commencement of this code, a retailer must—
 - (a) nominate an employee of its organisation who is an individual as its contact for record keeping and reporting matters (the **primary reporting contact**); and
 - (b) provide to the administrator the primary reporting contact's—
 - (i) first and last name; and
 - (ii) position within the organisation; and
 - (iii) direct business email address; and
 - (iv) direct business telephone number.
 - (c) Subsection (1) does not apply if the NERL retailer has already nominated an activity compliance contact.
- (2) A primary reporting contact need not be the individual that approves compliance plans and mandatory reports, but must be a senior officer with sufficient authorisation to arrange the provision of reports and other information required by this code.
- (3) A retailer must notify the administrator in writing of a change of the primary reporting contact, or of the primary reporting contact's details in subsection (1), within 5 working days after the change happened.

16 Accessibility and privacy

- (1) Records must be kept in writing in the English language.
- (2) For an individual activity record form prepared in a language other than the English language, a copy of the record must be translated into and kept in the English language.

- (3) The accuracy of translation of required information into or from the English language is the responsibility of the retailer supplying the information.
- (4) Records must be kept in a manner and form that is readily accessible.
- (5) As far as is reasonable, retailers must maintain records that enable information provided to the administrator to be verified.
- (6) All information obtained by a retailer must be used, collected and stored in accordance with the “Information Privacy Principles” (IPPs) set out in the *Privacy Act 1988 (Cwlth)* as if the IPPs were provisions of this Code and the retailer was a collector and/or record-keeper of the Personal Information as defined in the Act.

17 Format of documents

- (1) Documents provided to the administrator must be provided in the format applying to the type of record or report in this section.
- (2) For compliance plans, the format prescribed in section 28.
- (3) For periodic activity reporting, the format prescribed in section 62.
- (4) For compliance period reports, the format prescribed in section 73.
- (5) For independent information audits, the format specified by the administrator under section 79 (1) (e).
- (6) For information and reporting requests, including for activity record forms and activity certifications, the relevant format prescribed in section 90 or determined by the administrator under section 88.
- (7) A copy of a document that cannot be edited must be clearly labelled and marked as ‘Uneditable Copy’.
- (8) Documents must be named in accordance with the naming convention of <Retailer Prefix>_<Issue Date>_<Report Type>_<Reporting Period> where—
 - (a) the Retailer Prefix is the individual retailer prefix assigned to the retailer by the administrator; and
 - (b) the Issue Date is the date the report is completed, including any approval or declaration relating to the report, in the YYYYMMDD date format; and
 - (c) the report type is not more than one of —
 - (i) compliance plan; or
 - (ii) periodic activity report; or
 - (iii) compliance period report; or

- (iv) independent audit report; or
 - (v) for information and reporting requests under part 9, the information request reference provided by the administrator in accordance with that part.
- (d) the reporting period is the period of time the report relates to.
- (9) For a periodic activity report for certain eligible activities required under section 65, the report type must include the activity identifier at the end of the report type.

Examples of document naming

- 1 A Quarter 3 2014 periodic activity report for a retailer with the retailer prefix of EPD1 issued on 5 October 2014 would be named EPD1_20141005_Periodic Activity Report_Quarter3 2014.
- 2 A monthly report on activity 3.1 for retailer EPD2 for July 2013 and issued on 2 August 2013 would be named EPD2_20130802_Periodic Activity Report 3.1_July 2013.
- 3 A compliance plan for the compliance period 2015 issued on 9 January 2015 by retailer EPD3 would be named EPD3_20150109_Compliance Plan_2015.
- 4 A report generated on 1 April 2013 by retailer EPD4 in response to an information request from the administrator with the request reference number of MO1.82013 covering certain activities in March 2013 would be named EPD4_20130401_MO1.82013_March 2013.

Note The record keeping requirements in this code do not preclude the use of electronic devices. For example, authorised installers may prepare their individual activity records and facilitate the completion and signing of the forms by the installer and consumer by electronic means (e.g. a handheld computer or such device).

18 Control of confidential information

- (1) Information provided in confidence to a retailer by the administrator must—
- (a) be kept securely in a hard copy or electronic format; and
 - (b) be only provided to individuals in the retailer's organisation that require the information to comply with an obligation under the Act or a relevant code; and
 - (c) not be provided to any other party, including an authorised contractor, an authorised seller or an authorised installer, unless approved in writing by the administrator.

Example —confidential information

Information bound by privacy requirements, information on non-compliance of an authorised contractor, product approval and performance information where that information is not publicly available.

19 Providing information to the administrator

- (1) Reports, records and other required information must be provided to the administrator by a secure electronic link unless otherwise agreed in writing by the administrator.
- (2) Not later than 2 working days before a compliance plan, periodic report or compliance period report is due, the primary reporting contact must request the electronic link by email to the administrator at EPD-EEIS@act.gov.au.

Note A retailer does not need to wait until 2 working days before the relevant report is due to request the link.

- (3) For information and reporting requests under Part 1, the administrator will confirm the method to be used for providing the information in the request to the retailer.
- (4) Information must be lodged in the relevant format prescribed in section 17.
- (5) If a requirement for the information to be approved exists, the relevant approval or declaration must be included with the approved information.
- (6) A document must not contain more than one report, or relate to more than one information or reporting request, unless otherwise specified by this code.
- (7) The time of receipt of a document will be determined in accordance with section 13A of the *Electronic Transactions Act 2001*.

20 Authorised contractor identification

- (1) A retailer must assign each authorised contractor a unique identifier that is—
 - (a) for an entity that holds a licence issued under the *Construction Occupations (Licensing) Act 2004*, the licence number for the entity given under that Act; or
 - (b) for an entity that does not hold a licence issued under the *Construction Occupations (Licensing) Act 2004* and does not require such a licence to undertake an eligible activity, an eight digit numeric identifier with a prefix of the letter C.

Note A construction occupations licence number is generally an 8 digit numeric identifier, but may range to 9 digits. The assigned contractor identification is required for the completion of activity records, as provided for under Part 5, and identification of authorised contractors for compliance purposes.

21 Authorised seller identification

- (1) A retailer must assign each authorised seller a unique identifier that is—
- (a) for an entity that is an authorised contractor, the unique identifier assigned to the entity in accordance with section 20; or
 - (b) for an entity that is not an authorised contractor and holds a licence issued under the *Construction Occupations (Licensing) Act 2004*, the licence number for the entity given under that Act; or
 - (c) for an entity that is not an authorised contractor and does not hold a licence issued under the *Construction Occupations (Licensing) Act 2004* and does not require such a licence to undertake an eligible activity an eight digit numeric identifier with a prefix of the letter S.

Note A construction occupations licence number is generally an 8 digit numeric identifier, but may range to 9 digits. The assigned seller identification is required for the completion of activity records, as provided for under Part 5, section 46 and identification of authorised sellers for compliance purposes.

22 Authorised installer identification

- (1) A retailer must assign each authorised installer a unique identifier that is—
- (a) for an individual that is an authorised contractor, the unique identifier assigned to the individual by the retailer in accordance with section 20; or
 - (b) for an individual that is not an authorised contractor and is an authorised seller, the unique identifier assigned to the individual in accordance with section 21; or
 - (c) for an individual that is not an authorised contractor or authorised seller and holds a licence issued under the *Construction Occupations (Licensing) Act 2004*, the licence number for the entity given under that Act; or
 - (d) for an individual that is not an authorised contractor or authorised seller and does not hold a licence issued under the *Construction Occupations (Licensing) Act 2004* and does not require such a licence to undertake an eligible activity, an eight digit numeric identifier with a prefix of the letter I.

23 Information to be kept on authorised contractors and installers

- (1) A retailer must keep a register of all authorised contractors, authorised sellers and all authorised installers.
- (2) The register for subsection (1) must include for each entity—
- (a) the unique identifier assigned to the entity by the retailer in accordance with sections 20, 21 and 22; and

- (b) the entity's legal name; and
 - (c) if the entity is not an employee of a retailer or authorised contractor, the entity's Australian Business Number or Australian Company Number; and
 - (d) the name, date of completion and method of completion of all applicable mandatory induction or training courses required for the eligible activities the entity provides.
- (3) Details of training required in subsection (2) must be included in the register within 5 working days of completion of the training.
- (4) A retailer must keep records supporting the completion of any mandatory induction or training courses recorded in the register.
- (5) A retailer must keep records of non-mandatory training provided to authorised contractors, authorised sellers and authorised installers, and may record this information in the register.
- (6) A retailer may record other relevant information in the register.

Note The administrator may make an information or reporting request under Part 10 to see the register or extracts from the register for compliance purposes.

Part 4 Compliance plans

24 Application of Part 4

This part applies to the giving and lodging of a compliance plan under section 17 of the *Energy Efficiency (Cost of Living) Improvement Act 2012*. A compliance plan is not considered given or lodged if it does not comply with this part.

Note 1 Section 17(3) of the Act provides that a NERL retailer commits a strict liability offence if the retailer does not lodge a compliance plan before undertaking eligible activities in the compliance period. The maximum penalty prescribed for that offence is 10 penalty units.

Note 2 A tier 1 NERL retailer must undertake eligible activities or acquire approved abatement factors to achieve its energy savings and priority household obligations. A tier 2 NERL retailer must undertake eligible activities, acquire approved abatement factors or pay an energy savings contribution for all or part of its energy savings obligation. A NERL retailer is not required to lodge a compliance plan if it does not undertake eligible activities.

25 Content of compliance plan—Act section 17(2)

- (1) A compliance plan for a compliance period must include a minimum of—
- (a) an estimation of the retailer's electricity sales in the ACT in the compliance period in MWh; and
 - (b) a calculation, based on the reported estimated electricity sales in the ACT for the compliance period and any expected carried forward shortfall or surplus from the previous compliance period, of—
 - (i) the retailer's expected energy savings obligation for the compliance period; and
 - (ii) for a tier 1 retailer, the retailer's expected priority household target for the compliance period; and
 - (c) a description of how the retailer plans to achieve the energy savings obligation reported in accordance with subsection (b)(i) and, if required, the priority household obligation reported in accordance with subsection (b)(ii), including but not limited to—
 - (i) the eligible activities the retailer is planning to undertake; and
 - (ii) for each eligible activity that requires a product installed by an authorised installer —
 - (A) the expected number of installations; and
 - (B) the estimated number of premises in which the activity will be undertaken; and

- (iii) for each eligible activity that does not require the installation of a product by an authorised installer, the expected number of products that will be sold; and
- (iv) an indication of whether the retailer is intending to apply for approval of new activities, including a brief description of the new activities; and
- (v) an indication of whether the retailer is intending to apply for the approval of new products for inclusion on a product register required for a particular activity, including a brief description of the new products; and
- (vi) an estimation of the acquired abatement factors that the retailer may seek approval for during the compliance period; and
- (d) a description of the retailer's internal allocation of responsibilities in relation to the retailer's obligations under the Act; and

Example —internal allocation of responsibility

A retailer may allocate responsibility for reporting, general compliance, communications, management of contractors and installers and other relevant matters to different officers, or teams within the organisation.

Note A retailer may update contact information for required contact officers, such as the primary reporting contact, in the compliance plan.

- (e) a description of the resources, systems and processes that the obliged retailer intends to use to ensure that the retailer's obligations and responsibilities under the Act for the compliance period are met; and

Note This may include quality assurance systems, telephone and field audits, data verification and validation processes, payment terms that do not create an incentive for installers to engage in dishonest practices, contractual consequences for non-compliant work, management of requests for duplicate activities or products.

- (f) a description of how the retailer plans to meet the quality, health, safety, environment and consumer protection requirements relating to eligible activities under the Act, the eligible activity determination, codes of practice made by the administrator and any other relevant legislation including, but not limited to—
 - (i) the training provided to the retailer's employees, authorised contractors, authorised sellers and authorised installers in relation to the performance of eligible activities, and guidelines for decommissioning practices; and
 - (ii) the systems and processes in place to ensure that people undertaking eligible activities are competent to undertake the work, including meeting any mandatory licensing and training requirements outlined in the relevant codes of practice for the activities; and

- (iii) the systems and processes in place to ensure authorised installers undertaking eligible activities in residential customer's premises are fit and proper to undertake the activities; and
- (g) information about the retailer's and authorised contractor's compliance of undertaking activities within the last five years in other energy efficiency schemes, such as the Energy Savings Scheme, Retailer Energy Efficiency Scheme and Victorian Energy Efficiency Target. This information could include but is not limited to audit reports, accreditation notices, conditions of accreditation or any other information requested by the Administrator.
- (h) information about the retailer's complaint and dispute resolution procedures in relation to the Act, demonstrating that its procedures are—
 - (i) established in accordance with Australian Standard ISO 10002-2006; and
 - (ii) readily accessible to any customer that has had an eligible activity undertaken in their premises.
- (2) Information in a compliance plan must relate to the relevant compliance period and expected energy savings obligation for that period.
- (3) A retailer may include in a compliance plan any other information relating to its compliance that it considers relevant.

26 Preparation of compliance plan

- (1) A retailer must use all reasonable endeavours to accurately prepare a compliance plan and the information, estimates and calculations contained within it.
- (2) Descriptions of systems and processes must, as far as is reasonable, reflect the actual systems and processes the retailer is, or is intending to use.

Note The information in the compliance plan is not intended to bind a retailer to offering particular eligible activities or prevent a retailer from revising processes and systems for management of its obligations under the Act. However, it is expected that the retailer will provide accurate information to the administrator to allow an assessment of likely compliance with relevant obligations.

27 Retailer approval of compliance plan

- (1) A compliance plan must be approved and signed by an individual employed by the retailer to which the compliance plan applies with an appropriate delegation for statutory reporting purposes relevant to the Act.
- (2) An approval of a compliance plan must include a statement by the person approving the plan acknowledging the obligations and

responsibilities of that retailer under the Act in relation to the giving and lodging of compliance plans.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see the *Legislation Act 2001*, s104).

28 Format of compliance plan

- (1) A compliance plan must be in writing and provided to the administrator in both—
 - (a) a portable document format (.pdf); and
 - (b) a Microsoft Word document in .doc or .docx format that allows information from the document to be copied, or
 - (c) for calculations, a Microsoft Excel document compatible with Microsoft Office Suite 2007 or higher that allows information from the document to be copied.

29 Lodgement of compliance plan

- (1) A compliance plan must be lodged in accordance with section 19 of this code.

30 Incomplete plans and further information

- (1) This section applies to compliance plans required before eligible activities are undertaken in the compliance period.
- (2) Within 10 working days of a compliance plan being received, the administrator must determine if the compliance plan is complete.

Example —incomplete compliance plans

Information on energy savings obligations not included, insufficient information on compliance systems, expected number of installations for each activity not provided.

- (3) If a compliance plan is not complete, the administrator must, as soon as is practicable—
 - (a) inform the retailer that the compliance plan is not lodged; and
 - (b) provide a description of the required information to complete the compliance plan and a reference to the relevant provisions of this code; and
 - (c) inform the retailer that a new and complete compliance plan must be lodged before any eligible activities are undertaken in the compliance period; and
 - (d) inform the retailer of penalties that may apply for failing to comply with section 17 of the Act.

- (4) If a compliance plan is complete, the administrator must confirm in writing to the retailer within 10 working days that the plan is lodged.
- (5) To remove any doubt, a compliance plan is not considered lodged or given until all required information is included in the compliance plan.
- (6) A determination of whether a compliance plan is complete under this section is not an assessment of the accuracy of the information provided in the plan or the likely compliance of the retailer with its energy savings obligation.

Note 1 A retailer is obliged to provide complete and adequate information for the administrator to make an assessment under section 31 of this code. If a retailer is informed that a new compliance plan is required it is the retailer's responsibility to provide the new plan.

Note 2 A retailer commits an offence if it undertakes eligible activities before it lodges a compliance plan for the compliance period. If a retailer undertakes eligible activities prior to receiving confirmation that a plan is lodged, it does so at its own risk.

31 Use of compliance plan

- (1) On receipt of a complete compliance plan, the administrator may, based on the information available at the time, assess—
 - (a) the accuracy of calculations for energy savings obligations and priority household obligations, including allowances for any expected carried forward shortfall or surplus from a previous compliance period; and

Note A compliance plan for the period may be lodged before the energy savings result or any carried forward shortfall or surplus is finalised. However, it is expected that retailers will monitor their progress against their respective targets throughout the compliance period and be able to make a reasonable assessment of any likely carried forward shortfall or surplus for the previous compliance period.

- (b) the extent to which the type and volume of eligible activities reported in the compliance plan are likely to contribute to the achievement of the retailer's estimated obligations for the relevant compliance period; and
 - (c) if the systems and processes as described in the compliance plan satisfy, or are likely to satisfy, the retailer's obligations under the Act.

- (2) If an assessment that calculations are not accurate is made under subsection (1) the administrator—

- (a) must advise the retailer of the miscalculation in writing within 5 working days of the assessments being made; and

- (b) may request a new compliance plan for the period to be lodged within 10 working days of the request.
- (3) In requesting a new compliance plan under subsection (2) (a) the administrator must have regards to—
 - (a) the extent of the miscalculation; and
 - (b) the degree to which the miscalculation may affect the retailer's planning for, or compliance with, its energy savings obligations.
- (4) The administrator may also provide information to the retailer on the assessments made under subsections (1) (b) and (1) (c).
- (5) An assessment under this section does not constitute a determination of an energy savings obligation, priority household obligation, carried forward shortfall or surplus or the compliance of an eligible activity undertaken by the retailer.

Note The administrator does not approve or endorse compliance plans.

32 Subsequent compliance plans

- (1) A retailer may submit a revised compliance plan (*subsequent compliance plan*) that provides for the addition of new eligible activities or a change in systems and processes for a compliance period at any time during that period.
- (2) A retailer need not provide subsequent compliance plans unless otherwise required by the Act or this code.
- (3) The administrator may provide an assessment of the compliance plan in a time agreed with the retailer.

Note A retailer is not obliged to prepare and give a subsequent compliance plan if changes to its obligations are made, or if undertaking activities not included in the original plan, if not required to do so by legislation. It is, however, recommended that retailers seek information from the administrator, particularly in relation to undertaking new activities. This section does not limit a retailer from providing similar information to that contained in all or part of a compliance plan separately to seek such advice.

Part 5 Activity records

33 Application of Part 5

The activity records provisions apply to records of eligible activities undertaken and used, or intended to be used, to meet a retailer's energy savings obligation under the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

34 Activity records

- (1) A retailer must collect and record the information specified in this part in relation to each eligible activity undertaken for the purposes of meeting its energy savings obligation (an **activity record**).

Note An activity record corresponds to an individual eligible activity.

- (2) A complete activity record must include—

- (a) all standard information prescribed in sections 41 of this part; and
- (b) all relevant activity information for the eligible activity prescribed in section 54.

- (3) Relevant information for the activity record must be completed at the time the related prescribed activity requirement for the eligible activity is carried out, unless otherwise specified in this code.

Note Certain requirements such as disposal of waste products may occur on a date subsequent to the date of installation of a product. All relevant information about the installation of the product should be completed immediately after the installation has been carried out. Information about the disposal of waste products may be recorded at a later time when it is complete.

- (4) If a format for recording certain information is prescribed that format must be used.
- (5) If more than one format for recording certain information is permitted, or a format is not prescribed, a retailer may choose the format for the information insofar as—
 - (a) the meaning of the information can be clearly inferred in the context of the record; and
 - (b) it meets all requirements for legibility.

Examples of formats

- 1 The type of priority household may be denoted by stating the full category, such as TPI gold repatriation card, or the abbreviation provided in section 44 of 'TG'. The retailer chooses to record information in the abbreviated form.
- 2 Tables, checkboxes, short description of product

Activity record forms

- (1) An activity record must be made on a designated activity record form.
- (2) An activity record form must contain fields or sufficient space for recording all required information in relation to the eligible activity.
- (3) Forms must be clearly legible and developed in consideration of *Vision Australia's Public Policy on Access to Published Information*, particularly with respect to font choice, text layout and colour choice.

Note Vision Australia's Public Policy on Access to Published Information can be found at <http://www.visionaustralia.org/about-us/public-policy>.

- (4) The activity record form is part of the activity certification.

Note Further requirements for activity certification are in Part 6 to this code.

- (5) A retailer may include more than one activity record on a single activity record form (a **multiple activity record form**).
- (6) If a retailer records more than one activity record on a single form—
 - (a) the specific activity information for each eligible activity, other than the installer and consumer declarations, must be co-located on the form; and
 - (b) if more than one installer has carried out the eligible activities, or parts of the activities, each installer must sign an installer declaration; and
 - (c) copies of required documentation that form the activity certification for each eligible activity undertaken and recorded on the form must be attached to the form; and
 - (d) the consumer declaration must relate to all the eligible activities recorded on the form.

Note Different information requirements apply to the different eligible activities. Retailers may customise their own activity record forms to incorporate the different information requirements into the one form. For example, a retailer that intends to install lamps, low flow shower fixture outlets, water heaters, building sealing and standby power controllers may create its own activity record form to capture the different information requirements for all activities.

- (7) For a multiple activity record form, individual activity records for activities included on the form need not be completed for activities that are not undertaken in the premises.
- (8) All activities recorded on a multiple activity record form must be undertaken in respect to the same premises, or for activities not requiring an authorised installer, the same consumer.

- (9) All relevant information must be recorded on the activity record form before the form is signed by the consumer and the authorised installer or authorised seller.

36 Nomination of a primary installer

- (1) This section applies only if an authorised installer is required to carry out an eligible activity, or certain prescribed activity requirements, for an eligible activity.
- (2) If more than one authorised installer is involved in carrying out an eligible activity or activities, one authorised installer must be identified as the primary installer on the activity record form.
- (3) The primary installer must organise the completion of all relevant sections of the activity record form and the provision of any required information to the consumer.
- (4) As far as is reasonable, the primary installer must review the activity record form for accuracy and completeness before it is signed by, and a copy provided to, the consumer, but is not required to—
- (a) supervise the work of other authorised installers prior to the signing of the activity record form; or
 - (b) supervise or record subsequent completion of prescribed activity requirements by other authorised installers that must be carried out before an eligible activity is taken to be complete.
- (5) A primary installer may be an individual that is also an authorised contractor.

37 Activity record may affect the determination of obligation

- (1) The administrator may consider the accuracy and completeness of the activity record for the eligible activity in determining whether—
- (a) a retailer has met its obligations under the Act; and
 - (b) an eligible activity has been completed in accordance with all relevant requirements.
- (2) Information on an activity record form that relates to more than one eligible activity may affect all activities to which it relates.

Examples of information that may relate to one or more activities

Declarations, authorised installer numbers, activities that must be undertaken in conjunction with other activities, installed products such as building sealing products.

38 Copy to be provided to consumer

- (1) An authorised installer or authorised seller, or primary installer if one must be nominated under section 36 of this code, must give a copy of the activity record form to the consumer immediately after the form has been signed by both parties.
- (2) At the time of giving the copy to the consumer, the authorised installer, or authorised seller, or primary installer if one must be nominated under section 36, must ensure that—
 - (a) all relevant information is complete, other than the date of completion for activities that require subsequent activity requirements to be undertaken, such as disposal of removed products at a waste facility or a statutory inspection; and
 - (b) the activity certification documents, other than evidence of destruction or disposal of products if this is to be undertaken after the installer has left the premises, has been provided to the consumer.

Note The record keeping requirements in this code do not preclude the use of electronic devices to prepare an activity record form.

39 Customisation of forms

- (1) A retailer may customise an activity record form to include one or more of—
 - (a) the retailer's logo; or
 - (b) the retailer's branding; or
 - (c) contact details for the organisation in addition to those required under section 41 (1) (v) of this code; or
 - (d) explanatory text, if that text is not inconsistent with the Act or this code; or
 - (e) additional product information or specifications, if the information is not false or misleading; or
 - (f) any other information approved in writing by the administrator.
- (2) Customised information must not obscure the required information for the activity.

40 Information not to be included in the activity record form

- (1) ACT Government logos or other branding, or information that states or implies that installers are contracted to or otherwise employed by the ACT Government, or that states or implies that an eligible activity is being undertaken on behalf of the ACT Government must not be included on an activity record form.

- (2) Customisation of the activity record form, other than that permitted under section 39, must not be included unless approved in writing by the administrator.
- (3) The administrator must not approve customisation or information that contains advertising material for third parties, particular product or services where that information is not related to the undertaking of eligible activities or could be perceived as a government endorsement or promotion of a particular third party, product or service.
- (4) An activity record must not be used to record work or activities other than that provided in relation to the undertaking or determining suitable eligible activities for the premises.

Note It is recommended that retailers provide a draft of forms they have created to the administrator before they are published and used to avoid the incorrect or incomplete recording of information in relation to an activity or customisation that is not permitted under this section.

41 Standard information

- (1) Each activity record form must include—
 - (a) a unique form identifier in accordance with section 42; and
 - (b) the standard statement prescribed in section 43 in a prominent position on the form; and
 - (c) the relevant building classification of the premises the eligible activity was undertaken in, determined by the classification under Part A3 of the National Construction Code, or, for premises that are not classified under that document, as described in the definition of a **residential premises** or a **business premises**; and

Note 1 For the definition of a residential premises see the Dictionary at the end of this code. Premises not classified in the National Construction Code include transportable homes not permanently fixed to the land.

Note 2 Classifications of buildings in the National Construction Code can be found at http://www.actpla.act.gov.au/topics/design_build/da_assessment/exempt_work/process/definitions.

Note 3 For the definition of a business premises see the Dictionary at the end of this code.

- (d) the approximate year of construction of the premises in YYYY format, if it can reasonably be identified; and

Note A consumer may be able to confirm the date of construction or the installer may be able to identify the age of the premises if the ages of the surrounding premises have been identified during undertaking eligible activities in those premises.

- (e) for an eligible activity that requires an authorised installer, the details of the premises in which the activity has been undertaken, including—

- (i) the business premises name if applicable, the unit number if applicable, the street number, street name, suburb, and postcode in the format required by the administrator, if any; and
- (ii) occupancy status, being one of— public housing, community housing, private rental, owner occupied, commercial premises or other; and

Note Block, section, and division information can be found at <http://app.actmapi.act.gov.au/actmapi/index.html?viewer=bwi>

- (f) for an eligible activity that does not require an authorised installer, the details of the premises in which the compliant product for the activity is to be installed, if different to the consumer’s residential address, including—
 - (i) the business premises name if applicable, the unit number if applicable, the street number, street name, suburb, and postcode in the format required by the administrator, if any; and
 - (ii) occupancy status, being one of— public housing, community housing, private rental, owner occupied, commercial premises or other; and
- (g) for an eligible activity that requires an authorised installer, the details of the consumer that is the signatory to the form, including—
 - (i) title; and
 - (ii) first name; and
 - (iii) last name; and
 - (iv) a contact number for the consumer; and
 - (v) for a business premises a brief explanation of why the signatory is an appropriate person to sign the form; and
- (h) for an eligible activity that does not require an authorised installer, the details of the consumer that is the signatory to the form, including—
 - (i) title; and
 - (ii) first name; and
 - (iii) last name; and
 - (iv) residential or business premises address; and
 - (v) a contact number for the consumer; and
 - (vi) for a business premises a brief explanation of why the signatory is an appropriate person to sign the form; and

Note A person that purchases a product as part of an eligible activity must be a resident of the ACT.

- (i) the priority household information prescribed in section 44; and
- (j) the authorised contractor information, prescribed in section 45, if applicable; and

- (k) for activities not requiring an authorised installer, the authorised seller information prescribed in section 46; or
 - (l) for activities requiring an authorised installer, the authorised installer information prescribed in section 47; and
 - (m) if a primary installer must be nominated under section 36, identification of the primary installer; and
 - (n) information on the value of eligible activities undertaken prescribed in section 48; and
 - (o) the total abatement being claimed for all eligible activities on the form in tonnes of carbon dioxide-equivalent (tCO₂-e) calculated in accordance with the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination*, as in force on the date of completion of all eligible activities; and
 - (p) the relevant consumer declaration prescribed in section 49 or 50; and
 - (q) for activities requiring an authorised installer, an installer declaration for each authorised installer that carried out an eligible activity, or part of an activity, made in accordance with section 51; and
 - (r) if a primary installer must be nominated under section 36, the primary installer declaration, made in accordance with section 52; and
 - (s) for activities not requiring an authorised installer, the seller's declaration in section 53; and
 - (t) the activity record form numbers for other eligible activities undertaken at the premises at the same time if not recorded on the same form; and
 - (u) the manner for the consumer to access the retailer's information service, and complaint or dispute resolution processes in relation to the eligible activity and relevant contact details for those processes, including a telephone number; and
 - (v) the implementation date.
- (2) The building classification need not be recorded if the activity record relates only to activities that permit the purchase of a product and do not require its installation by an authorised installer.

Note There are a number of fields for completion common to all activity record forms, as well as specific information that must be provided to all consumers participating in eligible activities unless otherwise specified.

42 Unique identifier

- (1) The unique form identifier must be in the format 'abcde-123456789', where—

- (a) ‘abcde’ is the individual retailer prefix assigned to the retailer by the administrator; and
- (b) ‘123456789’ is a unique nine digit form number assigned by the retailer.

43 **Standard statement**

- (1) The following statement must be included in a single block in the activity record form—

“The Energy Efficiency (Cost of Living) Improvement Act 2012 (the Act) requires electricity retailers in the Territory to meet an energy savings obligation. This is promoted as the ACT Energy Efficiency Improvement Scheme (EEIS). Under the Scheme, retailers may undertake eligible activities approved by the Minister for Climate Change and Sustainability. All eligible activities must be carried out in accordance with prescribed standards and codes of practice.

Retailers may contract businesses and installers to undertake activities on their behalf. Retailers may negotiate with consumers for activities to be provided for payment. Any payment is to be negotiated between the consumer and the retailer or its agent. The negotiations and contract are subject to standard fair trading requirements.

[insert retailer’s name] intends that the undertaking of the activity or activities described on this form will be considered in the determination of whether [insert retailer’s name] has achieved its energy savings obligation under the Act. The information provided on this form may affect the determination of [insert retailer’s name] energy savings obligation.

Retailers or their representatives must give you, the consumer, adequate information about the product(s), product warranty period(s), safety instructions and the operation of the product(s) you receive. You should also receive a copy of all relevant electrical, plumbing, gasfitting or other certificates associated with work undertaken, as well as a copy of this form.

Undertaking eligible activities in rented premises may affect the rights and obligations of the lessor and the tenant. Lessors and tenants must comply with their tenancy agreements and other legal obligations.

Further information about the Scheme and eligible activities can be found at http://www.environment.act.gov.au/energy/smarter-use-of-energy/energy_efficiency_improvement_scheme_eeis”

- (2) Other than the substitution of the retailer’s name in the relevant sections of the standard statement, the content of the standard statement must not be altered or amended by a retailer.

44 **Priority household information**

- (1) For activities undertaken in a residential premises the following information must be recorded—
- (a) an indicator of whether a person who lives at the premises is eligible for priority household status; and
 - (b) if a person who lives at the premises is eligible for priority household status—
 - (i) the class of priority being one of—
 - (A) a government energy concession, which may be recorded as ‘EC’; or
 - (B) a Commonwealth health care card, which may be recorded as ‘HC’; or
 - (C) a Commonwealth pensioner concession card, which may be recorded as ‘CP’; or
 - (D) a war widows repatriation health care card, which may be recorded as ‘WW’; or
 - (E) a Department of Veterans Affairs pensioner concession card, which may be recorded as ‘VA’; or
 - (F) a Department of Veterans Affairs TPI gold repatriation health care card, which may be recorded as ‘TG’; or
 - (G) a Department of Veterans Affairs gold repatriation health care card, which may be recorded as ‘GR’; or
 - (H) a Commonwealth Seniors Health Care Card, which may be recorded as ‘SH’; or
 - (I) a Commonwealth Low Income Health Care Card, which may be recorded as ‘LI’; or
 - (J) a Commonwealth Disability Support Pension Card, which may be recorded as ‘DS’; or
 - (K) households accessing an approved financial hardship scheme of an energy retailer which may be recorded as ‘FH’; or
 - (L) households experiencing financial hardship and referred by a specified community organisation, which may be recorded as ‘RH’
 - (M) tenanted public housing properties, which may be recorded as ‘HA’;
 - (N) tenanted not for profit community housing facilities, which may be recorded as ‘CH’
 - (O) tenanted not for profit aged care facilities, which may be recorded as ‘AF’;
 - (P) tenanted not for profit disability housing facilities, which may be recorded as ‘DH’; and
 - (ii) if relevant, the number of the card relating to the class specified under (i); and
 - (iii) if the resident is not the consumer named on the form, the resident’s first and last name; and
 - (iv) the signature of the primary installer; and

- (v) an indication in writing that the installer has sighted the resident's card mentioned in subsection (1) (b) (ii).

Note The person that is eligible for priority household status need not be the consumer that is the signatory to the form. The consumer does not need to view or witness the information on the class of priority for another person who lives in the premises.

45 Authorised contractor information

- (1) If an eligible activity is not undertaken by an employee of the retailer, the following information must be included on an activity record form—
 - (a) the authorised contractor's unique identifier assigned to the entity by the retailer under section 20; and
 - (b) the authorised contractor's legal name; and
 - (c) the authorised contractor's registered trading name, if different to the legal name; and
 - (d) the authorised contractor's Australian Business Number or Australian Company Number; and
 - (e) a direct business telephone number for the authorised contractor.

46 Authorised seller information

- (1) For an eligible activity not requiring an installation by an authorised installer, the following minimum information must be collected on an activity record form—
 - (a) the authorised seller's unique identifier assigned to the entity by the retailer under section 21; and
 - (b) the authorised seller's legal name; and
 - (c) the authorised sellers' trading name, if different to the legal name; and
 - (d) the authorised seller's Australian Business Number or Australian Company Number; and
 - (e) the address of the business premises where the products were purchased; and
 - (f) a direct business telephone number for the authorised seller.

47 Authorised installer information

- (1) For each authorised installer, the following information must be included on an activity record form—
 - (a) the authorised installer's unique identifier assigned to the entity by the retailer under section 22; and
 - (b) the authorised installer's first and last name; and

- (c) an indication of whether the authorised installer holds one or more of the following occupational licensing issued under the ACT *Construction Occupations (Licensing) Act 2004*—
 - (i) a current and valid gasfitter licence; or
 - (ii) a current and valid plumber licence; or
 - (iii) a current and valid builder licence; or
 - (iv) a current and valid electrician licence.

Note A licence does not include a permit or restricted permit.

48 Value of eligible activities

- (1) For each eligible activity the following information must be recorded—
 - (a) whether the eligible activity was provided at full, partial or no cost to the consumer; and
 - (b) if the eligible activity was provided at full or partial cost to the consumer, the type of value or arrangement for undertaking the eligible activity being one or more of—
 - (i) price reduction or rebate on product; or
 - (ii) price reduction or rebate on installation; or
 - (iii) free product; or
 - (iv) free installation; or
 - (v) delayed payment; or
 - (vi) instalment plan; or
 - (vii) no interest loan; or
 - (viii) interest-bearing loan; or
 - (ix) if the arrangement is not described in subsections (i) to (viii), a short description of the arrangement; and
 - (c) the total monetary value estimated by the retailer of all the eligible activities to which the activity record form relates in Australian Dollars (*AUD*); and
 - (d) the value of the retailer's contribution, if any, towards the cost of the activities in AUD; and
 - (e) the consumer's contribution, if any, to the costs of the activities in AUD.

49 Consumer declaration – activities requiring authorised installers

- (1) For activities that require an authorised installer, the consumer must declare that—

- (a) (i) I am the tenant / resident / lessee (owner) of the residential premises at the installation address identified on this form; or
 - ii) I am an appropriate person representing the tenant / lessee (owner) of the business premises at the installation address identified on this form; and
 - (b) The eligible activity(ies) recorded on this form have been carried out at the installation address on this form; and
 - (c) I have received adequate information about the product(s), product warranty periods, safety instructions and the operation of the product(s) from the installer; and
 - (d) The information I have provided and the value of my contribution to the costs of the activity is correct and complete as recorded on this form; and
 - (e) I understand that this form is a record under the *Energy Efficiency (Cost of Living) Act 2012* and that information may be disclosed to the administrator, a contracted third party or another regulatory authority for the purpose of related verification, assessment, audit and scheme monitoring and compliance; and
 - (f) I understand that authorised people may, with appropriate consent, inspect, examine, test, take samples, or take other recordings in respect to the eligible activities; and
 - (g) I understand that knowingly making a false or misleading declaration is a serious offence under the *Criminal Code 2002*.
- (2) For eligible activities 1.3(b), 1.6 and 5.4, the declaration must contain additional statements that— ‘I have been provided with printed instructions on the operation of [*insert product type(s)*].’
 - (3) For eligible activity 2.2, the declaration must contain an additional statement that no certificate of occupancy for the respective dwelling has been issued and that the premises has never been occupied.
 - (4) For eligible activity 5.4, the declaration must contain an additional statement that—‘I have been advised about the inbuilt surge protection of the standby power controller(s) provided, and whether this will reduce the level of surge protection relative to any replaced power boards, and what may happen because of reduced surge protection.’
 - (5) A declaration must be dated and signed by the consumer making the declaration.
 - (6) The statements in the declaration that must form part of the activity record must not be altered in any way without the written approval of the administrator.

Consumer declaration – activities not requiring an authorised installer

- (1) For activities that do not require an authorised installer, the consumer must declare that—
 - (a) (i) I am purchasing this product for use in a residential premises located in the Australian Capital Territory; or
 - (ii) I am an appropriate person representing the tenant / lessee (owner) of a business premises located in the Australian Capital Territory identified on this form; and
 - (b) The information I have provided and the value of my contribution to the costs of the activity is correct and complete as recorded on this form; and
 - (c) I understand that this form is a record under the *Energy Efficiency (Cost of Living) Act 2012* and that information may be disclosed to the administrator, a contracted third party or another regulatory authority for the purpose of related verification, assessment, audit and scheme monitoring and compliance; and
 - (d) I understand that authorised people may, with appropriate consent, inspect, examine, test, take samples, or take other recordings in respect to the eligible activities; and
 - (e) I understand that knowingly making a false or misleading declaration is a serious offence under the *Criminal Code 2002*.
- (2) A declaration must be dated and signed by the consumer making the declaration.
- (3) The statements in the declaration that must form part of the activity record must not be altered in any way without the approval of the administrator.

Installer declaration

- (1) For activities that require an authorised installer, the installer must declare that—
 - (a) I have carried out all eligible activities, or prescribed activity requirements for activities, against which my authorised installer ID is recorded, at the installation address on this form; and
 - (b) The eligible activities, or prescribed activity requirements for activities, that I have carried out, and the provision of any advice or information to the consumer or another occupier, has been undertaken in accordance with all relevant codes and legislation applying to the activity, including the giving or arranging for the provision of any mandatory information and statutory certifications; and
 - (c) All products or waste materials for which I am responsible under a requirement of a licence or registration for the decommissioning or disposal of, have been, or will be, decommissioned or disposed in

accordance with any requirements in a code of practice or relevant law; and

- (d) I understand that this form is a record under the *Energy Efficiency (Cost of Living) Act 2012* and that information may be disclosed to the administrator for the purpose of related verification, assessment, audit, scheme monitoring and compliance; and
 - (e) I understand that an authorised person may, with appropriate consent from the occupier, inspect, examine, test, take samples, or take other recordings in respect to the eligible activities; and
 - (f) I understand that other regulation and related inspection powers and penalties may apply to the eligible activities undertaken; and
 - (g) The information I have provided is correct and complete as recorded on this form, and I understand that knowingly making a false or misleading declaration is a serious offence; and
- (2) For eligible activity 5.4, the declaration must contain an additional statement that—‘I have advised the consumer about the inbuilt surge protection of the standby power controller(s) provided, and whether this will reduce the level of surge protection relative to any replaced power boards, and the implications of any reduced surge protection.’
- (3) A declaration must be dated and signed by the installer making the declaration.
- (4) The statements in the declaration that must form part of the activity record must not be altered in any way without the written approval of the administrator.
- (5) For a multiple activity record form, the declaration may be included once if there is sufficient space for each authorised installer identified on the form to date and sign the form and it is clear which date and signature relate to each authorised installer.

52 Primary installer declaration

- (1) If a primary installer must be nominated under section 36, the primary installer, in addition to completing an installer declaration under section 51, must declare that—
- (a) I have confirmed with the consumer that she/he has been provided adequate information about the product(s), product warranty period(s), safety instructions and the operation of the product(s) from the installer, including any specialist advice provided by other authorised installers or licence holders; and
 - (b) I have confirmed with the consumer that she/he has received a copy, or arrangements have been made for provision, of any required electrical, plumbing, gasfitting or building certifications and other statutory documents associated with work undertaken at the premises; and
 - (c) All relevant sections of the form that can be completed at this time have been completed.

- (2) A declaration must be dated and signed by the primary installer making the declaration.
- (3) The statements in the declaration that must form part of the activity record must not be altered in any way without the written approval of the administrator.

53 Seller declaration

- (1) If an authorised seller must make a declaration, the authorised seller must declare that—
 - (a) (i) I have confirmed the customer is a resident of the Australian Capital Territory and that the product will be installed and used in the residential premises recorded on this form; or
 - (ii) I have confirmed the customer is a resident of the Australian Capital Territory and that the product will be installed and used in the business premises recorded on this form; and
 - (b) The consumer has been provided adequate information about the product(s), product warranty period(s), safety instructions and the operation of the product(s); and
 - (c) I understand that this form is a record under the *Energy Efficiency (Cost of Living) Act 2012* and that information may be disclosed to the administrator for the purpose of related verification, assessment, audit and scheme monitoring and compliance; and
 - (d) I understand that an authorised person under the *Energy Efficiency (Cost of Living) Act 2012* may inspect, examine, test, take samples, or take other recordings in respect to the eligible activities; and
 - (e) The information I have provided is correct and complete as recorded on this form; and
 - (f) I understand that knowingly making a false or misleading declaration is a serious offence.
- (2) A declaration must be dated and signed by the authorised seller making the declaration.
- (3) The statements in the declaration that must form part of the activity record must not be altered in any way without the written approval of the administrator.

54 Specific activity information

- (1) Recording and reporting information for the specific eligible activity information for the eligible activity as required in the relevant “Recording and Reporting” sections of the Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice.

- (2) For a multiple activity record form, information relevant to each activity must be located so that it is clearly identified as applying to the activity.
- (3) The activity ID for the activity is the number given in this section and relates to the schedule and part number in the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination* as in force from time to time.
- (4) Dates of completion for activities that require particular prescribed activity requirements to be carried out after the installation of a product, but before an activity is considered complete, must be recorded after the provision of the activity record form to the consumer if those prescribed activity requirements are carried out after the installation of a product and not at the relevant premises or the associated block.

Part 6 Activity certification

55 Application of Part 6

The activity certification provisions apply to records for eligible activities under section 14 of the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

Note Section 26 of the Act provides that 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. Records must be kept for at least 5 years after the end of the compliance period to which the record relates, and in accordance with a relevant approved code of practice. The maximum penalty prescribed for failing to keep records for the required amount of time is 20 penalty units.

56 Activity certification

(1) An activity certification for an eligible activity must include—

- (a) the activity record form for the activity; and
- (b) a copy of each statutory certification required in relation to the activity under another law of the Territory; and
- (c) a copy of each statutory certification required in relation to the activity under a law of another jurisdiction; and
- (d) if a prescribed method in a code of practice or other relevant law applies to the disposal or destruction of an existing product at a waste facility or other prescribed place, evidence of the disposal or destruction at that place; and
- (e) if an eligible activity requires that a removed product is decommissioned, evidence that the product has been decommissioned and the method of decommissioning; and
- (f) proof of purchase for each installed product.

Note 1 Proof of purchase for installed products may include a sales, purchase or service record, invoice, receipt, supply contract or the like. A proof of purchase may apply to more than one activity. For example, a person purchases a large consignment of general service lighting lamps, which are recorded on a single invoice. If a person has made a bulk purchase, the products must be able to be reconciled to the relevant eligible activities they were used in.

Note 2 Evidence of decommissioning may include reconciliations, recycling receipts, count forms or the like.

(2) An activity certification may include any other information that allows the administrator to verify the activity was completed in accordance with all relevant requirements.

- (3) Information on statutory certifications and other evidence of compliance must correspond to the information recorded on the activity record form.

Part 7 Periodic activity reporting

57 Application of Part 7

This part applies to periodic reporting of eligible activities undertaken by a retailer during a compliance period, to determine a retailer's compliance with eligible activity requirements under section 14 of the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

In this part:

quarter, in relation to a compliance period means, the time periods including the dates below—

- Quarter 1: 1 January – 31 March
- Quarter 2: 1 April – 30 June
- Quarter 3: 1 July – 30 September
- Quarter 4: 1 October – 31 December

58 Information to be given to administrator periodically

- (1) For each quarter in a compliance period that a retailer undertakes eligible activities in, the retailer must give the administrator a periodic activity report.
- (2) The periodic activity report must contain information specified in this part about eligible activities completed during the relevant quarter.
- (3) A periodic activity report must be given to the administrator within 15 working days of the end of a quarter.
- (4) A report for quarter 4 is not a compliance period report for section 19 of the Act and need only contain eligible activities completed in that quarter.

Note Only retailers undertaking eligible activities for the purpose of meeting their obligation under the Act are required to submit a periodic activity report.

59 Required information

- (1) For each activity completed in the relevant quarter the following minimum information must be given to the administrator—
 - (a) the unique activity record form identifier on which the eligible activity is recorded to be reported separately as
 - (i) the first five letters - being the individual retailer prefix assigned to the retailer by the administrator; and

- (ii) the last nine digits - being the unique nine digit form number assigned by the retailer; and
- (b) the activity ID; and
- (c) the implementation date for the activity; and
- (d) the authorised contractor, authorised seller and authorised installer identifiers of the entity or entities that undertook the activity; and
- (e) the relevant building classification of the premises the eligible activity was undertaken in, determined in accordance with section 41 of this code, if required; and
- (f) the sector type of the premises, being one of – residential or business; and
- (g) for an eligible activity that requires an authorised installer, the details of the premises in which the activity has been undertaken including—
 - (i) the block, section and division or district as identified in the crown lease for the relevant parcel of land on which the premises is located; and
 - (ii) the business premises name and Australian Business Number if applicable, the unit number if applicable, the suburb, street name and number and postcode of the premises in the format required by the administrator, if any; and
 - (iii) occupancy status, being one of— public housing, community housing, private rental, owner occupied, commercial premises or other; and

Note Block, section, and division information can be found at <http://app.actmapi.act.gov.au/actmapi/index.html?viewer=bwi>

- (h) for an eligible activity that does not require an authorised installer, the details of the premises in which the product is to be installed, if different to the consumer’s residential address, including—
 - (i) the block, section and division or district as identified in the crown lease for the relevant parcel of land on which the premises is located; and
 - (ii) the business premises name and Australian Business Number if applicable, the unit number if applicable, the suburb, street name and number and postcode of the premises in the format required by the administrator, if any; and
 - (iii) occupancy status, being one of— public housing, community housing, private rental, owner occupied or other; and
- (i) the approximate year of construction of the premises in YYYY format, if identified; and
- (j) whether the premises is a priority household; and
- (k) if applicable, the class of priority as determined under section 44 (1)
 - (b) (i) and the card number relating to the class; and

- (l) the consumer's first and last name and contact number; and
 - (m) the first and last name, and contact number of the authorised signatory if different from the consumer in section 59(1)(l); and
 - (n) all activity specific information under Recording and Reporting' required by the part of the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities)* Code of Practice which applies to the given activity.
- (2) A copy of a retailer's current register of authorised contractors, authorised sellers and authorised installers must also be given in the periodic activity report.
- (3) A retailer may include additional information relevant to the activity.

60 Preparation of periodic activity report

- (1) A retailer must use reasonable endeavours to accurately prepare a periodic activity report and to include all eligible activities completed in the period.

61 Approval of periodic activity report

- (1) A periodic activity report must be approved and signed by a person employed by the retailer to which the periodic activity report applies and who holds an appropriate delegation for statutory reporting purposes relevant to the Act.
- (2) An approval of the periodic activity report must include the signed declaration prescribed in Schedule 1 to this code.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see the *Legislation Act 2001*, s104).

62 Format of periodic activity report

- (1) A periodic activity report must be given in—
 - (a) a comma separated value (CSV) file; and
 - (b) Microsoft Excel document compatible with Microsoft Office Suite 2007 or higher.
- (2) A retailer may provide separate files for each eligible activity containing all of the relevant information for that activity.
- (3) The signed declaration required under section 61 must be made in writing and given to the administrator in a portable document format (.pdf).
- (4) A copy of a retailer's current register of authorised contractors, authorised sellers and authorised installers may be given in either a

comma separated value format or a portable document format, provided that it is in a form that cannot be edited.

63 Lodgement of periodic activity report

- (1) A periodic activity report must be provided to the administrator in accordance with section 19.

64 Use of periodic activity report

- (1) The administrator may use the information provided in a periodic activity report to—
 - (a) assess whether information is recorded and reported in accordance with this code; and
 - (b) identify eligible activities for inspection, auditing, or for a request for further information under Part 10; and
 - (c) determine the accuracy of abatement factor calculations for eligible activities reported; and
 - (d) assess the extent to which the type and volume of eligible activities reported are likely to contribute to the achievement of the retailer's estimated energy savings obligations for the relevant compliance period; and
 - (e) aggregate data to prepare reports, briefings or public documents on the administration and operation of the Act, including to fulfil the administrator's reporting functions under section 24 of the Act.
- (2) If the administrator makes an assessment that information on certain eligible activities is not recorded and reported in accordance with this code, the administrator—
 - (a) must inform the retailer within 5 working days of the assessment being made; and
 - (b) must inform the retailer that only eligible activities undertaken that comply with relevant approved codes of practice can be considered in determining the retailer's energy savings result for the compliance period; and
 - (c) may request additional information on the eligible activities identified as not being recorded and reported in accordance with this code; or
 - (d) if the non-compliance with record keeping and reporting requirements in this code affects a significant number of activities or activity records, the administrator may request a revised periodic activity report to be given within a specified timeframe.

Note The administrator does not approve or endorse periodic activity reports.

- (3) If the administrator determines that an abatement factor calculation for an eligible activity may be inaccurate, within 5 working days of the determination being made the administrator must—
 - (a) notify the retailer of the potential inaccuracy; and
 - (b) inform the retailer that an inaccuracy may affect the determination of the retailer's energy savings result for the compliance period; and
 - (c) inform the retailer that only eligible activities undertaken that comply with relevant approved codes of practice can be considered in determining the retailer's energy savings result for the compliance period.
- (4) An assessment under this section does not constitute a determination of a retailer's energy savings obligation for the compliance period.

65 Frequency of reporting – certain eligible activities

- (1) The administrator may require that reports are provided for certain eligible activities, or the installation of certain products, more frequently than a periodic activity report for compliance purposes.
- (2) An eligible activity, or product, that is subject to a requirement to provide a regular report under this section must be prescribed in this code.
- (3) In determining whether certain activities require more frequent reporting the administrator must consider—
 - (a) the health, safety, environmental and other compliance risks associated with the activity; and
 - (b) the existing inspection and auditing requirements, whether under the Act or another law of the Territory, associated with the activity; and
 - (c) the complexity of standards relating to the activity; and
 - (d) any recent changes in prescribed activity requirements that may affect the compliance of the activity; and
 - (e) any previous evidence or history of non-compliance with prescribed activity requirements identified under this Act or another law of the Territory.
- (4) The administrator must review a reporting requirement under this section at the end of every 6 month period the reporting requirement is in force.
- (5) The administrator may remove a reporting requirement under this section at any time after considering the matters in subsection (3).

Part 8 Compliance period report

66 Application of Part 8

This part applies to the provision of information to the administrator under section 19 of the Act to help the administrator work out if a retailer has met its obligations under the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

Note Section 19 of the Act provides for certain information to be provided by a retailer not later than 3 months after the end of the compliance period. Subsection 19(1) (g) of the Act requires that a NERL retailer must give the administrator any other information that the administrator reasonably requires to help the administrator work out if a retailer has met their obligation. A NERL retailer commits an offence if the retailer does not comply with this section of the Act. The maximum penalty for not complying with this obligation is 50 penalty units.

67 Compliance period report—Act, s19

- (1) A retailer must give the administrator certain information (a ***compliance period report***) containing the following information in relation to a compliance period—
 - (a) the retailer's total electricity sales in the ACT in megawatt hours; and
 - (b) the eligible activities undertaken by the retailer in the ACT that comply with a relevant approved code of practice; and
 - (c) the approved abatement factors acquired by the retailer, that comply with a relevant approved code of practice; and
 - (d) the total abatement factors for the eligible activities undertaken or acquired by the retailer that comply with a relevant approved code of practice; and
 - (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; and
 - (f) for a tier 2 NERL retailer—the extent to which the retailer's energy savings obligation was achieved by paying an energy savings contribution expressed as a percentage.

Note A NERL retailer that has made no sales in the ACT for the compliance period and has an energy savings obligation of zero is still obliged to provide a compliance period report under section 19 of the Act. The maximum penalty for not complying with this obligation is 50 penalty units.

- (2) If a retailer has a carried forward surplus or carried forward shortfall from the previous compliance period, the amount of the shortfall or surplus must be included in the report.

- (3) For each activity completed in the compliance period that complies with a relevant approved code of practice, the following minimum information must be given to the administrator—
- (a) the unique activity record form identifier on which the eligible activity is recorded to be reported separately as
 - (i) the first five letters - being the individual retailer prefix assigned to the retailer by the administrator; and
 - (ii) the last nine digits – being the unique nine digit form number assigned by the retailer
 - (b) the activity ID; and
 - (c) the implementation date for the activity; and
 - (d) the authorised contractor, authorised seller and authorised installer identifiers of the entity or entities that undertook the activity; and
 - (e) the relevant building classification of the premises the eligible activity was undertaken in, determined in accordance with section 41 of this code, if required; and
 - (f) the sector type of the premises, being one of – residential or business; and
 - (g) for an eligible activity that requires an authorised installer, the details of the premises in which the activity has been undertaken including—
 - (i) the block, section and division or district as identified in the crown lease for the relevant parcel of land on which the premises is located; and
 - (ii) the business premises name and Australian Business Number if applicable, the unit number if applicable, the suburb, street name and number and postcode of the premises in the format required by the administrator, if any; and
 - (iii) occupancy status, being one of— public housing, community housing, private rental, owner occupied or other; and

Note Block, section, and division information can be found at <http://app.actmapi.act.gov.au/actmapi/index.html?viewer=bwi>

- (h) for an eligible activity that does not require an authorised installer, the details of the premises in which the product is to be installed, if different to the consumer’s residential address, including—
 - (i) the block, section and division or district as identified in the crown lease for the relevant parcel of land on which the premises is located; and
 - (ii) the business premises name and Australian Business Number if applicable, the unit number if applicable, the suburb, street name and number and postcode of the premises in the format required by the administrator, if any; and
 - (iii) occupancy status, being one of— public housing, community housing, private rental, owner occupied or other; and

- (i) the approximate year of construction of the premises in YYYY format, if identified; and
- (j) whether the premises is a priority household; and
- (k) if applicable, the class of priority as determined under section 44 (1) (b) (i) and the card number relating to the class; and
- (l) the consumer's first and last name, and contact number; and
- (m) the first and last name, and contact number of the authorised signatory if different from the consumer in section 67(3)(l); and
- (n) all activity specific information under Recording and Reporting' required by the part of the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities)* Code of Practice which applies to the given activity.

(4) A retailer may include additional information it considers relevant for the administrator to determine the retailer's energy savings result.

68 Other information—Act, s19 (2) (g), (3) (b)

- (1) A retailer that has made electricity sales in the ACT during the compliance period and has an energy savings obligation greater than 0 tonnes of carbon dioxide equivalent greenhouse gas emissions must also include the following information in a compliance period report—
 - (a) a calculation of the total costs of undertaking eligible activities, including administrative costs, less any co-contribution from consumers in expressed in Australian Dollars (AUD) (GST exclusive); and
 - (b) the total monetary value of all co-contributions and payments for eligible activities made by consumers and/or other parties expressed in AUD (GST exclusive); and
 - (c) for a tier 2 NERL retailer – the extent to which the retailer's energy savings obligation will be achieved by paying an energy saving contribution expressed in AUD; and
 - (d) a calculation of the costs of acquiring approved abatement factors that comply with a relevant approved code of practice expressed in AUD (GST exclusive), if applicable.

69 Results of independent audit—Act, s19 (2) (a)

- (1) If the administrator requires the results of an independent audit of some or all of the information provided to be given with the compliance period report, the results of the audit must be lodged with the compliance period report in accordance with part 9 of this code.

70 Preparation of compliance period report

- (1) A retailer must use reasonable endeavours to accurately prepare a compliance period report and the information, estimates and calculations contained within it.

71 Retailer approval of compliance period report

- (1) A compliance period report must be approved and signed by—
 - (a) the Chief Executive Officer or General Manager of the retailer; or
 - (b) a person holding an equivalent position to Chief Executive Officer of the retailer; or
 - (c) a person holding a delegation from the retailer to exercise the powers and functions of the retailer at a level equivalent to that held by a Chief Executive Officer; or
 - (d) the person acting as Chief Executive Officer or equivalent position during an absence of the substantive officeholder.
- (2) An approval of the compliance period report must include the signed declaration prescribed in Schedule 2 to this code.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see the *Legislation Act 2001*, s104).

72 Format of compliance period report

- (1) The information in the report, other than the detailed information relating to individual eligible activities under section 68 (3) and including the signed declaration required under section 72, must be made in writing and given to the administrator in—
 - (a) a portable document format (.pdf); and
 - (b) an unprotected Microsoft Word document in .doc or .docx format.
- (2) Information relating to individual eligible activities for the compliance period must be given in a comma separated value (*CSV*) file.
- (3) A retailer may provide separate CSV files for each eligible activity containing all of the relevant information for that activity.

73 Lodgement of compliance period report

- (1) A compliance period report must be provided to the administrator in accordance with section 19.
- (2) A compliance period report must be given to the administrator not later than 3 months after the end of the compliance period as follows—
 - (a) for compliance period 1, no later than 5 pm 31 March 2014;
 - (b) for compliance period 2, no later than 5 pm 31 March 2015;
 - (c) for compliance period 3, no later than 5 pm 31 March 2016;
 - (d) for compliance period 4, no later than 5 pm 31 March 2017;

- (e) for compliance period 5, no later than 5 pm 31 March 2018;
- (f) for compliance period 6, no later than 5 pm 31 March 2019;
- (g) for compliance period 7, no later than 5 pm 31 March 2020;
- (h) for compliance period 8, no later than 5 pm 31 March 2021.

74 **Incomplete reports and further information**

- (1) Within 10 working days of a compliance period report being received, the administrator must determine if the compliance period report is complete.

Example —incomplete compliance period reports

Detailed information of eligible activities is not included; results of a required independent audit are not included, insufficient information on activities undertaken in priority household

- (2) If a compliance period report is complete, the administrator must confirm in writing to the retailer within 10 working days that the report is given.
- (3) If a compliance period report is not complete, the administrator must as soon as is practicable—
 - (a) inform the retailer that the compliance period report is not given; and
 - (b) provide a description of the required information to complete the compliance period report and a reference to the relevant provisions of this code; and
 - (c) inform the retailer that a new and complete compliance period report must be lodged within a specified timeframe; and
 - (d) inform the retailer of penalties that may apply for failing to comply with section 19 of the Act; and
 - (e) inform the retailer that inaccurate or incomplete information may affect the determination of the retailer's energy savings result for the compliance period.
- (4) To remove any doubt, a compliance period report is not considered given until all required information is included in the report.
- (5) A determination of whether a compliance period report is complete under this section is not an assessment of the accuracy of the information provided in the plan or the compliance of the retailer with its energy savings obligation.

Note 1 A retailer is obliged to provide complete and adequate information for the administrator to make determination of the retailer's energy savings result under sections 20 and 21 of the Act. If a retailer is informed that a new compliance period report is required it is the retailer's responsibility to provide the new plan.

75 Use of compliance period report

- (1) The administrator may use the information provided in a compliance period report to—
- (a) determine the retailer's compliance with its energy savings obligations for the compliance period; and
 - (b) assess whether information is recorded and reported in accordance with this code; and
 - (c) identify eligible activities for inspection, auditing or for a request for further information under Part 10; and
 - (d) determine the accuracy of energy savings obligations calculated for the compliance period; and
 - (e) determine the accuracy of abatement factor calculations for reported eligible activities; and
 - (f) determine any carried forward shortfall or carried forward surplus for the period; and
 - (g) assess the extent to which the abatement factors claimed contribute to the achievement of the retailer's energy savings obligations for the relevant compliance period; and
 - (h) aggregate data to prepare reports, briefings or public documents on the administration and operation of the Act, including to fulfil the administrator's reporting functions under section 24 of the Act.

Note The administrator is not limited to considering only the information provided under section 19 an energy savings result or the compliance of the retailer with other obligations under the Act. However, the compliance period report establishes a retailer's claims in relation to the compliance period and is one of the main mechanisms for determining compliance.

Part 9 Independent information audits

76 Application of Part 9

This part applies to independent audits of some or all information required by the administrator under subsection 19 (2) (a) of the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

Note 1 Subsection 19(2) (a) of the Act provides that the administrator may also require an independent audit of some or all of the information provided by a retailer under that subsection.

77 Audit requirements

(1) In relation to information provided under section 19 of the Act, the administrator may—

- (a) arrange an independent audit of some or all the information; or
- (b) require a retailer to provide an audit report of some or all of the required information prepared by an independent auditor at the time of giving the relevant compliance period report; or
- (c) after reviewing a compliance period report, require a retailer to provide an audit report prepared by an independent auditor of some or all of the required information.

(2) An independent audit for the purposes of subsection (1) (a) includes an audit by an authorised person appointed by the administrator under section 30 of the Act.

78 Purpose of audit

(1) If the administrator requires an audit, as soon as practicable the administrator must in writing—

- (a) inform the retailer which information provided requires auditing; and
- (b) the date that the audit must be completed by; and
- (c) the scope of the audit required; and
- (d) the process for nominating and appointing an auditor; and
- (e) the form of the audit report.

Examples of audit scope

Investigating compliance with certain sections of the Act or this code, analysing relevant data in a retailer's systems and records, verifying correct application of formulae and the accuracy of arithmetical calculations, identify any missing data or unusual figures or trends that might suggest incorrect data, errors in data entry or manipulation, analysis of source data, audit of staff processes, analysis of quality controls, testing a sample of cases or data.

79 Audits to be submitted with compliance period reports

- (1) This section applies if the administrator requires a retailer to provide an audit report of some or all of the required information prepared by an independent auditor at the time of giving the relevant compliance period report under subsection 78 (1) (b).
- (2) The administrator must notify a retailer by 1 December in any year of a requirement to provide an audit report at the time of giving a compliance plan.
- (3) In requiring a retailer to provide an audit report under subsection 78 (1) (b), the administrator must consider—
 - (a) the obligations of the relevant entity under the Act;
 - (b) the objects of the Act;
 - (c) the risk associated with a retailer in relation to—
 - (i) the likelihood of non-compliance; and
 - (ii) the likelihood of information being defective, unreliable, lacking in quality or not conforming with relevant specifications; and
 - (iii) any previous audit results or evidence of non-compliance; and
 - (iv) the likely or known extent of information defects; and
 - (v) any issues identified by the administrator during the ongoing administration of the scheme; and
 - (vi) the consequences of non-compliance including the effect on administrator's ability to carry out relevant functions and the effect on the setting of other retailers' obligations and targets under the Act; and
 - (d) any other matters the administrator considers relevant.
- (4) The administrator will conduct any risk assessment under this section in accordance with AS/NZS ISO 31000:2009 Risk management – Principles and guidelines as amended from time to time.

80 Appointment of auditor— administrator

- (1) If a person other than an authorised person carries out an independent audit under subsection 78 (1) (a), the administrator must appoint the auditor.

81 Nomination and approval of auditor— retailer

- (1) If a retailer is requested to provide an audit report prepared by an independent auditor, the retailer must nominate an auditor to carry out the audit within a timeframe not less than 10 working days specified by the administrator.

Note The dictionary to the Act provides that an auditor means any of the following: an auditor registered under the Corporations Act; a member of the Institute of Chartered Accountants in Australia; a member of CPA Australia; a member of the Institute of Public Accountants.

- (2) Within 10 working days of receiving a nomination of an auditor, the administrator must approve or not approve the use of the auditor and inform the retailer of the decision in writing.
- (3) An approval of an auditor may be conditional.
- (4) The administrator's approval of an auditor constitutes an approval of that auditor only for the purpose of conducting the audits which the nominating retailer is obliged under the Act to arrange and for no other purpose.
- (5) In nominating an auditor to the administrator, the relevant entity must provide details of—
 - (a) the proposed auditor who will undertake the specified audit; and
 - (b) the proposed individuals who will undertake any relevant audit work for the auditor (*the audit team*); and
 - (c) the proposed individual who will lead the audit team (who must be a partner or equivalent of the auditor and who will be required to sign the audit report and take full responsibility for the audit findings); and
 - (d) the work history and skills of the audit team leader and each audit team member and the role they will play in undertaking the audit; and
 - (e) the auditor's field of work, core expertise, experience and corporate or business structure; and
 - (f) any work undertaken by the auditor for the retailer in the previous two years; and
 - (g) any work that the auditor is currently doing or has bid for in relation to the relevant entity; and
 - (h) any potential or perceived conflict of interest and the manner in which the potential or perceived conflict of interest is proposed to be managed.
- (6) In deciding whether to approve an auditor nominated by a relevant entity, the administrator may have regard to the following—
 - (a) demonstrated skill, experience in, and detailed knowledge of quality assurance, including operational or compliance auditing and, where relevant, science or engineering, and information systems of the nominated auditor and the proposed audit team; and
 - (b) appropriate knowledge of electricity and gas retailing and the operation by both the nominated auditor and the proposed audit team; and

- (c) an absence of conflicts; and
 - (d) if relevant, the resource capacity to undertake audits under tight time constraints; and
 - (e) any other information the administrator considers relevant.
- (7) If the retailer fails to nominate an auditor as required under subsection (1) or the administrator decides not to approve the nominated auditor, the administrator may, but is not obliged to, appoint an auditor in relation to an independent audit report to be provided by the retailer, without limiting or qualifying any liability of the retailer.
- (8) If the administrator appoints an auditor under subsection (7) the retailer will be responsible for the costs of the auditor.

82 Appointment and termination of approval of auditor

- (1) Once approved, the primary duty of care of the auditor is to the administrator and the auditor must—
- (a) notify the administrator immediately of any change to the audit team members; and
 - (b) ensure that no member of the audit team performs fee earning work for the relevant entity except as disclosed under subsection 82 (4) (h) and that no work is undertaken that either influences any members of the audit team or could reasonably be considered to give rise to a material risk of any members of the audit team being influenced in relation to the relevant audit; and
 - (c) minimise the risk of conflicts of interest arising or being seen to arise, and
 - (d) notify the administrator of and manage any conflicts of interest or perceived conflicts of interest that arise in accordance with any conditions approved by the administrator.

83 Obligations of the retailer

- (1) The retailer must ensure that no person nominated by it as auditor commences an audit until that person has been approved by the administrator under section 81.
- (2) The retailer must not—
- (a) require or seek changes to be made to an auditor's report that conflict with the auditor's professional judgment and its primary responsibility to the administrator including, for instance, requiring a change to be made that would, in effect, remove or obscure any adverse finding of the auditor; or
 - (b) unreasonably withhold payment or terminate any contract with the auditor over a disputed audit finding.

- (3) If the auditor believes that the retailer has not complied with its obligations under this section, the auditor must advise the administrator as soon as possible after the event has occurred.

84 Briefing of auditors

- (1) The administrator may request to brief an auditor to make sure the audit requirements are clearly understood.
- (2) Representatives of the auditor must attend the briefing.
- (3) Representatives of the retailer may also attend the briefing.

85 Use of and response to audit report

- (1) Without limiting its powers and rights under the Act or otherwise, the administrator may—
 - (a) obtain and analyse the auditor's record of its contacts with the retailer and its representatives, for example to obtain more details of reported non-compliance, misrepresentation of data or to investigate whether significant changes have been made to drafts of the report;
 - (b) require further auditing to be undertaken (whether by the relevant auditor or another) where it considers the report is or may be unsatisfactory in a material respect, for example where the administrator has independent information contradicting an assessment made by the auditor;
 - (c) through authorised people, exercise any powers under Part 5 of the Act to the extent necessary to substantiate the information provided in a compliance period report or otherwise to determine whether the relevant entity has complied with the Act;
 - (d) use the information in the report in determining the retailer's compliance with its energy savings obligations for the compliance period; and
 - (e) assess whether further action in relation to non-compliance with the Act may be required; and
 - (f) aggregate data to prepare reports, briefings or public documents on the administration and operation of the Act, including fulfilling the administrator's reporting functions under section 24 of the Act.

Part 10 Information and reporting requests

86 Application of Part 10

The information and reporting requests apply to all record keeping and reporting requirements under this code and under the *Energy Efficiency (Cost of Living) Improvement Act 2012* other than for independent audits.

87 Information and reports required from time to time

- (1) A retailer must provide to the administrator any additional information in relation to compliance matters for the Act as sought by the administrator from time to time.
- (2) The administrator may request information on any compliance matter, including, but not limited to, information on—
 - (a) an eligible activity undertaken by the retailer;
 - (b) an authorised contractor;
 - (c) an authorised seller;
 - (d) an authorised installer;
 - (e) activities provided to a customer;
 - (f) training provided to authorised installers;
 - (g) acquisition of abatement factors;
 - (h) quality assurance processes;
 - (i) complaints and non-compliant work.
- (3) The administrator may request the provision of documents relating to the matter or request a report containing all relevant information.
- (4) The administrator may assign the information or reporting request a reference identifier (the ***information request reference***) to be used in correspondence and reporting.
- (5) A retailer must provide the information in the format specified by the administrator in the request.
- (6) Any information requested must be provided within 10 working days unless—
 - (a) a different timeframe is specified in this code; or
 - (b) the information is requested under section 89 in relation to a health and safety risk; or
 - (c) otherwise agreed between the administrator and the retailer.

88 Information in relation to health and safety risks

- (1) If the administrator requests information in relation to a situation 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, a retailer must provide any additional information sought by the administrator and any other information it holds under the Act that may be relevant to the situation in the timeframe specified by the administrator.

89 Activity record forms and activity certifications

- (1) If requested by the administrator, copies of activity record forms and activity certifications must be provided—
 - (a) for up to 5 forms or certifications, within 2 working days of the request; or
 - (b) for greater than 5 but not more than 20 forms or certifications, within 5 working days of the request; or
 - (c) for greater than 20 forms, within 10 working days of the request.
- (2) Activity record forms and activity certifications must be provided in portable document format (.pdf).
- (3) All required information in an activity record form or activity certification provided to the administrator must be clearly legible.

90 Lodgement of information

- (1) Information must be provided to the administrator in accordance with section 19.
- (2) The administrator must acknowledge the receipt of requested information in writing within 5 working days of it being received.
- (3) Information may not be considered given if it does not comply with this part.

91 Requests for further information

- (1) If the retailer is required to give the administrator something under this section—
 - (a) the administrator may ask for further relevant information in relation to anything not dealt with, or not adequately dealt with, in the provided information; and
 - (b) the retailer must give the administrator the further information not later than 5 working days after the day the administrator asked for it.

Dictionary

(See section 2)

Note The Legislation Act, the *Energy Efficiency (Cost of Living) Act 2012*, the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination*, the *Building Act 2004*, the *Construction Occupations (Licensing) Act 2004*, the *Gas Safety Act 2000*, the *Electricity Safety Act 1971*, and the *Water and Sewerage Act 2000* may contain definitions and other provisions relevant to this code.

abatement factor means the number of tonnes of carbon dioxide equivalent emissions that an eligible activity is taken to save. The method for calculating the abatement factor for each eligible activity is outlined for each eligible activity in the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination* as in force from time to time.

activity means an eligible activity as determined by the Minister under section 14 of the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

activity certification means the certification prepared by a person or people involved in carrying out an activity declaring compliance with relevant activity eligibility requirements and includes any statutory certifications required under another law of the Territory and documents and evidence prescribed in Part 6 to this code.

activity item, in relation to eligible activities, means one of a number of options for an installation or of product type that may be permitted under the activity definition to undertake and complete and eligible activity.

activity item unit means the unit of measurement for the number of units installed used to calculate the abatement factor for an activity item and include square metres, length in metres, number of products and the like.

administrator means the person appointed as the administrator by the Minister under section 23 of the *Energy Efficiency Cost of Living Improvement Act 2012*.

agent means an entity with demonstrable authority to create or affect legal relations between the appointing entity and an independent third party.

appropriate person means a person with demonstrable authority to create or affect legal relations on behalf of a consumer occupying a business premises between that consumer and the retailer or their agent.

approved product abatement value means an abatement value approved by the administrator for a particular product model (expressed in tCO₂-e),

which may be used to calculate the abatement factor for an eligible activity.

associated work in relation to eligible activities, means work required to complete the installation other than work within the standard scope of the activity including, but not limited to, electrical work, plumbing work, gasfitting work, building work, asbestos assessment and removal and handling of dangerous goods.

AS 1731 means the relevant parts of Australian Standard 1731 as in force from time to time.

AS 5102 means the relevant parts of Australian Standard 5102 as in force from time to time.

AS/NZS 1680 means Australian/New Zealand Standard 1680 as in force from time to time.

AS/NZS 2442 means Australian/New Zealand Standard 2442 as in force from time to time.

AS/NZS 4234 means Australian/New Zealand Standard 4234 as in force from time to time.

AS/NZS 4474 means the relevant parts of Australian/New Zealand Standard 4474 as in force from time to time.

AS/NZS 4859 means the relevant parts of Australian/New Zealand Standard 4859 as in force from time to time.

AS/NZS 5263 means the relevant parts of Australian/New Zealand Standard 5263 as in force from time to time.

AS/NZS 6400 means Australian/New Zealand Standard 6400 as in force from time to time.

AS/NZS 62087 means the relevant parts of Australian/New Zealand Standard 62087 as in force from time to time.

AS/NZS ISO 31000:2009 means Australian/New Zealand Standard ISO 31000:2009 Risk management - Principles and guidelines as in force from time to time.

AUD means Australian Dollars.

Australian Business Number means the current Australian Business Number as issued by the Australian Business register.

Australian Standard ISO 10002-2006 means Australian Standard ISO 10002-2006 Customer satisfaction—Guidelines for complaints handling in organizations (ISO 10002:2004, MOD) as in force from time to time.

authorised contractor means an entity that is directly contracted or

otherwise authorised by a retailer to provide or arrange the undertaking of eligible activities, but is not an employee of the retailer.

authorised installer means an individual, whether an employee of, or under direct contract to, a retailer or an authorised contractor, who undertakes an eligible activity on behalf of a retailer, including the physical installation of products.

authorised seller means a business entity that, under contract or by other direct arrangement with a retailer or an authorised contractor, undertakes an eligible activity that specifically refers to the purchase of a compliant product but does not require the installation of the product for the activity to be considered complete.

building code means the ACT building code, which is comprised of Volumes 1 and 2 of the National Construction Code published by the Australian Building Codes Board and the ACT Appendix to the building code as determined by the responsible Minister.

building work— see Section 6 of the *Building Act 2004*.

business premises means an existing commercial premises that—
(a) is not a residential premises; and
(b) qualifies as a National Construction Code class 3, 5, 6, 7, 8, 9, 10 or the common areas of class 2.

Note 1 A business premises may be occupied by a business, not-for-profit organisation or other enterprise.

Note 2 A business premises may represent part of a larger building.

code of practice means a code of practice made by the administrator under section 25 (Codes of practice) of the *Energy Efficiency (Cost of Living) Improvement Act 2012* that may address consumer protection obligations, quality, health, safety and environmental requirements, record keeping requirements and reporting requirements for eligible activities.

compliance period report means the compilation of all information in relation to a compliance period a retailer is required to give to the administrator under section 19 of the Act and prepared in accordance with Part 8 of this code.

consumer means the occupier of the premises to which the activity relates.

date of completion means the date the activity is taken to be completed as defined under the relevant section for the activity in the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2017*.

decommission means disable and render permanently unusable.

electrical work— see electrical wiring work as defined in the Dictionary of the *Electricity Safety Act 1971*.

eligible activities determination means the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination* as in force from time to time

eligible business premises means an existing business premises—

- a) for which the energy consumption is not included in a reporting obligation under of any of the following;
 - (i) the National Greenhouse and Energy Reporting Act 2007 (Commonwealth); or
 - (ii) the Australian Government’s Energy Efficiency in Government Operations Policy; or
 - (iii) the Carbon Neutral ACT Government Framework; and
- b) is not undergoing development or refurbishment under an existing development approval under the ACT Planning and Development Act 2007. The exception is when a development approval is required for undertaking an eligible activity in an existing building.

eligible residential premises means an existing residential premises –

- a) located in the Territory that meets all criteria for an eligible activity and is not excluded by another law of the Territory, or by the failure to obtain a required approval for any part of the activity, from the activity being undertaken at the premises; and
- b) that is not undergoing development or refurbishment under an existing development approval under the ACT Planning and Development Act 2007. The exception is when a development approval is required for undertaking an eligible activity in an existing building.

entity— see entities as defined in the *Corporations Act 2001*.

Energy Savings Scheme has the same meaning as in Part 9 of the *Electricity Supply Act 1995 (NSW)*.

ESS Administrator has the same meaning as Scheme Administrator in Part 9 of the *Electricity Supply Act 1995 (NSW)*.

ESS Commercial Lighting Calculation Tool means the record-keeping and calculation tool published by the ESS Administrator on the Energy Savings Scheme website for use with Clause 9.4 of the ESS Rule.

ESS Rule has the same meaning as Scheme Rule in Part 9 of the *Electricity Supply Act 1995 (NSW)*.

Existing Lighting Equipment means the equipment that provides artificial lighting services that was already installed and in working order at the time of implementation of the activity, including luminaires and/or lamps, control gear, and lighting control systems.

external wall means an outer wall of a building other than a wall separating or common to adjoining buildings.

gasfitting work— see the Dictionary of the *Gas Safety Act 2000*.

habitable room— see section 1.1.1 Definitions in Volume 2 *National Construction Code Class 1 and Class 10 Buildings* of the National Construction Code Series.

Implementation date means the date on which, -

- a) for an eligible activity that requires an authorised installer, the physical installation or implementation of an activity is undertaken at the eligible business premises or eligible residential premises; or
- b) for an eligible activity that does not require an authorised installer, the receipt of a product from an authorised seller for installation into an eligible business premises or eligible residential premises occurs.

in association, in relation to work or other eligible activities undertaken in a premises, includes at the same time as, or subsequent to alterations and additions to a premises, or part of a premises, or as a result of an eligible activity, or as part of the same contract with a lessee or occupier of a premises.

indication means a mark such as a cross, a tick in a check box, an abbreviation, a number, text or the like included on a document signifying a particular fact or piece of information.

install includes modify or replace to achieve compliance with eligible activity criteria.

installed products means the products installed to meet the installed product requirement relevant to the eligible activity.

installer means a person physically installing a product as part of an eligible activity in a consumer's residence on the behalf of a NERL retailer for the purposes of the NERL retailer complying with the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

kW means kilowatt.

lamp waste means decommissioned lamps, possibly integrated into a luminaire.

large electricity customer means a business who consumes electricity at or above the upper consumption threshold for electricity, as defined in the *National Energy Retail Regulations*.

Note The upper consumption threshold for large electricity users is more than 160 MWh per annum per National Meter Identifier in the 12 months prior to upgrade.

lessee— see section 234 of the *Planning and Development Act 2007*

modified LED linear tube installations means modification style installations are those where the existing linear fluorescent lamp is replaced with a linear LED lamp, the original starter is replaced with a fuse as supplied with the LED lamp (in accordance with instructions provided with the LED lamp), and the original fluorescent lamp control gear – including both the ballast and capacitor where fitted – is rendered inoperable by removal and destruction of the whole item.

multiple activity record form means a form that contains more than one activity record for eligible activities.

MWh means megawatt hours.

National Construction Code means Volumes 1 and 2 of the National Construction Code published by the Australian Building Codes Board and the ACT Appendix to the building code as determined by the responsible Minister.

natural person means a human being.

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.

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.

plumbing work— see sanitary plumbing work and water supply plumbing work as defined in the dictionary of the *Water and Sewerage Act 2000*.

prescribed activity requirement means a requirement for an eligible activity that must be completed or complied with and includes an action, a product specification, a manner of carrying out a particular task, and a resultant performance of an installation.

primary reporting contact means an individual nominated by a retailer as the main contact for the administrator in relation to the record keeping and reporting requirements under the Act and this code.

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

The following additional classes are prescribed in the *Energy Efficiency (Cost of Living) Improvement Regulation 2017*.

- (a) holders of a Commonwealth seniors health card,
(b) holders of a Commonwealth low income health care card, or
(c) recipient of a Commonwealth disability support pension, or
(d) people accessing an energy retailer's financial hardship program, or
(e) people referred to a NERL retailer by a referring organisation for access to eligible activities carried out by the retailer, or
(f) people living in a priority dwelling.

product includes appliances, equipment and materials.

quarter— see part 7, section 57 of this code.

record includes reports on all or certain criteria of an eligible activity where an obligation to report exists.

register of products, in relation to an eligible activity, means a register of products that meet one or more of the installed product requirements and product testing criteria for the activity that is prescribed by the administrator under a relevant code of practice and provided to NERL retailers with an energy savings obligation under the Act. The register of products includes those available under the Victorian Energy Efficiency Target (VEET), or the NSW Energy Savings Scheme (ESS), or in the Greenhouse and Energy Minimum Standards Act 2012 (GEMS). If a product is suspended by either GEMS, the VEET or ESS product register then that product is no longer eligible to be used in the Energy Efficiency Improvement Scheme (EEIS).

relevant legislation means a law of the Territory or another jurisdiction that applies to all or part of the activity being undertaken, including but not limited to the—

- *Building Act 2004*
- *Gas Safety Act 2000*
- *Electricity Safety Act 1971*
- *Electronic Transactions Act 2001*
- *Water and Sewerage Act 2000*
- *Dangerous Substances Act 2004*
- *Work Health and Safety Act 2011*
- *Unit Titles Act 2001*
- *Fair Trading Act (Australia Consumer Law) Act 1992*
- *Environment Protection Act 1997*
- *Construction Occupations (Licensing) Act 2004*
- *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Commonwealth)*

- *Planning and Development Act 2007*
- *Trade Practices Act 1974 (Commonwealth)*

resident of the ACT, in relation to eligible activities that require the purchase of certain products from an authorised seller, means person who resides in a residential premises located in the ACT or a lessee of a residential premises located in the ACT.

residential premises means as a building or part of building located in the Australian Capital Territory and classified under Part A3 of the National Construction Code as a class 1 building, a class 10a building associated with a class 1 building, a sole occupancy unit in a class 2 building, or a class 4 building, or is a transportable home or vehicle designed for habitation that is not used for short-stay or holiday accommodation.

retailer—see *NERL retailer*

R-value means the thermal resistance in $\text{m}^2\text{K/W}$ of a component calculated by dividing its thickness by its specific ability to conduct heat thermal conductivity

small electricity customer means a business who consumes electricity below the upper consumption threshold for electricity, as defined in the *National Energy Retail Regulations*.

Note A small electricity customer uses less than 160 MWh per annum per National Meter Identifier in the 12 months prior to upgrade.

tCO₂-e means tonnes of carbon dioxide equivalent of a greenhouse gas.

the Act means the *Energy Efficiency (Cost of Living) Improvement Act 2012*— as in force from time to time.

tier 1 retailer— see Dictionary, *Energy Efficiency (Cost of Living) Improvement Act 2012*.

tier 2 retailer— see Dictionary, *Energy Efficiency (Cost of Living) Improvement Act 2012*.

WERS means the Window Energy Rating Scheme managed by the Australian Window Association.

window includes a glass panel, glass block, glass brick, glazed sash or similar glazing product that, when closed, transmits natural light directly from outside a premises to the inside of the premises, but does not include a louvered product, and includes a door in an external wall that has a glazing pane or panes that comprise 60 per cent or more of the door.

working day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

Schedule 1

Declaration—periodic activity report

In my opinion the information contained in this report provided to the administrator on [*insert date*] is true and accurate in accordance with the requirements of the *Energy Efficiency (Cost of Living) Improvement Act 2012* and the Record Keeping and Reporting Code of Practice approved by the administrator and in force at the time of providing this report.

Signed:

Name:

Position:

Date:

Schedule 2

Declaration—compliance period report

In my opinion the information contained in this report provided to the administrator on [*insert date*] is true and accurate in accordance with the requirements of the *Energy Efficiency (Cost of Living) Improvement Act 2012* and the Record Keeping and Reporting Code of Practice approved by the administrator and in force at the time of providing this report, and to the best of my knowledge all abatement factors claimed in this report relate to eligible activities that comply with relevant codes of practice made under the Act.

Signed:

Name:

Position:

Date: