

2012

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ENERGY EFFICIENCY (COST OF LIVING) IMPROVEMENT BILL 2012

EXPLANATORY STATEMENT

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Overview

The *Energy Efficiency (Cost of Living) Improvement Bill 2012* is a bill to reduce greenhouse gas emissions and costs associated with the production and use of energy by requiring electricity suppliers in the ACT to meet emissions reduction targets through energy efficiency activities. The *Energy Efficiency (Cost of Living) Improvement Bill 2012* introduces a non-certificate based supplier obligation energy efficiency scheme which will commence from 1 January 2013 and run initially until 31 December 2015.

Climate change is one of the most significant environmental, social and economic challenges of our time. The ACT Government recognises the connection between greenhouse gas emissions in the ACT and adverse climate impacts, and thus the importance of reducing the ACT's GHG emissions in a timely manner.

In November 2010, the ACT Legislative Assembly enacted the *Climate Change and Greenhouse Gas Reduction Act 2010* that has a primary target of zero net emission by 2060 and includes an interim target of a 40 per cent reduction in greenhouse gas emissions from 1990 levels by 2020. These targets will require an ambitious program of reduction in energy consumption, combined with investment in low carbon and renewable energy sources.

A further reason to improve energy efficiency in the ACT is the risk to the community of likely future higher energy prices. The national electricity market will absorb high levels of investment in generation and network infrastructure over the coming decade. Much of this investment relates to demand for gas generation plants required to meet increasing peak loads. These costs will be distributed across all users in the national electricity market and will result in higher electricity prices for ACT households and businesses.

As the price of energy continues to rise, the impact of inefficient energy use in low-income households also becomes an increasingly important issue. Low-income households spend a greater proportion of their budget on energy than wealthier households. The opportunity for these households to invest in energy efficiency measures is also reduced, compounding the issue. Given that energy is an essential service, when the prices of these services increase, householders are left with little option but to pay the extra cost.

The ACT Government, through the *National Partnership Agreement on Energy Efficiency*, has committed to the development of a nationally consistent and coordinated package of measures to advance energy efficiency outcomes across the Territory economy. In addition to these measures, NSW, VIC and SA have also developed retailer (supplier) obligation energy efficiency schemes. These have been demonstrated to be highly cost effective in reducing greenhouse gas emissions and consistently deliver net economic benefits. The experience of these schemes has been considered in developing this bill.

In 2010, the Prime Minister's Task Group on Energy Efficiency recommended the development of a national energy savings initiative to replace existing state-based schemes. The Commonwealth Government's recently released Clean Energy Future package, committed to an expedited process to implement a national scheme, and consultation on the development of a national scheme has begun. It is not expected, however, that a national scheme would be in place until 2014 or 2015 at the earliest.

A national carbon pricing scheme will provide a further impetus for greater end-use energy efficiency in the Territory, and substantially reduce the emissions intensity of electricity supplies,

however, a range of market barriers will inhibit the optimal uptake of cost-effective energy efficiency opportunities.

The ACT's residential sector is among the most energy intensive in Australia meaning that it has a relatively high exposure to rising energy prices, including the impact of a national carbon price. We also have large cost-effective opportunities to improve the energy efficiency of its housing stock and energy using appliances.

It is clear that, in the absence of any statutory requirement, industry will not supply a scheme to address these market barriers and significantly improve the efficient use of energy in the Territory. The creation of a statutory obligation provides a basis on which reasonable costs can be incurred in the expectation that those costs may be equitably recovered by industry participants.

The key objectives of the Bill are to encourage the efficient use of energy, reduce greenhouse gas emissions associated with stationary energy use in the Territory, reduce household and business energy use and costs and increase opportunities for priority households to reduce energy use and costs.

The bill achieves these objectives by:

- establishing a Territory wide energy savings target and individual electricity supplier energy savings obligations covering, initially, energy savings in the residential sector;
- defining activities that suppliers may undertake to promote energy efficiency to reduce greenhouse gas emissions and meet their obligations under the Act;
- requiring energy suppliers to undertake a specified proportion of energy efficiency activities in priority households; and
- imposing a penalty on suppliers who fail to meet their obligations under the Act.

The Scheme provides electricity suppliers with the flexibility to choose the most cost-effective and efficient method to improve energy efficiency. The Bill has also been designed to minimise the impact on electricity suppliers, especially smaller suppliers and new market entrants. This is consistent with the ACT Government's objective of supporting enhanced retail competition in the Territory.

Smaller 'Tier 2' suppliers will be allowed to either undertake energy savings measures, or discharge their obligations through the payment of an Energy Savings Contribution fee equal to the estimated cost of participation of a Tier 1 supplier. The Bill requires that all funds raised as a result of the Scheme (including contribution fees or penalties paid to the Territory) be appropriated to support initiatives or undertake activities consistent with the Objects of the Act. This fund will also be used to pay for the administration of the Scheme.

A comprehensive regulatory impact assessment, incorporating consultation with industry, community organisations and government stakeholders, was undertaken to inform the development of the Bill. The assessment includes detailed analysis of the likely impacts of the Scheme, including a comprehensive analysis of the likely economic costs and benefits, for the Territory. This analysis concludes that the objectives of the policy, including substantial greenhouse gas savings and enhance social equity, can be achieved with net economic benefits for the Territory.

The Bill has been reviewed for compatibility with the Human Rights Act 2004, and has been found to not present any issues of compatibility.

This Bill contains strict liability offences. Strict liability is usually employed where it is necessary to ensure the integrity of a regulatory scheme, such as those relating to public health and safety, the environment and the protection of the revenue. The control of compliance with this Act requires offences that are generally at the lower end of the range of criminal conduct. It is anticipated that offences against the Act will not apply to individuals. The mistake of fact defence expressly applies to strict liability as do other defences in chapter 2 of the *Criminal Code 2002*.

Detailed Explanation

Part 1 Preliminary

Clause 1 provides for the name of the legislation as the Energy Efficiency (Cost of Living) Improvement Act 2012. This reflects that the purpose of the Act is to save energy in ACT households and businesses with the effect of decreasing the cost of living.

Clause 2 provides for the commencement as the day after its notification day.

Clause 3 provides the dictionary to be part of the legislation.

Clause 4 explains that notes included in the Act are explanatory and are not in themselves part of the Act.

Clause 5 sets out that the Criminal Code applies in relation to offences against this Act and penalty units are applied in accordance with the Legislation Act.

Clause 6 sets out the objects of the Act. The objects are aimed at reducing greenhouse gas emissions in the ACT by improving the efficient use of energy in households and businesses. This is in acknowledgement of the importance of reducing greenhouse gas emissions to address the issue of climate change and the significant opportunity that exists to achieve this through energy efficiency activities.

The Bill's objects provide that the Act should reduce household energy use and costs, especially in households determined to be priority (low-income) households. This is in recognition of the disproportionate impact that rising energy prices will have on these households.

Part 2 Targets and important concepts

Clause 7 requires the Minister to determine the Energy Savings Target (EST). The EST sets out the level of greenhouse gas reduction to be targeted each year by the Scheme in the ACT. This is represented as a percentage of total electricity sales in the ACT in that year. The EST does not represent actual expected greenhouse gas reductions in a year, as savings may be deemed for the lifetime of an activity and the lifetime savings given upfront.

The EST is applied to an individual electricity supplier's sales to determine their individual obligation under the Act, as set out in clause 13.

The EST is set by Disallowable Instrument to allow for changes in available technologies and resulting opportunities to increase the target. Similarly, the Minister may take into account the operation of the Act to date and adjust the target accordingly.

Clause 8 sets out that the Minister will determine the Priority Household Target (PHT) which states the proportion of energy savings that must be achieved in priority households. This is in recognition of the objects of the Act which relate to reducing priority household energy use and costs. The PHT is set by Disallowable Instrument to allow for consideration of expansion of this definition and the success in the scheme in meeting this target.

Priority households are defined in the Dictionary, and the definition may be expanded by Regulation.

Clause 9 states that the Minister must set an emissions factor which determines the amount of greenhouse gas emissions that result from consumption of electricity in the ACT. The emissions factor is required to determine an electricity supplier's energy savings obligation (in tonnes of carbon dioxide equivalent greenhouse gas emissions) in clause 13.

The emissions factor is to be set by Disallowable Instrument as this allows for changes in the national electricity market resulting from increased levels of renewable energy and low-carbon generation. The determination must be made 3 months before a compliance period to give sufficient time for participating suppliers to estimate their own liability under the scheme for a given compliance period (provided for in clause 12).

Clause 10 states that the Minister must determine and describe energy efficiency activities which electricity suppliers can undertake to reduce household and business consumption of energy to reduce greenhouse gas emissions in the ACT in accordance with their target. These activities are set by notifiable instrument. Activities are set separate to the Act in acknowledgement that technologies may change and more information about their greenhouse gas abatement potential may become available.

Further, it is intended that suppliers or other interested persons may apply to the Administrator (provided for in Part 4) to include new energy efficiency activities throughout the operation of the Act and this will allow for innovative proposals and new technologies to be adopted through the life of the Act.

Clause 11 states that the Minister must set an Energy Savings Contribution (ESC) that can be paid by tier 2 electricity suppliers in the ACT in place of undertaking energy efficiency activities to meet their obligation under the Act.

The definition of tier 1 and tier 2 suppliers is provided in the Dictionary which states that a:

- *tier 1 electricity supplier* means an electricity supplier with annual electricity sales to customers in the ACT of 500 000MWh or more; and
- *tier 2 electricity supplier* means an electricity supplier with annual electricity sales to customers in the ACT of less than 500 000MWh.

Tier 2 suppliers may, however, also undertake energy efficiency activities as provided for in clause 10, to meet their target.

This is in recognition of the significant overhead costs smaller suppliers would incur if compelled to undertake eligible activities to meet their targets, and the disincentive this may provide for their participation in the ACT electricity retail market.

Clause 12 defines the dates for which electricity suppliers must comply with the Act. The Act operates over three ‘compliance periods’, with each period having a defined energy savings target, priority household target, emissions factor and associated obligations for suppliers.

Part 3 Energy savings

Clause 13 sets out how Tier 1 and Tier 2 electricity suppliers must determine their obligation for each compliance period to achieve reduced greenhouse gas emissions under the Act. Suppliers determine their obligation by applying the EST to their electricity sales, taking into account the emissions factor determined under clause 9.

The clause also allows for electricity suppliers to include a shortfall or surplus from previous compliance periods to the level set under clause 20, part 6. The purpose of this is to allow for reasonable flexibility for electricity suppliers to meet their target, whilst still meeting the objects of the Act.

Clause 14 defines the conditions under which a tier 1 and tier 2 supplier will achieve their energy savings obligation calculated in clause 13.

The clause states that eligible activities undertaken must comply with a relevant approved code of practice provided for in clause 25. The purpose of the code is to outline how suppliers must comply with

- consumer protection obligations;
- quality, health, safety and environmental requirements;
- record keeping requirements; and
- reporting requirements.

The clause also provides for suppliers to include abatement factors acquired from other suppliers, if approved by the Administrator in accordance with clause 18. The primary purpose of this is to allow for any changes that may occur through the year in a suppliers’ customer base through corporate acquisitions, mergers or other events that may affect a supplier’s market share.

Clause 15 states how a tier 1 supplier must calculate their priority household obligation by applying the priority household target defined in clause 8 to their supplier energy savings target defined in clause 13. This is expressed in carbon dioxide equivalent greenhouse gas emissions.

Clause 16 defines the conditions under which a tier 1 supplier will achieve their priority household obligation.

As in meeting their supplier energy savings target, this clause states that eligible activities undertaken by suppliers must comply with a relevant approved code of practice provided for in clause 25.

The clause also provides for suppliers to include abatement factors in relation to priority households acquired from other suppliers, if approved by the Administrator in accordance with clause 18.

Clause 17 requires electricity suppliers to lodge a compliance plan before undertaking any energy efficiency activities eligible under the Scheme. The compliance plan will outline how a supplier plans to meet their energy savings obligation and priority household obligation and meet any requirements defined in the code of practice.

The purpose of this is to ensure that suppliers are equipped to meet the obligations of the Scheme and increase the opportunity for the Administrator to identify potential environmental or safety concerns that may result from a supplier's actions under the Act.

Clause 18 provides for the Administrator to approve an application from a supplier to acquire an abatement factor from another person. The purpose of this is to ensure that the transaction occurred for an eligible activity and is not counted towards more than one supplier's energy savings target or priority household target.

Clause 19 states the information that must be given to the Administrator within three months of the conclusion of a compliance period, so that the Administrator may determine if a supplier has met their obligations under the Act.

The clause also provides for the Administrator to require a supplier to have their information audited and seek further reasonable information.

Non-compliance by the supplier under this clause is considered an offence.

Clause 20 outlines how the Administrator is to determine a supplier's compliance with their supplier energy savings obligation under the Act. The clause also states that the Administrator must notify the supplier of any shortfall or surplus against their obligation.

If a supplier is determined to have a shortfall the Administrator must notify the supplier of the maximum shortfall that may be carried forward to the next compliance period. The supplier must then inform the Administrator of the shortfall they wish to carry forward to the next compliance period.

If after carrying forward a shortfall to the next compliance period a shortfall remains, the Administrator must notify the supplier of the applicable shortfall penalty as provided for in clause 22.

Clause 21 outlines how the Administrator is to determine a supplier's compliance with their priority household obligation under the Act. The clause also states that the Administrator must notify the supplier any shortfall or surplus against their obligation.

If a supplier is determined to have a shortfall the Administrator must notify the supplier of the maximum shortfall that may be carried forward to the next compliance period. The supplier must then inform the Administrator of the shortfall they wish to carry forward to the next compliance period.

If after carrying forward a shortfall to the next compliance period a shortfall remains, the Administrator must notify the supplier of the applicable shortfall penalty as provided for in clause 22.

Clause 22 outlines the penalty payable by a supplier who is determined to have a shortfall in clause 20 and/or clause 21. The penalty is set at \$70 per tonne of carbon dioxide equivalent greenhouse gas emissions in the shortfall.

The purpose of this clause is to encourage suppliers to achieve their energy savings obligation and priority household obligation. The shortfall penalty has therefore been set at a level that will provide a strong incentive for suppliers to meet their obligations under the Scheme and has been developed on the basis of the specific outcomes sought by the Act, such as the desired level of abatement. However, the shortfall penalty also sets a cap on the costs for participating suppliers. Should the cost of achieving obligations through the delivery of eligible activities exceed the shortfall penalty amount, suppliers may have an incentive to pay the penalty price so as to minimise their costs of compliance with the Act.

Part 4 Administration

Clause 23 states that the Minister must appoint a person as the Administrator for the Act. This allows the Minister to consider and determine the appropriate person to carry out the functions defined in this part.

Clause 24 outlines the specific functions of the Administrator under the Act.

Clause 25 provides for the Administrator to approve codes of practice in relation to the Act with which suppliers must comply.

Clause 26 requires suppliers to maintain records in accordance with an approved code of practice.

Suppliers are required to keep records for a period of at least 5 years after the end of the compliance period to which they relate.

Non-compliance with this clause is an offence under the Act.

The purpose of this is to ensure the Administrator may determine a supplier's compliance with the Act, as provided for in clause 19.

Clause 27 requires the Administrator to provide the Minister with an annual report covering suppliers' compliance with the Act and the number and type of activities undertaken by suppliers. The purpose of this is to inform the Minister of the success or any issues with the Act and inform future decisions relating to setting energy savings targets, priority household targets and eligible activities.

Clause 28 requires that any shortfall penalty raised under clause 22, tier 2 contributions provided for in clause 11, or any other penalty or amount paid as a result of the Act, be appropriated to support initiatives or activities consistent with the objects of the Act. It is intended that this may include funds required for administration of the Scheme.

Part 5 Enforcement

Division 5.1 General

Clause 29 provides definitions relevant to this part (part 5).

Division 5.2 Authorised people

Clause 30 provides for the Administrator to appoint a public servant as an authorised person under the Act. Under the Act the authorised person will have powers necessary to assist in the operation of the Act. These powers are outlined in division 5.3.

Clause 31 requires an authorised person to hold an identity card. This recognises that authorised persons hold significant powers under the Act and should therefore be clearly identifiable.

Division 5.3 Powers of authorised people

Clauses 32 - 36 outline the powers of an authorised person to enter premises, given the need to monitor compliance with this Act and to investigate possible breaches by suppliers in relation to the Act.

Clause 33 requires the authorised person to produce their identity card referred to in clause 31 when entering premises under clause 32.

Clause 34 states the process by which an authorised person must gain consent from the occupier of the premises before entry.

Clause 35 gives an authorised person the power to gather information through a variety of means on entry to a premises. This includes requiring the occupier of the premises to give the authorised person reasonable help to carry out their duties.

Clause 36 gives an authorised person the power to seize, and remove or restrict access to, items if they have reasonable grounds for believing the items are: connected with an offence under this Act; are authorised to seize the item under a warrant; or are satisfied that the item poses a risk to the health and safety of people, or damage to property or the environment.

This clause also provides that a person commits an offence if they interfere with an item seized under the act without an authorised person's approval to do so.

Division 5.4 Search warrants

Clause 37 provides for an authorised person to apply for a warrant to enter a premises and states the grounds on which a magistrate may issue a warrant and the information that must be included in an issued warrant.

Clause 38 allows an authorised person to apply for a warrant by communications other than in person in urgent or other special circumstances.

Clause 39 states how an authorised person is to announce their entry to a premises.

Clause 40 requires an authorised person to give an occupier of a premises, or their representative, a copy of the warrant and a document setting out the rights and obligations of the person.

Clause 41 allows the occupier of the premises, or their representative, to be present during the search – provided they are not under arrest and their presence does not impede the search.

Division 5.5 Return and forfeiture of things seized

Clause 42 requires an authorised person to give a receipt for things seized under clause 36.

Clause 43 allows things to be moved from a premises entered under a search warrant if required to determine if it may be seized under the warrant.

Clause 44 requires that a person who would normally be entitled to inspect a thing be allowed to inspect and take extracts from it (if it is a document).

Clause 45 outlines that things seized must be returned, or compensation paid for its loss, if an offence is not connected to the thing or the Administrator decides not to proceed in relation to an offence.

Clause 46 outlines that things not destroyed, returned or disallowed under clause 48, are forfeited to the Territory and the Administrator may determine how the thing is sold, destroyed or disposed of.

Clause 47 gives an authorised person the power to require a person in charge of a premises to destroy or dispose of things considered to pose a risk to health or safety of people or to the environment. An authorised person also has the power to destroy unsafe things seized under this part.

Clause 48 allows a person to apply to the Magistrates Court for a thing seized under this part to be disallowed.

Clause 49 outlines the circumstances under which the Magistrates Court must disallow the seizure after an application made in accordance with clause 48.

Division 5.6 Miscellaneous

Clause 50 requires that an authorised person causes as little inconvenience, detriment and damage as is practical in carrying out their functions under this part. If damages do occur written notice must be given to the owner.

Clause 51 provides for a person to claim compensation from the Territory if they are found to have suffered loss or expense due to the actions of an authorised person under this part.

Part 6 Notification and review of decisions

Clause 52 states that the decisions which are considered to be reviewable are provided in schedule 1.

Clause 53 states that the Administrator must give a notice, complying with the requirements of the ACT Civil and Administrative Tribunal (ACAT) Act 2008, to each person identified in Schedule 1 or any other person whose interests are affected by the decision.

Clause 54 sets out who may apply to the ACAT for a reviewable decision to be reviewed. This includes a person identified under schedule 1 or any other person whose interests are affected by the reviewable decision. It is intended that this will primarily apply to electricity suppliers.

Part 7 Miscellaneous

Clause 55 requires the Minister to commence a review of this Act in January 2014. The purpose of this review is to holistically assess the performance of the Act, including the extent to which the objects of the Act have been achieved, and to consider the industry funding arrangement of the Scheme, the extension of the Scheme beyond 2015 and any changes that may be required to improve the Act.

The review will also consider any changes at the national level relevant to energy efficiency, noting the Commonwealth Government's commitment to expedite the development of a national energy savings initiative as part of their Clean Energy Future announcement.

The review is to be presented to the Legislative Assembly not later than 9 month after its commencement. The purpose of this is to allow sufficient time for any necessary changes to the Act to be made with sufficient time for suppliers, the Administrator, and any other persons affected by the recommendations, to make any necessary preparations.

Clause 56 allows the Minister to approve forms under the Act. The intended purpose of these forms is to assist the Administrator in obtaining the required information from electricity suppliers in a suitable format. It is anticipated that forms may be necessary for the submission of compliance plans, acquiring abatement factors and submitting compliance information.

Clause 57 allows the Executive to make regulations for the Act as necessary. It is anticipated that this may include expanding the definition of a priority household.

Schedule 1

Outlines the decisions which are reviewable under the Act. This includes a supplier's application to acquire abatement factors and a supplier's energy savings result determined by the Administrator.

Schedule 2

Provides a list of greenhouse gases relevant to the Act.

Dictionary

Defines a number of important terms used in the Act, notably including the definition of the terms 'electricity supplier' and 'priority household'. The definition of a 'priority household' has been included here to cover, at a minimum, which households should be targeted by tier 1 suppliers to participate in energy efficiency activities. This definition may be further expanded by regulation as other eligible household types are identified in the future.