

2012

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**AMMENDMENT TO THE
ENERGY EFFICIENCY (COST OF LIVING) IMPROVEMENT BILL 2012**

SUPPLEMENTARY EXPLANATORY STATEMENT

Presented by

Mr Simon Corbell MLA

Minister for the Environment and Sustainable Development

Overview

Amendment 1 to 3 have been developed in direct response to Scrutiny Report No. 51, dated 26 April 2012, from the Standing Committee on Justice and Community Safety, and as such have not been referred to the Scrutiny Committee.

Amendment 4 to the Energy Efficiency (Cost of Living) Improvement Bill 2012 provides for an update to the definition of Tier 1 and Tier 2 electricity suppliers. This amendment is considered to be both minor and technical in nature (refer to Assembly Standing Order 182A) and therefore has not been referred to the Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills & Subordinate Legislation Committee).

Detailed Explanation

Amendment 1

The purpose of subclause 19(1)(g) is to assisting the administrator to determine if a supplier has met their obligations. It is therefore considered appropriate to reflect this in the legislation by updating clause 19(1)(g). The amended clause clarifies that the Administrator may only require information reasonably required to help the administrator work out if a supplier has met the supplier's obligations under the Act.

Further, it is noted that subclause 19(2)(b) provides that the Administrator may also require any other information that the administrator reasonably requires. The purpose of this is to assist the audit process and hence enable the Administrator to monitor the compliance of a supplier with their obligations under the Act.

Amendment 2

This references section 170 and 171 of the Legislation Act, dealing with the application of the privilege against self-incrimination and client legal privilege – in respect of the requirement that suppliers are required to provide information to the Administrator.

Amendment 3

It is expected that the Codes of Practice provided for by Clause 25 will be low level, technical documents which may need to be updated and amended from time to time to react to changing health, safety and environment requirements, sometimes with relatively short notice. This does, however, confer significant powers on the administrator to legislate Codes of Practice, which will ultimately determine the eligibility of an activity under the Scheme. This amendment therefore provides that a Code of Practice is a disallowable instrument, rather than a notifiable instrument, thus allowing the Legislative Assembly the opportunity to disallow the Codes.

As Codes of Practice may need to be reactive to fast changing circumstances, it is not, however, considered appropriate to insert a different date requirement than would otherwise be the case where no date is specified.

Amendment 4

A primary consideration during the development of the *Energy Efficiency (Cost of Living) Improvement Bill 2012* was the impact of the legislation on competition in the ACT. The Bill provides for smaller 'Tier 2' suppliers to discharge their obligation by paying an Energy Savings Contribution fee, provided for in clause 11, rather than undertaking eligible activities. This simplified obligation is intended to neutralise competition issues arising from the Scheme, in line with Territory's commitment to promote greater retail competition.

Under the differentiated obligation, as it was originally drafted, a:

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

It has become apparent, however, that after recent market changes, an electricity supplier in the ACT with a small number of major commercial customers, and no residential customers, may exceed the 500 000MWh threshold. It is not considered practicable for a supplier with no residential consumers to deliver energy savings services to households and priority groups, and requiring a supplier to comply with the Scheme as a Tier 1 supplier may discourage them from growing their market share in the ACT. This would represent a negative result for future retail competition in the Territory, and as such it is considered essential that the definition include a minimum number of customers, as well as a minimum market share of electricity sales in the ACT, to trigger a Tier 1 obligation.

The amendment to the dictionary therefore provides that any supplier in the ACT with less than 5 000 customers and/or selling less than 500 000MWh of electricity is not required to participate in the Scheme as a Tier 1 supplier and may participate as a Tier 2 supplier.

The minimum number of customers is recommended to be 5 000 customers, in line with requirements under the Victorian Energy Efficiency Target Scheme. 5 000 represents an economy of scale at which a supplier may be expected to cost-effectively deliver residential energy saving services.

This change has the effect of neutralising scheme competition impacts by ensuring suppliers with a small number of large commercial contracts in the ACT are not unreasonably encumbered with obligations that cannot reasonably be met.