

# Energy Efficiency (Cost of Living) Improvement Record Keeping and Reporting Code of Practice 2012 (No 1)

Disallowable Instrument DI2012-279

made under the

Energy Efficiency (Cost of Living) Improvement Act 2012, Section 25 (Codes of Practice)

## EXPLANATORY STATEMENT

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### Overview

The *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act) provides for obligations and administrative arrangements promoted as the Energy Efficiency Improvement Scheme (the Scheme). The Act places a number of obligations on electricity retailers selling electricity in the ACT (retailers) to meet an energy savings obligation.

Section 14 of the Act provides that a NERL retailer may meet their target in whole or in part by undertaking eligible activities. A tier 1 NERL retailer as defined in the Act must undertake eligible activities complying with a relevant approved code of practice or acquire approved abatement factors complying with a relevant approved code of practice to achieve its energy savings and priority household obligations.

A tier 2 NERL retailer as defined in the Act must undertake eligible activities complying with a relevant approved code of practice, acquire approved abatement factors complying with a relevant approved code of practice or pay an energy savings contribution for all or part of its energy savings obligation.

Eligible activities are determined by the Minister under section 10 of the Act. A determination must include the minimum specifications for the performance of the activity, amongst other things. To be included in the calculation of an energy savings result at the end of a compliance period, an eligible activity must be undertaken in accordance with relevant approved codes of practice.

The eligible activities retailers may undertake are provided for in the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2012 (No 1)*, as notified on 19 September 2012.

Section 25 of the Act provides that the Administrator of the EEIS may approve codes of practice relating to consumer protection obligations, quality, health, safety and environmental requirements, record keeping requirements and reporting requirements for eligible activities

Recordkeeping and reporting requirements are relevant to eligible activities are prescribed in the *Energy Efficiency (Cost of Living) Improvement Record Keeping and Reporting Code of Practice 2012 (No 1)* (DI2012-268), which is effective from 21 December 2012.

This code provides for the following minimum requirements in relation to undertaking eligible activities—

- (a) consumer protection;
- (b) quality requirements;
- (c) health and safety requirements; and
- (d) environmental requirements.

This code also provides specific requirements for certain eligible activities.

The setting of specific requirements is essential to provide clear methods of engaging with consumers and undertaking work involved in eligible activities without compromising consumer protections and the health and safety of workers, householders and other members of the public as well as to protect the environment.

These requirements will be used to assess whether an activity has been undertaken correctly so that the Administrator may establish a retailer's compliance with all relevant activity and general scheme requirements. This will inform the Administrator's actions under the Scheme in relation to calculating an energy savings result for a retailer, and assist with promoting safe and effective outcomes.

## **Regulatory Impact Analysis**

Section 34 of the Legislation Act provides that a Regulatory Impact Statement (RIS) must be prepared if a Disallowable Instrument is likely to impose appreciable costs on the community, or a part of the community.

A regulatory impact assessment, incorporating feedback from consultation with industry, community organisations and government stakeholders, was undertaken to inform the development of the Act.

The regulatory impact analysis was based on the availability of a range of activities such as those allowed under the *Victorian Energy Efficiency Target Act 2007* (Victoria), and included a detailed analysis of the likely impacts of the Scheme, including a comprehensive analysis of the likely economic costs to retailers in complying with the energy savings obligation across the range of activities. The costs and benefits for the Scheme were assessed with the anticipation that compliance in relation to eligible activities would require compliance with regulatory requirements for carrying out activities safely and effectively. The RIS is available at [http://www.legislation.act.gov.au/b/db\\_44295/default.asp](http://www.legislation.act.gov.au/b/db_44295/default.asp).

This instrument does not impose new obligations on a NERL retailer with an energy savings obligation under the Act, but rather clarifies the requirements on them. These requirements are consistent with the assumptions in the RIS and with those for similar schemes operating in other Australian states.

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

## **Consultation**

This code was developed after consultation with electricity retailers that have an obligation under the Act, particularly with Tier 1 and Tier 2 retailers that currently sell electricity in the Territory. Retailers identified certain activities that were intended for early adoption. Specific activity requirements for those eligible activities are included in this interim code to allow retailers to plan their compliance periods and make arrangements for the delivery of the activities. Codes for the remaining activities are in development.

It is intended that this code will be replaced with a series of codes incorporating specific activity requirements for all eligible activities. Additional or revised codes will be required if new activities are included in the Scheme.

## **Detailed Explanation of provisions**

### ***Instrument***

#### **Clause 1      Name of Instrument**

Clause 1 provides for the name of the instrument as the *Energy Efficiency (Cost of Living) Improvement Eligible Activities Interim Code of Practice 2012 (No 1)*.

#### **Clause 2      Commencement**

This clause provides for the commencement of the instrument the day after notification.

#### **Clause 3      Code of Practice**

This clause provides that the document entitled the 'Energy Efficiency (Cost of Living) Improvement Eligible Activities Interim Code of Practice' is an approved code of practice under section 25 of the Act.

#### **Clause 4      Disapplication of notification requirement**

Clause 4 disapplies the requirement of the *Legislation Act 2001*, section 47 (5) and 47 (6), so that published standards and codes that are relied on in the code of practice do not have to be notified on the ACT legislation register.

Documents referenced in the code include Australian Standards, the Building Code of Australia (BCA) and the Plumbing Code of Australia (PCA). These documents are subject to copyright, making them inappropriate to notify on the legislation register. Australian Standards are available at [www.standards.org.au](http://www.standards.org.au). The BCA and PCA, including published State and Territory appendices, are available on the ABCB web site at [www.abcb.gov.au](http://www.abcb.gov.au).

## **Clause 5      Referenced documents**

Provides advice regarding how the community can access the Australian Standards, the BCA and the PCA, including how they can freely access the BCA and PCA, considering that access to the standards and codes are generally otherwise by paid purchase or subscription.

### *Code of Practice*

#### **Part 1      Preliminary**

Provides for the name of the code, the application of the dictionary and makes reference to the offences provided for by the Act and under other legislation relating to the undertaking eligible activities.

#### **Part 2      Important concepts**

Part 2 identifies a number of important concepts relating to undertaking eligible activities as they relate to the Act and the Scheme, including the application of the code to certain stakeholders under the Scheme, including retailers, authorised contractors, authorised installers and authorised sellers.

This part also provides the object of and context for the code. The code is intended to be read in conjunction with a number of relevant instruments so that people operating under the Scheme will be aware of and consider all of the requirements applying to an eligible activity. This is important as requirements for activities are located in the Act, the determination of eligible activities made by the Minister under section 10 of the Act (NI2012-489), and other codes of practice.

In addition, this part clarifies that the code is not intended to be exhaustive and all relevant legislation that applies to work involved in undertaking an eligible activity must be complied with. Retailers and their representatives cannot rely solely on the code to determine all relevant requirements. This includes other construction legislation that applies to certain activities, as well as fair trading, work health and safety and privacy legislation. This is important when considering the range of activities and the health, safety and other risks that may apply regardless of the Scheme. Section 7 provides that in the case of an inconsistency with another law, the highest legislative requirement must be complied with.

#### **Part 3      General obligations**

This part outlines the requirements universal to the undertaking of eligible activities.

Section 23 requires each retailer to nominate a central contact, for compliance purposes. The purpose of this is to facilitate the coordinated provision of information between retailers and the Administrator.

This part provides for a number of consumer protections including:

- management of consumer complaints;
- privacy of consumer information;

- general conduct standards, including those that reflect Australian Consumer Law in relation to unsolicited contact and dealings with consumers;
- a retailer's requirements to manage the conduct of their representatives and report any investigations by a relevant authority to the Administrator; and
- the mandatory provision of identification cards to authorised installers and other people attending premises on behalf of the retailer to arrange or undertake activities.

Section 29 also prescribes a requirement for retailers to assess the fitness and propriety of any person that will be attending a residential premises to arrange or undertake an eligible activity on its behalf. This section does not prescribe a particular test for fitness and propriety but provides for circumstances the retailer must consider. This, and the other consumer protections included in this instrument, is essential for public safety as the Scheme requires that people attend and enter residential premises to undertake activities. The Scheme also requires that 25% of a Tier 1 retailer's obligation must be met by activities undertaken in a priority household. Any household may contain vulnerable people.

Sections 33 and 34 provide for representatives to inform people of their potential obligations under the Residential Tenancies Act and unit titles legislation so that consumers are able to make appropriate arrangements for activities if required. However, a representative is not responsible for ensuring any authorisations required are obtained.

Sections 35 and 36 prescribe practices for the management of waste and reiterate the need to make any notifications for health, safety and environmental incidents to relevant people.

#### **Part 4            Competency of representatives**

This Part provides for the general competency requirements of retailer and their representatives in relation to undertaking eligible activities, including that the retailer must engage suitably competent people to arrange and undertake eligible activities.

The purpose of this part is to put in place regulation that mitigates risks associated with incompetent installation of products and to provide for a minimum level of competency for a person undertaking an eligible activity. While the actual competencies required will differ from activity to activity, consumers should be able to expect a reasonable level of competency from installers and other people they may deal with under the Scheme. It is particularly important that representatives have specific skills and knowledge relating to the activities they will be undertaking, and that a person holds any relevant licences or authorisations for the work. Representatives should also be familiar with the Scheme so that they are able to accurately inform consumers.

Section 40 outlines training requirements for each type of representative and section 41 provides for requirements to attend induction courses on the Scheme and individual activities as required. Induction courses are intended to familiarise all relevant parties with their rights and obligations under the Act and in relation to specific activities. Induction courses are run by the Administrator at no cost to the participant and provide an important tool for managing compliance of installers with the Act and for providing each participant with clear, consistent information about the Act and any requirements that may apply to a person.

Sections 46 and 47 provide for the Administrator to be able to take certain actions when a retailer or their representative engage in conduct, or undertake an eligible activity, that presents or is likely to present a risk of death or injury to a person, significant harm to the environment or significant damage to a property. Section 46 allows the Administrator to give

a direction to the retailer regarding an unsafe thing. Work associated with some eligible activities can pose serious risks to people, property and the environment. Activities include electrical work, plumbing work, gasfitting work and other work that can present a serious health and safety risk if not undertaken correctly and competently. While certain powers for rectification or mitigation do exist under relevant acts, these do not necessarily extend to all parties and activities in the Scheme. It is essential in these instances that a retailer that is responsible for an activity carried out under the Scheme is also made responsible for the management of the unsafe thing caused by undertaking that activity.

In cases of serious risks, section 47 allows the Administrator to restrict a person's operation under the Scheme. This restriction applies only to undertaking eligible activities for compliance with an energy savings obligation and not to activities a person may carry out for other purposes. The Administrator must be reasonable in the application of this section and be satisfied that reasonable grounds exist for giving the restriction. A restriction must be proportional to the risk and could take the form of requiring additional quality assurance of work, requiring a person undergoes training, requiring a person works under supervision, preventing a person from undertaking all or part of an activity.

For fairness, section 48 provides that the Administrator must review any restriction after three months of operation and must revoke the restriction if the cause no longer exists, or that consumers will not be at a greater risk by using the person's services. The requirement to revoke in certain circumstances applies even where a restriction is continued.

## **Part 5           Activity performance specifications**

Part 5 prescribes general activity performance specifications and provides for an activity having to meet all applicable requirements including those prescribed in the Act and the code.

The purpose of provisions in section 51 that require a person to operate within their own skills and training is to protect consumers from unsafe or poor quality work, or being misinformed and deciding to take a particular action on the basis of that information.

## **Part 6           Building sealing activities**

Part 6 details the specific requirements for undertaking building sealing activities as defined in Schedule 1 Part 1.1 of the eligible activities determination including the minimum competency requirements and activity performance specifications, determining if a premises is eligible for the activity and calculating abatement factors for the activity.

## **Part 7           Shower fixture outlet**

Part 7 details the specific requirements for undertaking a replacement of an inefficient shower fixture outlet with a low flow product as defined in Schedule 3 Part 3.3 of the eligible activities determination including the minimum competency requirements and activity performance specifications, determining if a premises is eligible for the activity and calculating abatement factors for the activity.

## **Part 8            Hot water tap improvements**

Part 8 details the specific requirements for undertaking hot water tap improvements as defined in Schedule 3 Part 3.4 of the eligible activities determination including the minimum competency requirements and activity performance specifications, determining if a premises is eligible for the activity and calculating abatement factors for the activity.

## **Part 9            Lighting activities**

Details the specific requirements for undertaking lighting activities as defined in Schedule 4 Part 4.1 of the eligible activities determination including the minimum competency requirements and activity performance specifications, determining if a premises is eligible for the activity and calculating abatement factors for the activity.

## **Part 10          Install a standby power controller**

Details the specific requirements for installing a standby power controller as an eligible activity as defined in Schedule 5 Part 5.5 of the eligible activities determination including the minimum competency requirements and activity performance specifications, determining if a premises is eligible for the activity and calculating abatement factors for the activity.

## **Dictionary**

Provides for an explanation of a number of terms used in the code of practice.