

Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2013 (No 1)

Disallowable Instrument DI2013-264

made under the

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

EXPLANATORY STATEMENT

Terms of Reference

Administrator—the person appointed as administrator by the Minister as described in Part 4 of the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

Compliance period—for the *Energy Efficiency (Cost of Living) Improvement Act 2012* a compliance period is either 1 January 2013 to 31 December 2013; 1 January 2014 to 31 December 2014 or 1 January 2015 to 31 December 2015.

Compliance plan—a compliance plan for a compliance period that is required to contain defined information that must be provided to the Administrator before a retailer undertakes eligible activities as described in section 17 of *Energy Efficiency (Cost of Living) Improvement Act 2012*.

Eligible activity—an activity determined by the Minister that is intended to reduce the consumption of energy as described in section 10 of the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

Retailer—a *National Energy Retail Law (ACT)* retailer who holds a retailer authorisation to sell electricity to premises in the ACT for consumption.

Tier one retailer—means a *National Energy Retail Law (ACT)* retailer that has at least 5000 customers in the ACT and sells at least 500,000MWh of electricity to customers in the ACT annually.

Tier two retailer—means a *National Energy Retail Law (ACT)* retailer that is not a tier one NERL retailer.

Overview

The *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act) provides the legal framework 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 *National Energy Retail Law (ACT) 2012* (NERL) retailer may meet their target in whole or in part by undertaking eligible activities. To achieve its energy savings and priority household obligations, 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.

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 obligations.

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 2013 (No 1)* (the Determination,) as notified on 8 July 2013.

Section 25 of the Act provides that the Administrator 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 relevant to eligible activities are prescribed in the *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2013 (No 1)* (DI2013-264) which is effective from 22 October 2013.

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.

A retailer must complete an activity in accordance with the requirements of a relevant Code of Practice. This is the second version of this Code, replacing the *Energy Efficiency (Cost of Living) Improvement Eligible Activities Code of Practice 2012 (No 1)* which provided the requirements for completing 5 categories of activity.

This Code extends the range of eligible activities retailers can complete in accordance with a Code to 20 categories of activity. This is to assist authorised installers in ensuring that eligible activities comply with the prescribed activity requirements of this Code. This makes it easier for Retailers to meet the requirements of the Act and widens the range of electricity consumers who can participate in the Scheme.

Eligibility criteria for most activities have been expanded to include business premises. Business premises are defined in this Code as a building, or part of building, located in the Australian Capital Territory that is:

- not a residential premises; and
- not a new premises; and
- for which the energy consumption is not included in a reporting obligation under of any of the following;
 - a) the *National Greenhouse and Energy Reporting Act 2007* (Commonwealth); or
 - b) the Australian Government’s Energy Efficiency in Government Operations Policy; or
 - c) the Carbon Neutral ACT Government Framework.

This allows obligated retailers a greater range of premises in which to conduct eligible activities. All electricity users in the ACT will pay pass-through costs associated with the fulfilment of obligations under the Act as electricity prices rise to cover the cost of the scheme for retailers the expanded Code provides greater equity by giving consumers of electricity in business premises an opportunity to participate in energy saving activities.

This explanatory statement provides further information on some activities that were included in the previous iteration of this code. This provides retailers, contractors and installers with greater clarity where feedback has suggested this will improve the quality of installations. 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 whilst ensuring the environment is protected.

These Code 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.

Detailed regulatory impact analysis for the Act was undertaken during its development. 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 calculated an average cost of a Tier 1 retailer complying with the energy savings obligation across that range of activities. Compliance with the activity anticipated compliance with other regulatory requirements for carrying out activities safely and effectively would apply.

A further regulatory impact statement was prepared for the expansion of eligibility to business premises. Both regulatory impact assessments can be found at http://www.environment.act.gov.au/energy/energy_efficiency_improvement_scheme_eeis/the_energy_efficiency_cost_of_living_improvement_act_2012.

This instrument does not impose new obligations or a requirement 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. 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.

Improving the explanatory statements for some activities included in *Energy Efficiency (Cost of Living) Improvement Eligible Activities Code of Practice 2012 (No 1) (DI2012-279)* will assist authorised installers in ensuring that completed activities comply with the prescribed activity requirements of this code. This will improve outcomes without creating additional costs.

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.

Section 36 (1)(b) of the Legislation Act provide that a regulatory impact statement is not required if a disallowable instrument does not operate to the disadvantage of anyone by adversely affecting the person's rights or imposing liabilities on the person. This DI does not operate to the disadvantage of any person, and has a beneficial effect.

This DI increases the range of activities available to energy retailers to meet the requirements of the Act. This DI expands the eligibility criteria for receiving activities under the Act, allowing businesses as well as households to participate.

This DI establishes reporting and compliance requirements for the Act. Requirements for completing activities are in accordance with the performance of that activity by an appropriate competent person to meet the objectives of the Act.

Consultation

The first version of 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.

This is the first revised code expanding the range of specific activity requirements for existing eligible activities that retailers have expressed an interest in including in the Scheme.

Compliance and enforcement

The Act requires retailers undertaking eligible activities to undertake eligible activities determined by the Minister. The activities in the determination must be completed in accordance with a relevant Code of Practice. If activities are not completed in accordance with this Code **abatement cannot be attributed to the activity. A retailer that does not meet its energy saving obligation under the Act is liable to pay a shortfall penalty to the Territory set at \$70 per tonne of carbon dioxide equivalent.**

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 2013 (No 1)*.

Clause 2 Commencement

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

Clause 3 Code of Practice

In this clause the Administrator approves the '*Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice*' under section 25 of the Act.

Clause 4 Disapplication of notification requirement

Clause 5 disapplies , sections 47 (5) and 47(6) of the *Legislation Act 2001*, 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. This has been done for copyright reasons.

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. The BCA and PCA, including published State and Territory appendices, are available on the ABCB web site at www.abcb.gov.au.

Clause 5 Referenced documents

This clause 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.

Clause 6 Revocation

This clause revokes the previous eligible activities Code of Practice, *the Energy Efficiency (Cost of Living) Improvement Eligible Activities Code of Practice 2012 (No 1)* (DI2012-279).

Code of Practice

Part 1 Preliminary

Part 1 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 (NI2013-300), 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

Part 3 outlines the requirements universal to the undertaking of eligible activities.

Section 23 of the code 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:

- availability of information on the Scheme
- 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 or business 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 such as whether a person attending a premises has been convicted of a criminal offence involving fraud, dishonesty or violence and the seriousness of the offence; the nature of work undertaken;; whether the person attending a premises will be working alone or with others and the systems the retailer uses to manage the conduct of representatives.

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.

Sections 33 and 34 focus on the responsibility of persons arranging or undertaking eligible activities to inform people of their potential obligations under the *Residential Tenancies Act 1997*, *Leases (Commercial and Retail) Act 2001* 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 decommissioning and 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 for installers 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 that an activity must meet all applicable requirements including those prescribed in the Act and the code.

The purpose of the provisions in section 51, which require a person to operate within their own skills and training, are to protect consumers from unsafe or poor quality work, or to prevent customers from 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.

Building sealing activities must be recorded in accordance with the record keeping and reporting code.

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.

This activity must be recorded in accordance with the record keeping and reporting code.

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.

This activity must be recorded in accordance with the record keeping and reporting code.

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.

This activity must be recorded in accordance with the record keeping and reporting code.

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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 11 Decommissioning and disposal of pre-1996 refrigerator or freezer

Details the specific requirements for the decommissioning and disposal of a pre-1996 refrigerator or freezer as defined in Schedule 5 Part 5.1 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 12 Purchase of high efficiency refrigerator or freezer

Details the specific requirements for the purchase for installation in a premises a high efficiency refrigerator or freezer as defined in Schedule 5 Part 5.2 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 13 Installation of a high efficiency gas clothes dryer

Details the specific requirements for the installation in a premises a high efficiency gas clothes dryer as defined in Schedule 5 Part 5.3 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 14 Purchase of high efficiency electric clothes dryer

Details the specific requirements for the purchase for installation in a premises a high efficiency electric clothes dryer as defined in Schedule 5 Part 5.4 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 15 Purchase of high efficiency television

Details the specific requirements for the purchase for installation in a premises a high efficiency television as defined in Schedule 5 Part 5.6 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 16 Installation of a high efficiency swimming pool pump

Details the specific requirements for installation in a premises a high efficiency swimming pool pump as defined in Schedule 5 Part 5.7 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 17 Replacing a ducted gas space heater with a high efficiency ducted gas space heater

Details the specific requirements for installation in a premises a high efficiency ducted gas space heater defined in Schedule 2 Part 2.1 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 18 Decommission a central electric space heater and install a high efficiency ducted gas heater

Details the specific requirements for the decommissioning of a central electric space heater and installation in a premises a high efficiency ducted gas space heater defined in Schedule 2 Part 2.2 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 19 Install a gas or liquid petroleum gas space heater

Details the specific requirements for installation in a premises a gas space heater defined in Schedule 2 Part 2.3 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 20 Install a high efficiency ducted gas heater in a new residential premises

Details the specific requirements for installation in a residential premises a high efficiency ducted gas space heater defined in Schedule 2 Part 2.4 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 21 Install insulated gas heating ductwork

Details the specific requirements for installation in a premises insulated gas heating ductwork defined in Schedule 2 Part 2.5 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 22a Decommission and replace electric resistance water heater with a natural gas or liquefied petroleum gas storage water heater

Details the specific requirements for the decommissioning of an electric resistance water heater and installation in a premises a gas storage water heater defined in Schedule 3 Part 3.1(a) 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 22b Decommission and replace electric resistance water heater with a gas instantaneous water heater

Details the specific requirements for the decommissioning of an electric resistance water heater and installation in a premises a gas instantaneous water heater defined in Schedule 3 Part 3.1(b) 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 22c Decommission a gas or liquefied petroleum gas water heater and install a gas or liquefied petroleum gas boosted solar water heater

Details the specific requirements for the decommissioning of an electric resistance water heater and installation in a premises a gas boosted solar instantaneous water heater defined in Schedule 3 Part 3.1(c) 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Part 23 Decommission a gas or liquefied petroleum gas water heater and install a gas or liquefied petroleum gas boosted solar water heater

Details the specific requirements for the decommissioning of an electric resistance water heater and installation in a premises a gas boosted solar instantaneous water heater defined in Schedule 3 Part 3.2 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.

This activity must be recorded in accordance with the record keeping and reporting code.

Dictionary

The Dictionary defines the terms used in the code of practice. The definition of a conditioned zone has been expanded from the previous code to provide additional clarification for installers carrying out building sealing activities.