

Energy Efficiency (Cost of Living) Improvement Record Keeping and Reporting Code of Practice 2013 (No 1)

Disallowable instrument DI2013-265

made under the

Energy Efficiency (Cost of Living) Improvement Act 2012, s 25 (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.

Overview

The *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act), which provides the legal framework for arrangements promoted as the Energy Efficiency Improvement Scheme (the Scheme), places a number of obligations on electricity retailers selling electricity in the ACT (retailers) to meet an energy savings obligation. Retailers may achieve this obligation by undertaking eligible energy efficiency activities (eligible activities) in the ACT to meet their obligation.

The eligible activities retailers may undertake are provided for in the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2013 (No 1)*, as notified on 1 July 2013. These activities must be undertaken in accordance with requirements provided for in the Act and Determination, which includes approved Codes of practice and other relevant legislation.

Section 25 of the Act provides that the Administrator may approve Codes of practice relating to reporting and record keeping requirements, amongst other things. Section 26 of the Act requires that a retailer must keep records necessary for the Administrator to determine whether the retailer's energy savings obligations have been complied with. These records must be kept for a minimum of 5 years after the end of the compliance period to which they relate. Offences attach to failure to keep records, or provide certain reports and information in accordance with the Act.

The setting of specific record keeping and reporting requirements is essential to ensure that retailers collect, keep and provide evidence that an activity has been undertaken correctly. The Administrator may use these records to establish a retailer's compliance with all relevant activity and general scheme requirements. This will inform the Administrator's actions under the Scheme, and assist with promoting safe and effective outcomes. The Administrator is also required to prepare annual reports and to the Minister on the operation and administration of the Act.

This is the second version of this Code, replacing the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2012 (No 1)* (the Determination) that was notified on 21 September 2012. This code is very similar to the previous version of the Code but is required to extend the record keeping and reporting requirements for the Act to include business premises following the extension of eligible activities to business in the Determination.

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

- compliance plans;
- eligible activities;
- compliance period reporting;
- periodic activity reporting;
- independent information audits; and
- information and reporting requests from the administrator.

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 comprehensive regulatory impact assessment, incorporating 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 RIS anticipated that compliance with the activity would include compliance with other regulatory requirements for carrying out activities safely and effectively and complying with record keeping and reporting requirements. The RIS is available at 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.

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 for Retailer's obliged under the Act by extending the range of activities that can be provided and increasing the number of entities that can participate in the scheme established by the legislation.

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

A discussion paper, developed in consultation with the ACT Government Solicitor, was released publicly and given to all retailers with an authorisation to sell electricity in the Territory. The discussion paper and subsequent feedback from the consultation and further discussions with stakeholders provided the basis for the first version of this Code.

The second version of this Code was sent to Tier 1 retailers for comment in draft form. This led to a minor amendment to the Code.

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 Record Keeping and Reporting Code of Practice 2012 (No 1)*.

Clause 2 Commencement

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

Clause 3 Revocation

This clause revokes the previous record keeping and reporting Code of Practice, namely the *Energy Efficiency (Cost of Living) Improvement Record Keeping and Reporting Code of Practice 2012 (No 1)*.

Clause 4 Code of Practice

This clause provides that the document entitled the ‘Energy Efficiency (Cost of Living) Improvement Record Keeping and Reporting Code of Practice’ is an approved Code of practice as provided for under section 25 of the Act.

Clause 5 Disapplication of notification requirement

Clause 5 disapplies the requirement of the *Legislation Act 2001*, section 47 (5) and section 47 (6). This means 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 and the Building Code of Australia (BCA). These documents are subject to copyright, making it inappropriate to notify on the legislation register. Australian Standards are available at www.standards.org.au. The BCA, including published State and Territory appendices, are available on the ABCB web site at www.abcb.gov.au.

Clause 6 Referenced documents

This clause provides information regarding how the community can access the Australian Standards and the BCA, including how they can freely access them, considering that access to the standards and Codes are generally otherwise by paid purchase or subscription.

Code of Practice

Part 1 Preliminary

This Part 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 recording and reporting of information.

Part 2 Important concepts

This Part identifies a number of important concepts relating to record keeping and reporting as they relate to the Act and the Scheme, including the application of the Code to certain stakeholders under the EEIS, including retailers, authorised contractors, authorised installers and authorised sellers.

This Part provides that the terms used in the Code have the same meaning as those used in the Act, unless a different meaning is provided. It is therefore important that the Code be read in conjunction with the Act.

Related to this, the Code does not limit the obligations of a retailer under any other relevant law, including the Act. This includes other construction legislation that applies to certain activities, as well as fair trading, work health and safety and privacy legislation.

Part 3 General obligations

This Part outlines the requirements universal to the keeping and reporting of information in relation to the Code and the Act more generally. In particular, this Part outlines how information should be kept, controlled and provided to the Administrator. This enables the Administrator to fairly and efficiently assess a retailer's compliance with all obligations under the Act.

A central contact, for reporting purposes, must be established by all retailers and provided to the Administrator. The purpose of this is to facilitate the coordinated provision of information between retailers and the administrator.

As information may be personal or commercial in nature, Part 3 provides that certain records and information must be kept in confidence by the retailer and comply with any other legal requirements, including the *Privacy Act 1988 (Cwlth)*. For these reasons, information must be shared via a secure link provided by the Administrator.

All reports and records provided to the Administrator must be provided in a standard format so that the Administrator may effectively assess compliance. The specific format requirements for particular document types are provided under each relevant part, as summarised in section 17.

Part 3 also outlines how documents must be identified, particularly for uneditable copies of documents that must be provided. This complements provisions elsewhere in this Code that requires an uneditable copy of some reports to be provided to the administrator, as well as a standard copy. The purpose of this is to ensure that information cannot be altered and where information is taken from a report or record for use in analysis, enforcement or reporting by the Administrator the integrity of the original information is preserved.

This part also requires that the retailer must keep particular information on parties, including contractors, installers and sellers, engaged by a retailer. The Administrator may request to see this information as outlined under Part 10 of the Code for the purpose of confirming compliance with all requirements under the Act and other relevant legislation.

Part 4 Compliance plans

This Part provides for the information that must be contained in a compliance plan, which must be provided to the Administrator before a retailer undertakes any activities under the Scheme.

In particular, a compliance plan must provide a comprehensive overview of the retailer's estimated energy savings obligation for the compliance period and the activities they intend to undertake to meet their obligation. Further, information must be provided about the systems and processes a retailer has in place to ensure all requirements under the Act, and any other relevant legislation, are met.

The purpose of the compliance plan is to provide the Administrator with information on the types of activities planned and to inform the Administrator of further steps that may need to be taken to ensure compliance with activity definitions and Codes. The lodgement of the compliance plan also provides an opportunity for the Administrator to work with the relevant

retailer to resolve any potential compliance matters that may be indicated by information in the plan. For this reason, it is considered essential that all information required to be included in a compliance plan, as identified under this part, is provided to the Administrator, to the satisfaction of the Administrator. If the Administrator determines that the required information has not been included in the compliance plan, the Administrator may request additional information. If additional information is requested, the compliance plan is not taken to be lodged and eligible activities must not be undertaken by the retailer until the Administrator determines that the compliance plan is complete.

Section 30 of this Code places an obligation on the Administrator to confirm that a plan is considered lodged within certain timeframes. This is to allow retailers sufficient time to rectify any deficiencies in information before they are due to commence activities.

Part 5 Activity records

This Part provides that retailers must collect and keep information about the eligible activities they (or their authorised contractor, installer or seller) undertake for the purpose of meeting their energy savings obligation under the Act. This information must be recorded and kept on forms prepared by the retailer to the specifications of this part. These forms are referred to as activity record forms and are part of the overall activity certification, explained in Part 6.

The provision of general information to consumers must be included on all forms and there are a number of fields that must be provided for completion on all forms as provided in section 41 (noting some variation for select activities that do not require installation by the retailer). Provisions in section 43 part provide flexibility to retailers in allowing them to customise forms and to create forms that contain the records for a number of activities they intend to offer.

Information must be collected about the value of the service and the value of any contributions made by the retailer and/or the consumer. The purpose of this is to inform the review of the Act to be carried out in 2014 (regarding cost effectiveness) and the setting of the Tier 2 retailer contribution.

In addition, Part 5 specifies the information that must be collected on each eligible activity available under the *Eligible Activity Determination*. The purpose of this is so that the compliance of the activity, and the abatement associated with undertaking that activity, may be confirmed.

The installer(s) or contractor(s) responsible for the installation of each activity, or component of an activity, (or the seller of a product where installation is not required) must be identified on the form. These installers and sellers must sign a declaration in relation to their involvement in the activity.

In the instance that multiple installers are required for the completion of an activity or an activity record form, a primary installer must be nominated. The primary installer must organise the completion of all sections. The purpose of this is to ensure coordination and adequate oversight of the completion of all requirements for an activity, especially where the completion of a requirement could be undertaken by any of the installers involved in the activity – such as providing a consumer with a compulsory fact sheet or arranging copies of certification of work.

A form is signed by all identified installers (or the seller in the case of activities not requiring installation by a retailer) and the consumer.

The completed form constitutes an activity record and each form must be easily identified by a unique identifier so that it may be easily recalled by the retailer if requested by the Administrator. The record must be stored by the retailer for 5 years following the end of a compliance year to which the record relates, as provided for by clause 26 of the Act.

The purpose of requiring the collection and storage of detailed information about each activity undertaken is to ensure that the appropriate information is captured relating to an activity when undertaken for the purposes of complying with the Scheme, and to verify calculations of abatement factors. This includes activity –specific recording information relating to the schedule and part number in the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2013 (No 1.)*

In addition a portion of the information captured on the form will be reported periodically and annually to the Administrator, as provided for under Part 7 and Part 8 respectively. The Administrator may request copies of the forms, as provided for under Part 10. As such, the activity record may affect the determination of a retailer’s compliance with activity requirements and the corresponding abatement achieved towards their energy savings obligation.

Part 6 Activity certification

Part 6 details the requirements for activity certifications. Activity certifications represent the complete record that must be kept in relation to each activity undertaken by a retailer (or their representative) for the purpose of meeting their energy savings obligation.

The activity certification must include the activity record provided for in Part 5, all certifications relating to the activity, evidence relating to the disposal, removal or decommissioning of products, and proof of purchase for each installed product.

Part 7 Periodic activity reporting

Part 7 provides for the information that must be given to the Administrator, at given intervals throughout a compliance period, relating to eligible activities undertaken by a retailer (or their representative). This information constitutes a *periodic activity report*. As a minimum, periodic activity reports must be given to the Administrator quarterly in relation to all activities undertaken during that quarter.

This Part also provides, however, that the Administrator may request the more frequent reporting by retailers on certain eligible activities or the installation of certain products. This reflects the differing quality, health, safety, environmental, and consumer protection risks that apply to each of the activities. In setting a more frequent reporting requirement the Administrator must have regard to these risks and include a requirement in the Code of practice. Such arrangements must also be reviewed every 6 months. This is to establish the necessity of the reporting and align requirements to the risks of the activity, which may change over time and with experience of installers. Only retailers undertaking activities are required to submit periodic activity reports.

The periodic activity report must be provided in the prescribed format provided in section 62. The purpose of the provision of periodic activity reports is to allow the Administrator to monitor the types of activity being undertaken. In particular, this may inform the monitoring and compliance regime of the Administrator using the periodic activity reports in accordance

with section 64 of the Code in relation to the EEIS and other measures taken by the Administrator to ensure the ongoing safe and effective operation of the EEIS. In addition to the information provided in a period activity report, the Administrator may request access to specific activity records, as provided for under Part 10 of the Code.

Part 8 Compliance period report

Part 8 provides for information to be given to the Administrator pursuant to section 19 of the Act. . This information constitutes a compliance period report. Reports must be provided not later than 3 months after the end of the compliance period, in accordance with the compliance period dates provided in section 74 of the Code.

The information required to be given in a compliance report is similar to that given in a periodic activity report, however, a retailer must supply a report of all activities undertaken to be counted towards a retailer's energy savings obligation for a compliance period. Information about the retailer's sales and any acquired abatement factors must also be provided.

For Tier 2 retailers, information must be provided about the extent to which the retailer's energy savings obligation was achieved by paying an energy savings contribution, in addition to any information related to undertaking eligible activities.

The purpose of this is to ensure that the necessary information is given to the Administrator, in a standardised format, so that the Administrator may determine if a retailer has complied with their obligations for a compliance period under the Act.

NERL retailers who do not sell any electricity in the ACT during a compliance period will have an energy savings obligation of zero tonnes of carbon dioxide equivalents. Such retailers must still provide a compliance period report to confirm that they do not have an obligation under the Act – effectively a 'nil return'. However, if a retailer with a zero obligation chooses to undertake eligible activities, information on these activities must be provided.

Part 9 Independent information audits

Part 9 details the requirements for independent audits on information required by the Administrator under s19(2)(a) of the Act. This includes the process for nomination of an auditor by the retailer and approval by the Administrator or the appointment of an auditor by the Administrator and provides for the Administrator's use and response to an audit report. The purpose of this is to confirm a retailer's obligations under the Act and other relevant legislation have been complied with. This is necessary to provide a clear process for audit reporting and provide reasonable timeframes for provision of information that the Administrator may require to be reported on at the time a compliance period report is given.

Part 10 Information and reporting requests

Part 10 applies to all record keeping and reporting requirements under the Code and the Act. While only certain information captured in an Activity Record must be reported periodically or per compliance period to the Administrator under Part 7 and Part 8 respectively, Part 10 provides that the Administrator may request further information on any compliance matter .

For example, the Administrator may request access to activity records and certification collected as provided for under Part 5 and Part 6 respectively. The Administrator may also request all activity records for a particular activity or product used or for work undertaken by a particular installer.

These provisions complement those for periodic reporting. It is expected that periodic reporting will identify records or activities that may need further inspection to establish compliance with relevant requirements. This section can also be used in response to inspections and other compliance activities undertaken by the Administrator or authorised people to target further investigation to specific activities, installations or records.

Part 10 provides the time periods in which information must be given to the Administrator, but also identifies that the timeframe may be adjusted in consideration of likely risk of death or injury to a person, significant harm to the environment or significant damage to property. This is necessary as a number of activities, if not carried out correctly and competently, can cause serious risks to people and property. This includes work health and safety risks to installers. If an unsafe situation arises as a result of, or in conjunction with, a person undertaking an eligible activity, retailers will need to cooperate with the Administrator to provide information as expediently as possible to deal with imminent risks.

Part 11 Miscellaneous

This Part identifies where copies of standards and building Codes referred to in the Act may be sourced.

Dictionary

The Dictionary defines the terms used in the Code of practice.