2015

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ENERGY EFFICIENCY (COST OF LIVING) IMPROVEMENT AMENDMENT BILL 2015

EXPLANATORY STATEMENT

Presented by

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Overview

The Energy Efficiency (Cost of Living) Improvement Amendment Bill 2015 contains amendments to extend and enhance the operation of the Energy Efficiency Improvement Scheme (EEIS), provided for by the *Energy Efficiency (Cost of Living) Improvement Act 2012*

In summary, the amendments provide for:

a) annual compliance periods for each calendar year from 2016 to 2020 (inclusive);

b) additional notice time to be given when increasing a future energy saving target or an emissions multiplier;

c) a mechanism for the Administrator to register 'approved abatement providers' who are eligible to undertake EEIS activities in the ACT and create abatement that may be purchased by a retailer to meet an energy savings target;

d) a mechanism for the Administrator to recognise abatement created in the ACT under recognised activities in 'other-jurisdictional schemes';

e) the Administrator to develop codes in relation to the eligibility of approved abatement providers and in relation to the acquisition of approved abatement factors;

f) existing requirements on retailers (or their contractors) undertaking activities under the EEIS to be extended to 'approved abatement providers;

g) the shortfall penalty rate (for a retailer not meeting their abatement target) to be set by Disallowable Instrument; and

h) additional clarity regarding when an electricity retailer transitions from being a Tier 2 to a Tier 1 retailer.

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 energy, greenhouse gas savings and enhanced social equity, can be achieved with net economic benefits for the Territory.

This Bill contains a strict liability offence. 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 or the environment. The control of compliance with this Act requires offences that are at the lower end of the range of criminal conduct, however, they are necessary to ensure the safety and integrity of the EEIS.

The offence also arises in a context where a defendant can reasonably be expected, because of his or her professional involvement in the EEIS, to know the requirements of the law. The mistake of fact defence – where the person considered whether or not the facts existed, and was under a mistaken but reasonable belief about the facts – expressly applies to strict liability offences, as do other defences in chapter 2 of the *Criminal Code 2002*.

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

Detailed Explanation

Clause 1 Name of Act

This clause names the Act as the *Energy Efficiency (Cost of Living) Improvement Amendment Act 2015*.

Clause 2 Commencement

This clause provides for the commencement of the Act.

The effect of this Clause is that the Act will commence the day after its notification, with the exception of Clause 4, 5, 6, 10 and 40, which will commence on a day fixed by the Minister by written notice.

The purpose of delayed commencement of these clauses is to allow for the continuation of current requirements for the existing compliance period in relation to setting targets. In addition, new energy savings targets, priority household targets and emissions multipliers (which have not previously been set) will be set in accordance with existing requirements which requires 3 months notice – rather than with 6 months notice, which will be required for future compliance periods under amendment clause 4 and 5.

Clause 3 Legislation amended

This clause provides that the Act being amended is the *Energy Efficiency (Cost of Living) Improvement Act 2012*

Clause 4 Energy savings target: Section 7 (2)

This clause amends section 7(2) of the Act substituting when an Energy Savings Target determination must be made.

The amendment provides that if a determination increases the energy savings target, the determination must be made at least 6 months before the start of the compliance period to which the target relates. In any other case the existing requirement (to set the target 3 months prior to the corresponding compliance period) remains.

Clause 5 Priority household target: Section 8 (2)

This clause amends section 8(2) of the Act substituting when a Priority Household Target determination must be made.

The amendment provides that if a determination increases the priority household target, the determination must be made at least 6 months before the start of the compliance period to which the target relates. In any other case the existing requirement (to set the target 3 months prior to the corresponding compliance period) remains.

Clause 6 Section 9

This clause amends Section 9 of the Act replacing the entire section. This amendment has the effect of replacing the term ‘emissions factor’ in the unamended Act with the term ‘emissions

multiplier'. The purpose of this amendment is to reduce confusion with the generally accepted meaning of an 'emissions factor' which relates to the carbon dioxide equivalent (CO_2-e) associated at a particular point in time for the supply of electricity, gas or other fuel in the ACT, and the purpose of the instrument under the Act – which is to provide a conversion factor to determine a retailer's energy savings obligation in tonnes of CO_2-e, rather than MWh. Whilst linked to the projected emissions factor for electricity, the emissions multiplier, combined with the energy savings target, both set the level of ambition for a retailer and may reflect the predicted average over time.

In addition, this clause provides that if a determination increases the emissions multiplier, the determination must be made at least 6 months before the start of the compliance period to which the multiplier relates. In any other case the existing requirement (to set the multiplier 3 months prior to the corresponding compliance period) remains.

Clause 7 Eligible Activities: New section 10 (1A)

This clause amends section 10 of the Act by inserting a new section 10 (1A) in relation to eligible activities under the Act. The new section provides that an eligible activity undertaken to meet an obligation under the Act may include an activity undertaken in the Territory under an 'approved interstate energy efficiency scheme' – as provided for in new Section 10A, operationalised by Amendment Clause 8.

Clause 8 New section 10A

This clause amends the Act by inserting a new section 10A in relation to the approval of interstate energy efficiency schemes. The effect of the amendment is to provide that the Minister may recognise an energy efficiency scheme operating in another jurisdiction. This creates a clear pathway for the EEIS to leverage activities provided for by other energy efficiency schemes –creating additional opportunities for harmonisation and alignment with other schemes, as well as opportunities to increase efficiencies for retailers and activity providers operating across multiple schemes.

Clause 9 Meaning of compliance period: Section 12, new paragraphs (d) to (h)

This clause amends section 12 of the Act inserting new paragraphs (d) to (h) to provide new compliance periods. The result is the addition of five new compliance periods, effectively extending the obligation on retailers under the Act to 31 December 2020.

Clause 10 Working out energy savings obligation: Section 13 (2)

This clause amends section 13 (2) of the Act substituting the term 'factor' with the term 'multiplier'. This provides for the replacement of the term 'emissions factor' with the term 'emissions multiplier', in line with the amendment to section 9 under Amendment Clause 6.

Clause 11 New section 17 A

This clause amends the Act by inserting new section 17A and 17B in relation to approved abatement providers. New Section 17A creates a mechanism whereby the Administrator may approve a person to undertake eligible activities as an 'abatement provider'. The intention is that this person could then sell abatement to retailers – thereby facilitating the participation

of Tier 2 retailers and increasing competition in activity delivery, and ultimately broadening the range of activities and the participant base, and lowering costs for all electricity consumers.

New Section 17A also provides that the approval of an abatement provider may be made with or without conditions and that failure to comply with these conditions may result in cancellation of the abatement provider's approval. It is intended that conditions may relate, for example, to heath, safety, environment or reporting requirements that must be met to ensure the enduring integrity of the eligible activities undertaken by abatement providers.

In addition, similar to the requirement for a retailer to lodge a compliance plan before undertaking activities in a compliance period, new section 17B requires that approved abatement providers lodge a compliance plan before undertaking activities in a compliance period. New section 17B(3) creates an offence if an approved abatement provider fails to lodge a compliance plan before undertaking activities in a compliance period. The offence carries a maximum penalty of 10 penalty unit. The offence is a strict liability offence as is section 17 which applies to retailers.

The purpose of this is to ensure that abatement providers 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 provider's actions under the Act.

Clause 12 Approval of acquired abatement factor: Section 18 (1)

This clause amends section 18(1) of the Act substituting the term 'another person' with the term 'an approved abatement provider or another retailer'. This clarifies a retailer may acquire abatement from an abatement provider or retailer.

Clause 13 Section 20 (9) (b) (iii)

This clause amends section 20(9)(b) of the Act by substituting paragraphs (iii) to (viii), which continues the existing ability for a retailer to carry forward a shortfall of 10% to the next compliance period, except in the final legislated compliance period when no shortfall may be carried forward.

Clause 14 Compliance with energy savings obligations—tier 2 retailer contribution for shortfall: Section 20B (2) (b) (iii)

This clause amends section 20B(2)(b) of the Act by substituting paragraphs (iii) to (viii). This has the effect of continuing the existing ability for a Tier 2 retailer to carry forward a shortfall of 10% to the next compliance period, except in the final legislated compliance period when no shortfall may be carried forward.

Clause 15 Compliance with priority household obligations—retailer priority household result: Section 21 (8) (b) (iii)

This clause amends section 21(8)(b) of the Act by substituting paragraphs (iii) to (viii). This continues the existing ability for a retailer to carry forward a shortfall of 10% of their Priority

Household Target to the next compliance period, except in the final legislated compliance period, when no shortfall may be carried forward.

Clause 16 Penalties for noncompliance: Section 22 (3)

This clause amends section 22 substituting section 22 (3) in relation to noncompliance and creates new sections (3A), (3B) and (3C). The overall effect of this clause is to provide that the shortfall penalty, currently set in the Act at $70 per tonne of carbon dioxide equivalent greenhouse gas emissions in the net shortfall, to be set by the Minister by Disallowable Instrument. This provides the necessary flexibility and allows the EEIS to respond to implementation challenges should they emerge.

New section 3A provides that in setting the shortfall penalty, the Minister must take into consideration the objects of the Act. This recognises that setting the shortfall penalty, when combined with section 13 (Working out Energy Savings Obligation), section 7 (Energy Savings Target) and section 9 (as amended) (Emissions Multiplier), drives the overall ambition and in the turn household and business costs and savings associated with the Act.

Clause 17 Administrator's functions: Section 24 (a)

This clause amends section 24 (a) of the Act by inserting after 'retailers' 'and approved abatement providers' to extend the Administrator's functions to include setting the reporting and record keeping requirements for approved abatement providers. This is necessary to provide for the effective inclusion and operation of abatement providers under the Act as amended by clause 12 to allow abatement providers to undertake eligible activities under the Act.

Clause 18 New section 24 (ba)

This clause inserts a new Section 24 (ba) into the Act. This extends the Administrator's functions to include approving (including with or without condition) abatement providers, and that the Administrator may cancel the approval. This is necessary to provide for the effective inclusion and operation of abatement providers under the Act as amended to allow abatement providers to undertake eligible activities under the Act.

Clause 19 Codes of Practice: New Section 25 (1) (ba)

This clause inserts a new sections 25 (1) (ba) and 25 (1) (bb) into the Act. This extends the range of codes of practice that the Administrator may approve by Disallowable Instrument to include codes that address abatement provider eligibility and requirements for the acquisition of abatement factors.

This is necessary to provide for the effective inclusion and operation of abatement providers under the Act as amended to allow abatement providers to undertake eligible activities under the Act.

It is intended that these codes would provide a clear application process, and detail the minimum requirements for eligibility, in relation to both the approval of abatement providers and the acquisition of abatement factors.

Clause 20 Record keeping requirements: New section 26 (1A)

This clause inserts new section 26 (1A) into the Act. The new section requires that approved abatement providers must keep records, similar to those required to be kept by retailers, to ensure overall compliance with the Act, conditions of the provider's approval and compliance of eligible activities undertaken by the provider.

Clauses 21 – 36 Amendments to enforcement provisions

Clause 21 to Clause 36 amend the following sections: 47 (2) (c), 47 (7) (c), 49A (1 49A (1) (a) and (b), 49A (1) (c), 49A (1) (d), 49A (1) (d), 49A (1) (e), 49B (3), 49B (4) and (5), 49D (1), 49E (1), 49E (2) to (4), 49E (6), 49G (4) (f) and 49G (7).

The effect of these amendments is to provide that the powers in relation to enforcement that apply to retailers undertaking eligible activities under the Act also apply to approved abatement providers.

Clause 37 New section 55A

This clause inserts a new Section 55A into the Act. This provides that the Minister may determine fees, by Disallowable Instrument, in relation to the Act. Specifically it is anticipated that the Minister may set fees on a cost-recovery basis in relation to approving abatement providers or approving the acquisition of abatement.

Clause 38 Reviewable decisions: Schedule 1, new items 1A and 1B

This clause amends Schedule 1 of the Act by inserting new items 1A and 1B. This provides that decisions in relation to imposing conditions on an abatement provider or cancelling the approval of an abatement provider, are reviewable decisions.

Clause 39 Dictionary, new definitions

This clause amends the Dictionary of the Act by inserting new definitions to provide that the definition for an approved abatement provider is set by section 17A (2) and that the definition of an approved interstate energy efficiency scheme is provided by section 10A.

Clause 40 Dictionary, definition of emissions factor

This clause amends the Dictionary of the Act by substituting the term 'factor' with the term 'multiplier'. This provides for the replacement of the term 'emissions factor' with the term 'emissions multiplier', in line with Amendment Clause 6.

Clause 41 Dictionary, definition of tier 1 NERL retailer

This clause amends the Dictionary of the Act by substituting the definition of a tier 1 NERL retailer to clarify that a retailer transitions from being a Tier 2 to a Tier 1 retailer in the compliance period *following* the calendar year in which they exceeded the 5,000 customer and 500,000 MWh sales thresholds.

Clause 42 New part 8

This clause amends the Act by inserting a new Part 8 providing for transitional arrangements. This ensures the existing penalty per tonne of abatement not achieved by a retailer, set in the unamended Act, continues to apply to shortfalls in relation to compliance periods ending before 1 January 2016. The penalty for subsequent compliance years is to be set by Disallowable Instrument (as provided for by amendment clause 15).