

Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2016

Disallowable instrument DI2016 - 196

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; 1 January 2015 to 31 December 2015; 1 January 2016 to 31 December 2016; 1 January 2017 to 31 December 2017; 1 January 2018 to 31 December 2018; 1 January 2019 to 31 December 2019 or 1 January 2020 to 31 December 2020.

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.

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Introduction

This explanatory statement relates to the *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2016* (the disallowable instrument) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the disallowable instrument and to help inform debate on it. It does not form part of the disallowable instrument and has not been endorsed by the Assembly.

The statement must be read in conjunction with the disallowable instrument. It is not, and is not meant to be, a comprehensive description of the disallowable instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

This disallowable instrument establishes a code of practice relating to record keeping and reporting requirements for eligible activities under the *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act). It replaces an existing code of practice to ensure that the requirements are up to date.

Energy Efficiency Improvement Scheme

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 2016* (the eligible activities determination,).

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.

The *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2016* 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 of Practice

This instrument provides for minimum standards in relation to recordkeeping and reporting requirements relevant to eligible activities.

A retailer must complete an activity in accordance with the requirements of a relevant Code of Practice. This is the fourth version of this Code, replacing the *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2015 (No 1)*. The policy objective of this instrument is to ensure that activities undertaken in relation to the scheme are conducted in an appropriate manner. This is achieved by updating the code of practice. The recording keeping and reporting requirements also assist with compliance and auditing.

There are several amendments to the previous disallowable instrument described here. They include:

- updates to provide practical improvements or consistency both within the Energy Efficiency Improvement Scheme and between the Energy Efficiency Improvement Scheme, relevant standards and other approved interstate schemes. These updates have been made to:
 - listings of relevant current Australian and international standards;
 - the timing of the Administrator's confirmation of Periodic Activity Reports;
 - the dictionary; and
- the addition of new codes of practice, for two new eligible activities:
 - commercial lighting; and
 - refrigerated display cabinets; and
- the deletion of codes of practice for several activities which have been removed from the eligible activities determination because the ACT 100 per cent renewable energy target means that those activities now deliver negative abatement. They include:
 - hot water tap improvement;
 - decommission a central electric space heater and install a high efficiency ducted gas heater; and
 - install a gas or liquid petroleum gas space heater.

This explanatory statement provides information on both the updates to the disallowable instrument and also the pre-existing sections. This provides retailers, contractors and installers with 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.

The determination does not affect any human right set out in the *Human Rights Act 2004* and is consistent with the Scrutiny of Bills Committee's terms of reference, as set out below.

(a) Disallowable instrument is in accord with the general objects of the Act under which it is made

The instrument is in accord with the objects of the *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act). The relevant disallowable instrument supports the achievement of the objects of the Act, namely:

- a) encourage the efficient use of energy
- b) reduce greenhouse gas emissions associated with stationary energy use in the Territory
- c) reduce household and business energy use and costs
- d) increase opportunities for priority households to reduce energy use and costs.

The disallowable instrument is also in accord with the with the purpose for making the codes of practice. The code of practice is for consumer protection obligations, under s 25(1)(a) of the Act, and quality, health, safety and environmental requirements applying to eligible activities, under s 25(1)(a) of the Act.

(b) The disallowable instruments do not unduly trespasses on rights previously established by law

The instrument does not unduly trespass on rights previously established by law. The instrument determines codes of practice for implementing the Energy Efficiency Improvement Scheme.

(c) The disallowable instruments do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions

The instrument does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions. The new code of practice simply includes updates to take account of changes since the last code of practice was made. Decisions which may be impacted by the code of practice, such as determining retailer energy savings result, are reviewable, see Schedule 1 of the Act.

(d) Contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly

The matter contained in the code of practice is appropriate to be dealt with in subordinate legislation and is in accordance with the Act.

Consultation

There has been extensive consultation on both of the significant additions to the code. This includes the following:

- Ten written submissions were received to a stakeholder consultation forum held in 2014. Respondents expressed support for expanding the number and range of activities, particularly to include commercial lighting. Details of this feedback are on pages 30-37 of the 2015 Regulatory Impact Assessment *Energy Efficiency Improvement Scheme: Setting Key Parameters to 2020*¹ (the Scheme Extension RIS).
- The *Scheme Extension RIS* also presented modelling results which included commercial lighting, commercial refrigeration, expansions to space and water heating and other activities included here. The sooner these activities are brought in, the more accurate will be the modelled results for savings to be gained from the Scheme.
- A Stakeholder Forum held in September 2015 attracted 57 registrations. The *EEIS Stakeholder Forum Report on Results*² shows each of the new and updated activities included here to be high priorities for stakeholders (page 9).
- The *EEIS Stakeholder Consultation on 2016 Activities Update*³ was emailed to all energy efficiency scheme stakeholders in Victoria, New South Wales and the ACT. The ACT Stakeholder list includes 200 names and a similar or greater number are likely on the lists from the other states. They include energy retailers, abatement providers, government agencies, industry peak bodies and non-government organisations including both environment and social services groups.
- The *EEIS Stakeholder Consultation on 2016 Activities Update* report was also provided in hard copy to 68 participants at the 2016 Scheme Stakeholder Forum. The report was the focus of discussion at the 2016 forum. It included details on all of the activities proposed in the disallowable instrument and invited feedback.
- Government agencies attending the 2016 Scheme Stakeholder Forum included the:
 - Australian Department of the Environment;

¹

http://www.environment.act.gov.au/_data/assets/pdf_file/0006/735990/Attachment-C-Regulatory-Impact-Statement-EEIS-Parameters-to-2020-FINAL.pdf

² http://www.environment.act.gov.au/_data/assets/pdf_file/0004/798232/EEIS-Report-on-EEIS-Stakeholder-Forum,-3-September-2015.pdf

³ http://www.environment.act.gov.au/_data/assets/pdf_file/0008/857789/ACT-EEIS-Stakeholder-Consultation-on-2016-activities-update-report-2.pdf

- Australian Department of Industry, Innovation and Science;
 - AusIndustry Business Services;
 - ACT Environment and Planning Directorate;
 - ACT Education and Training Directorate;
 - ACT Justice and Community Safety Directorate; and
 - ACT Office of the Commissioner for Sustainability and the Environment.
- Forum notes, including results of workshop discussions have been recorded from the 68 participants at the 2016 Scheme Stakeholder Forum. Seventeen written responses were also received on the specific proposals. These responses have been considered in developing the disallowable instrument.

Focused consultation on the codes of practice for exhaust fan sealing activities has been undertaken because of Tier 1 retailer interest in undertaking that activity. This consultation has included the Tier 1 retailer (ActewAGL Retail), policy developers for the Victorian Energy Efficiency Target, product suppliers, Access Canberra and other stakeholders within the Environment and Planning Directorate.

Focused consultation, based on the detail of the updated disallowable instrument has also been undertaken on the commercial lighting and refrigerated display cabinet activities. Internal consultation has included Actsmart household and business teams, EPD Climate Change, EPD Energy and Waste Policy, ACT Property Group, Access Canberra and the Building Policy section of Environment and Planning Directorate.

External consultation based on the detail of the updated disallowable instrument has been undertaken with several parties. These include:

- administrators of approved interstate schemes;
- in particular, the administrators of the NSW Energy Saving Scheme, since the proposed new ACT commercial lighting activity makes use of elements of the NSW method. Arrangements for using this method are supported by the recent ACT approval of interstate energy efficiency schemes, under the *Energy Efficiency (Cost of Living) Improvement (Interstate Energy Efficiency Schemes) Approval 2016 (No 1)*, NI 2016-186. Practicalities of these arrangements are detailed in a draft Memorandum of Understanding between the Australian Capital Territory and New South Wales;
- relevant experts from the Canberra Institute of Technology; and
- three energy retailers that had expressed an interest in the commercial lighting and refrigerated display cabinet activities.

Compliance and Enforcement

The Act requires retailers undertaking eligible activities to undertake the 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 \$300 per tonne of carbon dioxide equivalent.

Notes on Provisions

Section 1 – Name of instrument

This section names the instrument.

Section 2 – Commencement

This section provides for the commencement of the instrument.

Section 3 – Code of practice

This section approves the code of practice as contained in the schedule. Details of the provisions of the code are explained below.

Section 4 – Disapplication of Legislation Act s47 (5) and 47 (6)

This section allows the code of practice to apply, incorporate or adopt an instrument without the instrument having to be notified.

Section 5 – Referenced documents

This section contains information about documents to which the code of practice refers and includes links to access those documents.

Section 6 – Revocation

This section revokes the *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2015 (No 1)*.

Outline of the provisions of the schedule

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, as well as 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 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 15 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.

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 the disallowable instruments. 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 was to inform the review of the Act carried out in 2014 (regarding cost effectiveness) and the setting of the Tier 2 retailer contribution. This remains relevant as it will be used to inform a future review of the Act, prior to the completion of the current phase.

In addition, Part 5 specifies the information that must be collected on each eligible activity available under the eligible activities 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 eligible activities determination.

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.

The following sections describe updates to the record keeping and recording requirements for specific activities, brought in by this disallowable instrument.

Activity 1.1 *Building sealing activities*

No changes have been made.

Activity 1.2 *Exhaust fan sealing activities*

Additional requirements are included to record the licence number of the electrician or registration number of any other person providing statutory certification. This is for consistency with other activities.

The eligible activities determination has also been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 1.3 *Ventilation opening sealing activities*

Additional requirements are included to record the licence number of the electrician or registration number of any other person providing statutory certification. This is for consistency with other activities.

Activity 1.4 *Install a thermally efficient window*

Additional requirements are included to record the U value and solar heat gain coefficient of the window. This is for consistency with new approach to calculating the Activity Abatement Value.

Additional requirements are included to record the licence number of the electrician or registration number of any other person providing statutory certification. This is for consistency with other activities.

Activity 1.5 *Retrofit thermally efficient glazing*

Additional requirements are included to record the U value and solar heat gain coefficient of the window. This is for consistency with new approach to calculating the Activity Abatement Value.

Additional requirements are included to record the licence number of the electrician or registration number of any other person providing statutory certification. This is for consistency with other activities.

Activity 1.6 *Install thermally efficient window coverings*

Additional requirements are included to record the licence number of the electrician or registration number of any other person providing statutory certification. This is for consistency with other activities.

Activity 1.7 *Install window pelmets*

Additional requirements to record the type of the existing window coverings. The eligible activities determination has also been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 2.1 *Install a specified high efficiency central electric space heater*

This is the first time that record keeping and reporting codes of practice have been provided for this activity. There are requirements to record specifications of the installed product, details of the replaced heater, if any, the value of the services, electrical and gas certification, if required, other statutory certification and the licence or registration number of any other person providing statutory certification, whether the ductwork was also upgraded, the abatement factor and the date of completion.

Activity 2.2 *Install a high efficiency ducted gas heater*

This is the first time that record keeping and reporting codes of practice have been provided for this activity. There are requirements to record specifications of the installed product, details of the replaced heater, if any, the value of the services, electrical and gas certification, if required, other statutory certification and the licence or registration number of any other person providing statutory certification, whether the ductwork was also upgraded, the abatement factor and the date of completion.

Activities 2.3 to 2.5

There is a gap in numbering within this instrument for activities 2.3 to 2.5. This is because activities with corresponding numbers are in place in the eligible activities determination, but record keeping and reporting codes of practice have not previously been available. Significant updates are planned for the three activities, which will still fit logically into this space within the instrument. New codes will be provided when the activities have been updated. The ACT Parliamentary Counsel has been consulted and has confirmed that it is appropriate to leave numbering gaps in these circumstances.

Activity 2.6 *Install insulated gas heating ductwork*

This was previously activity 2.5. Additional requirements are included to record the licence number of the electrician or registration number of any other person providing statutory certification. This is for consistency with other activities.

The eligible activities determination has also been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 3.1 *Decommission an electric resistance water heater and install a specified high efficiency water heater*

Additional requirements are included to record the licence number of the electrician or registration number of any other person providing statutory certification. This is for consistency with other activities.

The eligible activities determination has also been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 3.2 *Decommission a gas or liquefied petroleum gas water heater and install a specified high efficiency water heater*

Additional requirements are included to record the licence number of the electrician or registration number of any other person providing statutory certification. This is for consistency with other activities.

The eligible activities determination has also been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 3.3 *Replace an existing shower fixture outlet with a low flow shower fixture outlet*

Additional requirements are included to record the flow rate of the old shower head. Additional requirements are also included to record the licence number of the electrician or registration number of any other person providing statutory certification. This is for consistency with other activities.

The eligible activities determination has also been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 3.4 *Removal of hot water tap improvements activity*

This activity has been removed following advice that genuine abatement cannot be accurately reported for it.

Activity 4.1 *Residential lighting activities*

The decommissioning requirements have been clarified to ensure that different types of lamps are kept separate for recycling.

Activity 4.2 *Commercial Lighting Upgrade*

This is a new activity. There are requirements to record specifications of the installed products, the value of the services, the business classification of the occupier, the output from the ESS Commercial Lighting Tool, photographs of existing and new

lighting equipment, electrical certification, other statutory certification and the licence or registration number of any other person providing statutory certification, the service guarantees for the customer, details of waste disposal, the abatement factor and the date of completion.

Activity 5.1 *Decommissioning and disposal of refrigerator or freezer*

Additional requirements are included to record additional details about the equipment being decommissioned.

Additional requirements are included to record the licence number of any person providing statutory certification. This is for consistency with other activities.

The eligible activities determination has also been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 5.2 *Purchase of a high efficiency refrigerator or freezer*

The eligible activities determination has been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 5.3 *Removal of purchase of a high efficiency gas clothes dryer activity*

This activity has been removed because the ACT 100 per cent Renewable Energy Target means that abatement is negative for most activities involving the purchase of new gas appliances.

Activity 5.3 *Purchase of a high efficiency electric clothes dryer*

This Activity was renumbered from 5.4 due to the removal of the previous activity 5.3 (see above).

The eligible activities determination has also been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 5.4 *Install a standby power controller*

This activity was renumbered from 5.5.

Activity 5.5 *Purchase of a high efficiency television*

This activity was renumbered from 5.6.

The eligible activities determination has also been updated to require recording of the value of the services.

Activity 5.6 *Install a high efficiency swimming pool pump*

This activity was renumbered from 5.7.

The eligible activities determination has also been updated to require recording of the value of the services and to confirm compliance with mandatory safety standards consistent with the requirements for other Scheme activities.

Activity 5.9 High Efficiency Refrigerated Display Cabinet Activities

This is a new activity. There are requirements to record the specifications of the installed product, the value of the services, electrical certification, if required, other statutory certification and the licence or registration number of any other person providing statutory certification, the abatement factor and the date of completion.

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 the previous 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 Scheme and other measures taken by the Administrator to ensure the ongoing safe and effective operation of the Scheme. In addition to the information provided in a periodic activity report, the Administrator may request access to specific activity records, as provided for under Part 10 of the disallowable instrument.

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 disallowable instrument.

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.

Section 75(1) of the disallowable instrument has been amended so that the Administrator has 10 working days from the receipt of a compliance period report to determine whether the report is complete. In previous iterations of the disallowable instrument, only 5 working days were provided. Section 75(2) has been amended so that the administrator has 10 working days to confirm that a compliance period report given by a retailer is determined to be complete. Given that compliance period reports may be given to the administrator at any time before 31 March in a compliance year, the previous timeframes were unworkable. They required both administrative staff and the Administrator to coordinate extremely tight turnarounds of analysis, briefs and letters throughout the month of March, with no real benefit to retailers. The new timeframes are a reasonable and practical improvement.

Part 9 Independent information audits

Part 9 details the requirements for independent audits on information required by the Administrator under clause 19(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.

The dictionary has been updated to include terms which support the new commercial lighting activity. These are harmonised with the New South Wales Energy Saving Scheme, which is an approved interstate scheme under the Energy Efficiency Improvement Scheme. New terms include:

- Energy Savings Scheme;
- ESS administrator;
- ESS commercial lighting calculation tool;
- ESS rule;
- existing lighting equipment;
- lamp waste;
- large electricity customer; and
- small electricity customer.