

Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2019

Disallowable instrument DI2019-195

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.

Contents

Introduction	3
Overview	3
Energy Efficiency Improvement Scheme	3
This Code of Practice.....	4
Consultation	5
Compliance and Enforcement.....	8
Notes on Provisions	8
Outline of the provisions of the schedule	10
Part 1 Preliminary.....	10
Part 2 Important concepts.....	10
Part 3 General obligations	10
Part 4 Compliance Plans.....	11
Part 5 Activity records.....	12
Part 6 Activity certification	13
Part 7 Periodic activity reporting.....	14
Part 8 Compliance period report	14
Part 9 Independent information audits	15
Part 10 Information and reporting requests.....	15
Dictionary	16

Introduction

This explanatory statement relates to the *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2019* (the instrument) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the instrument and to help inform debate on it. It does not form part of the instrument and has not been endorsed by the Assembly.

The statement must be read in conjunction with the instrument. It is not, and is not meant to be, a comprehensive description of the 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

The 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 in relation to new and updated activities.

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 2019* (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 2019* (the eligible activities code of practice) 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

The instrument provides for minimum standards in relation to record keeping 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 sixth version of this Code, replacing the *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2016 (No 2)* (the previous disallowable instrument). The policy objective of the 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 record keeping and reporting requirements also assist with compliance and auditing.

The instrument makes amendments to the previous disallowable instrument. The key changes are;

- Additional reporting requirements; and
- updates to record keeping and reporting requirements to reduce ambiguity and avoid misinterpretation.

This explanatory statement provides information on both the updates to the previous disallowable instrument and also the pre-existing parts. 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.

The record keeping and reporting 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 instrument 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 instrument supports the achievement of the objects of the Act, namely:

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

The instrument is also in accord 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 (section 25).

Consultation

A different consultation process was undertaken for each of the different types of amendments provided for in this update. Those consultation processes are detailed in the accompanying *Regulatory Impact Statement* and are summarised here.

(a) Consultation on consequential amendments associated with the addition of new ceiling and underfloor insulation and ventilation opening sealing activities.

Significant internal and external consultation has been completed in developing codes of practice for the proposed insulation activities. Internal consultation was undertaken with Climate Change and Sustainability Division, Building Policy, Access Canberra and Worksafe ACT regularly through the internal residential insulation activity working group.

External consultation was undertaken via several insulation expert workshops on the EEIS involving representatives from peak insulation industry groups, insulation service companies, and retailers over a two year period. EEIS held three targeted technical expert workshops with stakeholders, in July 2017, Feb 2019 and July 2018 to ensure effective consultation with electricity retailers, insulation industry groups, reputable insulation service companies, and cross-jurisdictional representatives which are managing insulation programs.

The ACT government is also an active member of a cross-jurisdictional Insulation Steering Committee which is developing and evaluating insulation programs across Australia. EPSDD has used this forum to test the sufficiency and likely effectiveness of the approach proposed here and ensure inter-jurisdictional consistency of risk management codes of practice.

After this extensive internal and targeted expert consultation, the proposed activity, codes of practices and rationales for them, were consulted formally through the EEIS *stakeholder consultation paper on proposed new residential insulation and ventilation opening sealing activities*¹. Workshops on the proposed insulation activities were also held at EEIS stakeholder forums in both 2018 and 2019. Through each of these processes, stakeholders were invited to provide feedback to EEIS, and every element of the activities has been well scrutinised. All stakeholders' recommended improvements have been adopted and consultation has also confirmed that EEIS stakeholders support the final proposed insulation activities presented here.

(b) Consultation on expanding existing residential heating upgrade activities, including to businesses and commercial buildings.

These updates were consulted on internally and externally with retailers, approved providers, expert consultants. All stakeholders have been supportive of these changes. Internally, consultation involved all relevant staff within EPSDD, and also Access Canberra and Building Policy.

¹ https://www.environment.act.gov.au/_data/assets/pdf_file/0004/1310386/EEIS-Residential-Insulation-Activities-Consultation-Paper.pdf

Public consultation included on-line publication of the *stakeholder consultation report on proposed new business heating and cooling activities*², and workshops held at two EEIS public stakeholder forums. Consultation was also completed with energy retailers, representatives of the Australian Government Greenhouse and Energy Minimum Standards (GEMS) programs including Energy Efficient Equipment (E3) personnel and non-government bodies such as Australian Institute of Refrigeration, Air-Conditioning and Heating (AIRAH), Energy Efficiency Council (EEC), Energy Efficiency Certificate Creators Association (EECCA), and representatives of sub-national jurisdictional government energy efficiency obligation schemes.

This consultation generated discussion on practical work involved in removing old, inefficient heating and cooling systems and replacing them with efficient heaters which have been incorporated here. For example, the statutory requirements and relevant standards have been considered in relation to all heating and cooling activities. Only minor amendments have been made to the instrument as a result of this consultation, and they mostly serve to improve consistency within the instrument, and to remove any unnecessary administrative burden from activity delivery. All stakeholders supported the proposed changes.

d) Consultation on removing Activity 2.2 – upgrading inefficient gas ducted heating to efficient gas ducted heating

The EEIS Review recommended removal any remaining gas upgrade activities from the scheme. Similar recommendations have been made both through broader consultation on an ACT climate change strategy, and targeted commentary by EEIS stakeholders. There is a strong public and stakeholder expectation that EEIS should not incentivise gas activities and this supports the removal of Activity 2.2.

ActewAGL has not supported the removal of this activity because it continues to be popular among EEIS participants, and has delivered a significant percentage of total abatement in recent years, including in priority households. The government considers that the long lead time provided for the transition together with the introduction of new, high abatement space heating and cooling activities, and the initiative to install EEIS activities in about 2,200 ACT government homes all ensure that there are viable alternatives for ActewAGL to deliver.

e) Consultation on updating Activities 3.3, 5.2, 5.3 and 5.6, as well as the phase out of Activity 5.5 (Stand-by power controllers, previously Activity 5.4)

EEIS electricity retailers, approved providers, expert consultants and interjurisdictional EEO scheme policy officers have been consulted on these updates and are supportive as no changes were needed to the codes of practice to support the proposed activity updates.

² https://www.environment.act.gov.au/_data/assets/pdf_file/0006/1234887/EEIS-Stakeholder-Engagement-Report-Proposed-Business-Heating-and-cooling-activities.pdf

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 the instrument, 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.

The effect of subsection 47(5) is to make any law of another jurisdiction, or an instrument, that is applied by a subordinate law or by a disallowable instrument, as in force from time to time, a ‘notifiable instrument’. The effect of subsection 47(6) is to make any amendments or revisions of such (external) instruments also notifiable instruments.

The reason for disapplying the application of section 47(5) and (6) is to avoid breaching copyright. The code refers to Australian standards which would be required to be notified if s47 of the Legislation Act applied. Standards Australia is the nation's peak non-government, not-for-profit standards organization whose main responsibility is the development of standards. Australian standards are protected by copyright and are sold and distributed worldwide by SAI Global Limited. To provide a standard referred to in legislation as a notifiable instrument on the ACT Legislation Register (that is make it available publically for free) would constitute a breach of Standards Australia’s copyright in that particular standard. For this reason, the instrument disapplies s47 (5) and (6) of the Legislation Act which require the documents to be notified.

Disapplying s47 (5) and (6) means interested persons will be required to purchase the relevant standard. In relation to the cost associated with having to purchase a standard, the only people likely to have sufficient interest or need to purchase a Standard are those considering delivering activities as part of the Energy Efficiency Improvement Scheme (EEIS). Those parties include service providers such as electricians and plumbers who should already have access to the relevant Standards as part of their professions. The cost therefore should be minimal.

Additionally, many Australian and International Standards are available for viewing at the National Library of Australia (NLA). An online search of the NLA's catalogue can be undertaken to identify which Standards it has available.

In previous EEIS instrument updates, the Scrutiny of Bills Committee has drawn attention to the instruments on the basis that they disapply sections 47(5) and (6) of the Legislation Act 2001, which provide that any instrument that is applied as law in the ACT is taken to be a notifiable instrument. Consistent with EPSDD's previous advice to the Committee, the reason for disapplying the application of section 47(5) to these instruments is to avoid breaching copyright. The copyright in Australian Standards is owned by a non-government organisation, Standards Australia.

While it may be prohibitive for EEIS stakeholders to purchase all of the standards referred to in the instruments, there are several factors that minimise undue expense in the case of these standards. In particular, most interested parties will already have copies of the relevant standards, and copies of many standards are available at the National Library of Australia (NLA).

The committee has previously suggested two options for improving public access to the documents, but unfortunately, neither of these options provide a practical solution.

First, the committee suggested that the directorate might list specific standards that are available at the NLA. This would be problematic, as the instruments intentionally refer to "the relevant parts of ... standards ... as in force from time to time" so that any updates of the standards are automatically applied. As standards are updated, this would render inaccurate any advice provided about which standards are available in the NLA.

The committee's second suggestion was that the standards might be made available for viewing through the Access Canberra shopfront, as is the National Construction Code (NCC). This option is unfortunately unavailable due to copyright restrictions which do not apply to the NCC. That code is freely available online at www.abcb.gov.au/ncc-online/NCC. In contrast, the conditions of use for the ACT Government's access to Australian Standards provide that all copies of standards supplied are only for use within the organisation and may not be shared or distributed.

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 2016 (No 2)*.

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 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.

Three changes are proposed here for compliance plans. The first, in Section 25, formalises the requirement for product information to be included as part of the contents of a compliance plan. This includes product specifications and which register of products the product appears on. Product information has generally been provided in the compliance plan so inclusion here formalises the current process. Most of the energy efficient equipment delivered by EEIS is listed on one of three registers identified in the dictionary. Retailers will now be required to indicate which of the registers the installed equipment is listed on. Where equipment is registered on more than one register, retailers would report the most applicable register. For example, commercial lighting equipment is listed on both the Victorian Energy Upgrade (VEU) and the Energy Savings Scheme (ESS) registers. The VEU list is the most applicable one for tubes installed through EEIS because the equivalent activity is provided for in VEU, but the ESS list is applicable for other commercial lighting activities because ESS is the primary basis for the EEIS commercial lighting activity.

The second change is also in Section 25 and requires Safe Work Method Statements (SWMS) to be included as part of the contents of a compliance plan. SWMS have generally been provided on request throughout the operation of EEIS, and have proven relevant to managing the compliance risks associated with the scheme. In particular the government has sought to manage risks to installers' health while they are working in roof spaces during heatwaves, which occurs during some commercial lighting and ducting activity installations. Receiving the SWMS as a component of the compliance plan will ensure that SWMS are completed on time and are available for review whenever issues arise.

The third change in Section 32, is to require a subsequent compliance plan when new eligible activities, system or processes are introduced during a compliance period. Subsequent plans were previously optional and this has created difficulties for audit and compliance processes, as new equipment and abatement values has shown up in compliance reports, creating a need to go back and check retrospectively about what is being installed. This change will ensure that the government can effectively manage risk, respond to queries, inform decision makers, promote the scheme and report on outcomes in real time as implementation programs shift during compliance periods.

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.

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.

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.

Section 41 has been amended to provide for participants' email address to be included in the information gathered by consumers as part of the activity record form, and also that email addresses be provided to the administrator. This is to enable ACT government staff to contact scheme participants as part of their regular audit and compliance activities, to confirm that activities have been delivered consistently with compliance period reports. It has proven useful to have email addresses provided, particularly for contacting business recipients of EEIS activities.

Section 49 requires a consumer declaration and includes various requirements for the contents of the declaration. Confirmation that customers have received operating instructions, that the dwellings have not been occupied for specific activities have been removed from this clause as part of the process of streamlining EEIS reporting.

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.

Section 59 has been amended in four places:

- A new requirement is included to require reporting of the number of units being claimed for an activity. This is needed for audit and compliance purposes as it aids cross-checking of the abatement claim.
- A change is the addition of retailers among the group of entities listed as undertaking the activity.
- Retailers must report email addresses to periodic activity reporting to support audit and compliance activities by government.
- Retailers must report on both the activity's cost to both them and to the recipient.

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 73 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.

Several changes have also been made in Section 67 as follows:

- A note has been split because it contained two separate pieces of information (applicable penalty units and obligation to report if no sales).
- Additional reporting requirements have been added for the number of units, name of applicable register and retailer, consistent with the additions to Section 59 above.
- The requirement to report on the approximate year of construction of a premises has been removed due to difficulties in estimating construction dates, and because the information is not necessary for the calculation of abatement values.
- A requirement to report email addresses has been added, consistent with updates to Section 59 above.
- Retailers must report on both the activity’s cost to both them and to the recipient.

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.

Dictionary

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