

Energy Efficiency (Cost of Living) Improvement (Penalties for Noncompliance) Determination 2020 (No 1)

Disallowable Instrument DI2020–221

made under the

Energy Efficiency (Cost of Living) Improvement Act 2012, s22 (Penalties for noncompliance)*

Explanatory Statement

Introduction

This explanatory statement relates to the Energy Efficiency (Cost of Living) Improvement (Penalties for Noncompliance) Determination 2020 (No1) (the Determination). It has been prepared in order to assist the reader of the Determination. It does not form part of the Determination and has not been endorsed by the Assembly.

This explanatory statement clarifies the intent of the Determination and must be read in conjunction with the Determination. It is not, and is not intended to be, a comprehensive description of the Determination. What is written 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

Section 22 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act) outlines the penalty payable by a NERL retailer who is determined to have a shortfall in sections 20 and/or 21. Section 22 (Penalties for noncompliance) is amended by section 26 of the *Energy Efficiency (Cost of Living) Improvement Amendment Act 2019 (Amendment Act)*. Section 26 of the Amendment Act amends section 22(2) by omitting the greenhouse gas emissions metric and substituting an energy saving metric. The Amendment Act was notified on 3 October 2019 and has partially commenced. Section 26 of the Amendment Act is an uncommenced provision that will commence on 1 January 2021.

This instrument determines the shortfall penalty to be \$120 per MWh for the compliance period beginning on 1 January 2021 and ending on 31 December 2021.

The purpose of this section, coupled with sections 13, 15, 20, 20A, 20B, 20C and 21, is to encourage NERL retailers to achieve their energy savings obligation and priority household obligation. The shortfall penalty has therefore been determined at a level that will provide a strong incentive for NERL retailers to meet their obligations under the Energy Efficiency Improvement Scheme (in relation to meeting their retailer's energy savings obligation by undertaking energy saving activities) whilst also setting a cap on the costs to participating NERL retailers. Should the cost of achieving obligations through the delivery of eligible activities exceed the shortfall penalty amount, NERL retailers may have an incentive to pay

the penalty price so as to minimise their costs of compliance with the Act.

Accordingly, the shortfall penalty has been developed on the basis of the specific outcomes sought by the Act, that is to: encourage the efficient use of energy; reduce greenhouse gas emissions associated with energy use in the Territory; reduce household and business energy use and costs; and increase opportunities for priority households to reduce energy use and costs.

The instrument does not engage with the *Human Rights Act 2004*. The instrument does not impose appreciable costs on the community. A regulatory impact statement has been prepared for this instrument.

Clause Notes

Clause 1 names the instrument.

Clause 2 indicates the time of commencement.

Clause 3 provides that the penalty for noncompliance is \$120 per MWh for the period beginning on 1 January 2021 and ending on 31 December 2021.

Clause 4 indicates that section 81 (6) of the *Legislation Act 2001* applies. Section 22 of the Act is amended by section 26 of the Amendment Act. Section 26 of the Amendment Act is an uncommenced provision that will commence on 1 January 2021. The compliance period to which this determination applies begins on the same day that the uncommenced provisions of the Amendment Act commence.