

Energy Efficiency (Cost of Living) Improvement (Penalties for Noncompliance) Determination 2025

Disallowable instrument DI2025–260

made under the

Energy Efficiency (Cost of Living) Improvement Act 2012, s 22 (Penalties for noncompliance)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Energy Efficiency (Cost of Living) Improvement (Penalties for Noncompliance) Determination 2025* (the **Determination**). It has been prepared 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.

Overview

Section 22 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* (the **Act**) outlines the penalty payable by a National Energy Retail Law (**NERL**) retailer who is determined to have a net shortfall in accordance with the Act.

The Determination determines the shortfall penalty to be \$71.32 per megawatt hour (MWh) for the compliance period beginning on 1 January 2026 and ending on 31 December 2026.

The purpose of section 22 of the Act, 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 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 to minimise their costs of compliance with the Act.

Accordingly, the shortfall penalty has been developed to support the objects of 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 shortfall penalty for the compliance period beginning on 1 January 2026 and ending on 31 December 2026 has remained constant with the values set for the 2023, 2024 and 2025 compliance periods. As required by section 22 (5) of the Act, the Determination is being made at least 3 months before the start of the compliance period on 1 January 2026.

Human Rights

The Determination does not engage human rights under the *Human Rights Act 2004*.

Regulatory Impact Statement (RIS)

Section 34 of the *Legislation Act 2001* provides that if a proposed subordinate law or disallowable instrument (the proposed law) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a RIS to be prepared for the proposed law. A RIS has been prepared for the Determination.

Scrutiny of Bills Committee Terms of Reference

The Determination is consistent with the Legislative Assembly's Scrutiny of Bills Committee Terms of Reference. In particular, the Determination:

1. is in accordance with the general objects of the Act.
2. Does not unduly trespass on rights previously established by law.
3. Does not make rights, liberties and/or obligations unduly depended upon non-reviewable decisions.