



Australian Capital Territory

# Energy Efficiency (Cost of Living) Improvement Act 2012

A2012-17

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Australian Capital Territory

# **Energy Efficiency (Cost of Living) Improvement Act 2012**

**A2012-17**

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An Act to encourage the efficient use of energy, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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J2009-953

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Energy Efficiency (Cost of Living) Improvement Act 2012*.

### 2 Commencement

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*utility*—see the *Utilities Act 2000*, dictionary.' means that the term '*utility*' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Objects

The objects of this Act are to—

- (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.

## Part 2 Targets and important concepts

### 7 Energy savings target

- (1) The Minister must determine a target (an *energy savings target*) for the total reduction in greenhouse gas emissions to be achieved by electricity suppliers in a compliance period, expressed as a percentage of total electricity sales in the ACT.
- (2) A determination must be made at least 3 months before the start of the compliance period to which the energy savings target relates.
- (3) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 8 Priority household target

- (1) The Minister must determine a target (a *priority household target*) for the total reduction in greenhouse gas emissions to be achieved by tier 1 electricity suppliers undertaking eligible activities at priority households in a compliance period, expressed as a percentage of the supplier's energy savings obligation of tier 1 electricity suppliers in the ACT.
- (2) A determination must be made at least 3 months before the start of the compliance period to which the priority household target relates.
- (3) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## 9 Emissions factor

- (1) The Minister must determine the number of tonnes of carbon dioxide equivalent greenhouse gas emissions attributed to the consumption in the ACT of 1MWh of electricity (the *emissions factor*) for a compliance period.
- (2) In determining the emissions factor, the Minister must take into account the condition of, and changes in, the national electricity market.
- (3) A determination must be made at least 3 months before the start of the compliance period to which the emissions factor relates.
- (4) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## 10 Eligible activities

- (1) The Minister may determine an activity (an *eligible activity*) that is intended to reduce the consumption of energy.
- (2) In determining an eligible activity, the Minister must take into account—
  - (a) the objects of this Act; and
  - (b) the likelihood that the activity will contribute to a reduction in greenhouse gas emissions in the ACT.
- (3) A determination of an eligible activity must include the following:
  - (a) a description of the activity;
  - (b) the minimum specifications for the performance of the activity;
  - (c) the abatement factor for the activity;
  - (d) the time at which the activity is taken to be completed.

- (4) A determination may include any other matter that the Minister considers relevant.
- (5) A determination is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## 11 Energy savings contribution

- (1) The Minister must determine a contribution (an *energy savings contribution*) payable by tier 2 electricity suppliers for a compliance period in place of the supplier's requirement to achieve a supplier's energy savings obligation for the period, expressed as an amount in dollars per tonne of carbon dioxide equivalent greenhouse gas emissions.
- (2) In determining an energy savings contribution, the Minister must take into account—
  - (a) the impact of the contribution on levels of competition in the retail electricity market in the ACT; and
  - (b) the cost of achieving the equivalent abatement of greenhouse gas emissions through other means including energy efficiency measures and the purchase of renewable energy.
- (3) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## 12 Meaning of *compliance period*

For this Act, a *compliance period* is any of the following periods:

- (a) 1 January 2013 to 31 December 2013;
- (b) 1 January 2014 to 31 December 2014;
- (c) 1 January 2015 to 31 December 2015.

## Part 3 Energy savings

### 13 Working out energy savings obligation

- (1) An electricity supplier must work out the supplier's energy savings obligation (an *energy savings obligation*) for a compliance period under this section.
- (2) An electricity supplier's energy savings obligation must be—
  - (a) expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions; and
  - (b) worked out as follows:

$$EST \times (\text{electricity sales} \times \text{emissions factor})$$

*electricity sales* means the electricity supplier's total electricity sales in MWh in the ACT for the compliance period.

*emissions factor* means the emissions factor determined for the compliance period.

*EST* means the energy savings target determined for the compliance period.

- (3) An electricity supplier's energy savings obligation for a compliance period may be modified by including a supplier energy savings result shortfall or surplus carried over from a prior compliance period.

## 14 Achieving energy savings obligations

- (1) An electricity supplier must achieve the supplier's energy savings obligation for a compliance period.
- (2) A tier 1 electricity supplier achieves the supplier's energy savings obligation for the compliance period if, in the period—
  - (a) the supplier—
    - (i) undertakes eligible activities that comply with a relevant approved code of practice; or
    - (ii) acquires approved abatement factors that comply with a relevant approved code of practice; and
  - (b) the total of the abatement factors for the eligible activities undertaken and acquired achieve the obligation.
- (3) A tier 2 electricity supplier achieves the supplier's energy savings obligation for the compliance period if, in the period—
  - (a) the supplier—
    - (i) undertakes eligible activities that comply with a relevant approved code of practice; or
    - (ii) acquires approved abatement factors that comply with a relevant approved code of practice; or
    - (iii) pays an energy savings contribution to the Territory for all or part of the obligation; and
  - (b) the total of the abatement factors for the eligible activities undertaken and acquired, and the energy savings contribution achieve the obligation.

*Note 1* **Energy savings contribution**—see s 11.

*Note 2* An energy savings contribution imposed under this Act must be paid to the Territory.

**15 Working out priority household obligation**

- (1) A tier 1 electricity supplier must work out the supplier's priority household obligation (a *priority household obligation*) for a compliance period under this section.
- (2) An electricity supplier's priority household obligation must be—
  - (a) expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions; and
  - (b) worked out as follows:

$$\text{SESO} \times \text{PHT}$$

*PHT* means the priority household target determined for the compliance period.

*SESO* means the tier 1 electricity supplier's energy savings obligation for the compliance period.

- (3) An electricity supplier's priority household obligation for a compliance period may be modified by including a supplier priority household result shortfall or surplus carried over from a prior compliance period.

**16 Achieving priority household obligations**

- (1) A tier 1 electricity supplier must achieve the supplier's priority household obligation for a compliance period.
- (2) A tier 1 electricity supplier achieves the supplier's priority household obligation for a compliance period if, in the period—
  - (a) the supplier—
    - (i) undertakes eligible activities in priority households that comply with a relevant approved code of practice; or
    - (ii) acquires approved abatement factors in relation to priority households that comply with a relevant approved code of practice; and

- (b) the total of the abatement factors for the eligible activities undertaken and acquired achieve the obligation.

**17 Supplier must lodge compliance plan**

- (1) An electricity supplier must give a compliance plan for a compliance period to the administrator before undertaking eligible activities in the compliance period.
- (2) A compliance plan must include the following:
  - (a) how the supplier plans to achieve the supplier's energy savings obligation and priority household obligation (if required);
  - (b) how the supplier plans to meet health, safety and environmental requirements relating to eligible activities;
  - (c) any other information required under an approved code of practice.

*Note* If a form is approved under s 56 for this provision, the form must be used.

- (3) An electricity supplier commits an offence if the supplier does not lodge a compliance plan in accordance with this section.

Maximum penalty: 10 penalty units.

*Note* A penalty imposed under this Act must be paid to the Territory.

- (4) An offence against this section is a strict liability offence.

**18 Approval of acquired abatement factor**

- (1) An electricity supplier may apply to the administrator for approval of the acquisition of an abatement factor (an *approved abatement factor*) from another person.

*Note* If a form is approved under s 56 for this provision, the form must be used.

- (2) The administrator must approve an acquisition if satisfied that—
- (a) the acquisition occurred; and
  - (b) the acquired abatement factor relates to an eligible activity in the ACT; and
  - (c) the acquired abatement factor has not been used to achieve another supplier's energy savings obligations.
- (3) If the administrator approves an acquisition, the supplier may apply the acquired abatement factor to the supplier's energy savings obligation.

**19 Information to be given to administrator**

- (1) An electricity supplier must give the administrator the following information in relation to a compliance period not later than 3 months after the end of the compliance period:
- (a) the supplier's total electricity sales in the ACT;
  - (b) the eligible activities undertaken by the supplier in the ACT that comply with a relevant approved code of practice;
  - (c) the approved abatement factors acquired by the supplier, that comply with a relevant approved code of practice;
  - (d) the total abatement factors for the eligible activities undertaken or acquired by the supplier that comply with a relevant approved code of practice;

- (e) for a tier 1 electricity supplier—the total abatement factors for eligible activities undertaken in, or acquired in relation to, priority households by the supplier that comply with a relevant approved code of practice;
- (f) for a tier 2 electricity supplier—the extent to which the supplier’s energy savings obligation was achieved by paying an energy savings contribution;
- (g) any other information reasonably required by the administrator to help the administrator work out if a supplier has met the supplier’s obligations.

*Note 1* If a form is approved under s 56 for this provision, the form must be used.

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) The administrator may also require—
  - (a) an independent audit of some or all of the information provided; and
  - (b) any other information that the administrator reasonably requires.
- (3) An electricity supplier commits an offence if the supplier does not comply with this section.

Maximum penalty: 50 penalty units.

*Note* A penalty imposed under this Act must be paid to the Territory.

**20 Compliance with energy savings obligations—supplier energy savings result**

- (1) The administrator must determine the result (a *supplier energy savings result*) of an electricity supplier's compliance with the supplier's energy savings obligation, expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions.
- (2) A supplier energy savings result for an electricity supplier must be worked out as follows:

$$(\text{SESO} + \text{CFS}) - (\text{A} + \text{S})$$

*A* means the total abatement factors for eligible activities undertaken or acquired in the compliance period.

*CFS* means the carried forward shortfall.

*S* means the carried forward surplus.

*SESO* means the supplier's energy savings obligation.

- (3) A supplier energy savings result is—
  - (a) if the result is a positive number—a shortfall; and
  - (b) if the result is a negative number—a surplus.
- (4) The administrator must give an electricity supplier written notice of the supplier's supplier energy savings result.
- (5) If the electricity supplier has a surplus, the notice must show the surplus to be carried forward to the next compliance period.
- (6) If the electricity supplier has a shortfall, the notice must give the supplier the following information:
  - (a) the shortfall;
  - (b) the maximum percentage of the supplier's supplier energy savings result that the supplier may carry forward to the next compliance period being the following:

- (i) for a shortfall in the compliance period 1 January 2013 to 31 December 2013—10%;
  - (ii) for a shortfall in the compliance period 1 January 2014 to 31 December 2014—10%;
  - (iii) for a shortfall in the compliance period 1 January 2015 to 31 December 2015—nil.
- (7) Not later than 2 weeks after receiving a notice mentioned in subsection (6), the electricity supplier must give the administrator written notice of the percentage of the supplier's supplier energy savings result that the supplier elects to carry forward to the next compliance period.
- (8) Not later than 2 weeks after receiving a notice mentioned in subsection (7), the administrator must give the electricity supplier written notice of—
- (a) the amount of the supplier's supplier energy savings result to be carried forward to the next compliance period; and
  - (b) the shortfall penalty payable by the supplier.

**21 Compliance with priority household obligations—supplier priority household result**

- (1) The administrator must determine the result (a *supplier priority household result*) of a tier 1 electricity supplier's compliance with the supplier's priority household obligation, expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions.
- (2) A supplier priority household result for a tier 1 electricity supplier must be worked out as follows:

$$(PHO + CFS) - (A + S)$$

*A* means the total abatement factors for eligible activities undertaken in priority households or acquired in relation to priority households in the compliance period.

*CFS* means the carried forward shortfall.

*PHO* means the supplier's priority household obligation.

*S* means the carried forward surplus.

- (3) A supplier priority household result is—
  - (a) if the result is a positive number—a shortfall; and
  - (b) if the result is a negative number—a surplus.
- (4) The administrator must give a tier 1 electricity supplier written notice of the supplier's supplier priority household result.
- (5) If the tier 1 electricity supplier has a surplus, the notice must show the surplus to be carried forward to the next compliance period.
- (6) If the tier 1 electricity supplier has a shortfall, the notice must give the supplier the following information:
  - (a) the shortfall;
  - (b) the maximum percentage of the supplier's supplier priority household result that the supplier may carry forward to the next compliance period being the following:
    - (i) for a shortfall in the compliance period 1 January 2013 to 31 December 2013—10%;
    - (ii) for a shortfall in the compliance period 1 January 2014 to 31 December 2014—10%;
    - (iii) for a shortfall in the compliance period 1 January 2015 to 31 December 2015—nil.
- (7) Not later than 2 weeks after receiving a notice mentioned in subsection (6), the tier 1 electricity supplier must give the administrator written notice of the percentage of the supplier's supplier priority household result that the supplier elects to carry forward to the next compliance period.

- (8) Not later than 2 weeks after receiving a notice mentioned in subsection (7), the administrator must give the tier 1 electricity supplier written notice of—
- (a) the amount of the supplier's supplier priority household result to be carried forward to the next compliance period; and
  - (b) the shortfall penalty payable by the supplier.

## 22 Penalties for noncompliance

- (1) If an electricity supplier's supplier energy savings result is a shortfall, the supplier is liable to pay a penalty (a *shortfall penalty*) to the Territory.
- (2) If a tier 1 electricity supplier's supplier priority household result is a shortfall, the supplier is liable to pay a shortfall penalty to the Territory.
- (3) A shortfall penalty is \$70 per tonne of carbon dioxide equivalent greenhouse gas emissions in the shortfall.

*Note* A shortfall penalty imposed under this Act must be paid to the Territory.

## Part 4 Administration

### 23 Administrator

The Minister must appoint a person as administrator for this Act.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

### 24 Administrator's functions

The administrator has the following functions:

- (a) establishing reporting and record keeping requirements for electricity suppliers;
- (b) determining electricity suppliers' compliance with the supplier's energy savings obligations;
- (c) approving acquisition of abatement factors;
- (d) approving codes of practice;
- (e) preparing annual reports;
- (f) reporting to the Minister, at the Minister's request, on anything relating to the operation or administration of this Act.

### 25 Codes of practice

- (1) The administrator may approve a code of practice (an *approved code of practice*) for the following:
  - (a) consumer protection obligations;
  - (b) quality, health, safety and environmental requirements applying to eligible activities;
  - (c) record keeping requirements;

(d) reporting requirements.

*Note* The power to approve a code of practice includes the power to amend or repeal the code. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).

(2) An approved code of practice is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(3) An approved code of practice may apply, adopt or incorporate an instrument, as in force from time to time.

*Note* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

## **26 Record keeping requirements**

(1) An electricity supplier must keep the records that are necessary for the administrator to determine whether the supplier's energy savings obligations have been complied with.

(2) A record must be kept for at least 5 years after the end of the compliance year to which the record relates.

Maximum penalty: 20 penalty units

(3) Records must be kept in accordance with a relevant approved code of practice.

## **27 Annual report by administrator**

The administrator must provide an annual report to the Minister on the operation and administration of this Act including—

(a) electricity supplier compliance with this Act; and

(b) the number and type of eligible activities undertaken under this Act.

**28 Contributions, shortfalls and penalties**

The Territory must ensure that an amount equivalent to the amount paid to the Territory as an energy savings contribution, shortfall penalty, or penalty under this Act is appropriated to support initiatives or undertake activities consistent with the objects of this Act.

*Note* An amount paid to the Territory as an energy savings contribution, shortfall penalty, or penalty under this Act is public money for the *Financial Management Act 1996*.



### **31 Identity cards**

- (1) The administrator must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
  - (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
  - (a) the person stops being an authorised person; and
  - (b) the person does not return the person's identity card to the administrator as soon as practicable, but not later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 5 penalty units.

- (4) An offence against this section is a strict liability offence.

## **Division 5.3 Powers of authorised people**

### **32 Power to enter premises**

- (1) For this Act, an authorised person may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time, enter premises with the occupier's consent; or
  - (c) enter premises in accordance with a search warrant; or

- (d) at any time, enter premises if the authorised person believes on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary.
- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised person may, without the consent of the occupier, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) In this section:

*at any reasonable time* includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

### **33 Production of identity card**

An authorised person must not remain at premises entered under this part if the authorised person does not produce his or her identity card when asked by the occupier.

### **34 Consent to entry**

- (1) When seeking the consent of an occupier to enter premises under section 32 (1) (b), an authorised person must—
  - (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and

- (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

### **35 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
- (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples;
  - (d) take photographs, films, or audio, video or other recordings;
  - (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

### **36 Power to seize things**

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—
- (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.

- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Also, an authorised person who enters premises under this part (whether with the consent of a person in charge of the premises, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (5) The powers of an authorised person under subsections (3) and (4) are additional to any powers of the authorised person under subsections (1) or (2) or any other territory law.
- (6) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (7) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6); and
  - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (8) An offence against this section is a strict liability offence.

## Division 5.4                    Search warrants

### 37                    Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
  - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 7 days after the day of the warrant's issue, the warrant ends.

**38 Warrants—application made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
  - (a) the magistrate must—
    - (i) tell the authorised person the terms of the warrant; and
    - (ii) tell the authorised person the date and time the warrant was issued; and
  - (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.

- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**39 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
  - (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the authorised person or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**40 Details of search warrant to be given to occupier etc**

If the occupier, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**41 Occupier entitled to be present during search etc**

- (1) If the occupier, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
- (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

## **Division 5.5                    Return and forfeiture of things seized**

### **42                    Receipt for things seized**

- (1) As soon as practicable after an authorised person seizes a thing under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 36 (Power to seize things).
- (3) A receipt must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

### **43                    Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
    - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or

- (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

#### **44 Access to things seized**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

## **45 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if before the thing is forfeited to the Territory under section 46, the administrator—
  - (a) becomes satisfied that there has been no offence against this Act with which the thing was connected; or
  - (b) decides not to proceed in relation to an offence.
- (2) However, this section does not apply—
  - (a) to a thing seized under section 36 (4) (which is about the seizure of things that pose a risk to the health or safety of people or of damage to property or the environment); or
  - (b) to a thing if the administrator believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
  - (c) to a thing if possession of it by its owner would be an offence.

## **46 Forfeiture of seized things**

- (1) This section applies if—
  - (a) anything seized under this part has not been destroyed or otherwise disposed of under section 47 or returned under section 45; and
  - (b) an application for disallowance of the seizure under section 48—
    - (i) has not been made within 10 days after the day of the seizure; or

- (ii) has been made within that period, but the application has been refused or has been withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
- (a) it is forfeited to the Territory; and
  - (b) it may be sold, destroyed or otherwise disposed of as the administrator directs.

#### **47 Power to destroy unsafe things**

- (1) This section applies to anything inspected or seized under this part by an authorised person if the authorised person is satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (2) The authorised person may direct a person in charge of the premises where the thing is to destroy or otherwise dispose of the thing.
- (3) The direction may state 1 or more of the following:
- (a) how the thing must be destroyed or otherwise disposed of;
  - (b) how the thing must be kept until it is destroyed or otherwise disposed of;
  - (c) the period within which the thing must be destroyed or otherwise disposed of.
- (4) A person in charge of the premises where the thing is commits an offence if the person contravenes a direction given to the person under subsection (2).

Maximum penalty: 50 penalty units.

- (5) Alternatively, if the thing has been seized under this part, the authorised person may destroy or otherwise dispose of the thing.

- (6) Costs incurred by the Territory in relation to the disposal of a thing under subsection (5) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
  - (a) the person who owned the thing;
  - (b) each person in control of the premises where the thing was.
- (7) An offence against this section is a strict liability offence.

#### **48 Application for order disallowing seizure**

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the administrator.
- (3) The administrator is entitled to appear as respondent at the hearing of the application.

#### **49 Order for return of seized thing**

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 48 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if the court is satisfied that—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
  - (b) the thing is not connected with an offence against this Act; and
  - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.

- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
- (a) an order directing the administrator to return the thing to the applicant or to someone else who appears to be entitled to it;
  - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
  - (c) an order about the payment of costs in relation to the application.

## **Division 5.6                      Miscellaneous**

### **50                      Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

**51                    Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person or a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.



## Part 7 Miscellaneous

### 55 Review of Act

- (1) The Minister must commence a review of the operation of this Act in January 2014.
- (2) The review must consider the following:
  - (a) the future operation of this Act after 2015;
  - (b) any change required to improve the operation of this Act;
  - (c) the most appropriate funding mechanism for the future;
  - (d) the operation of this Act in the context of energy efficiency schemes operating in, or introduced for, the Commonwealth or another State or Territory.
- (3) The Minister must present a copy of the review to the Legislative Assembly not later than 9 months after the review commenced.

### 56 Approved forms

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**57 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

## Schedule 1      Reviewable decisions

(see pt 6)

| <b>column 1<br/>item</b> | <b>column 2<br/>section</b> | <b>column 3<br/>decision</b>   | <b>column 4<br/>entity</b>                       |
|--------------------------|-----------------------------|--|--|
| 1                        | 18                          | approving an application in relation to acquisition of abatement factors | electricity supplier applying for the approval   |
| 2                        | 20                          | determining supplier energy savings result                               | electricity supplier receiving the result        |
| 3                        | 21                          | determining supplier priority household result                           | tier 1 electricity supplier receiving the result |

## Schedule 2 Greenhouse gases

(see dict, def *greenhouse gas*)

| column 1<br>item | column 2<br>greenhouse gas            | column 3<br>chemical formula  |
|------------------|---------------------------------------|---|
| 1                | carbon dioxide                        | CO <sub>2</sub>   |
| 2                | methane                               | CH <sub>4</sub>   |
| 3                | nitrous Oxide                         | N <sub>2</sub> O  |
| 4                | sulphur hexafluoride                  | SF <sub>6</sub>   |
| 5                | hydrofluorocarbon-23                  | CHF <sub>3</sub>  |
| 6                | hydrofluorocarbon-32                  | CH <sub>2</sub> F <sub>2</sub>  |
| 7                | hydrofluorocarbon-41                  | CH <sub>3</sub> F   |
| 8                | hydrofluorocarbon-43-10mee            | C <sub>5</sub> H <sub>2</sub> F <sub>10</sub>                                     |
| 9                | hydrofluorocarbon-125                 | C <sub>2</sub> HF <sub>5</sub>  |
| 10               | hydrofluorocarbon-134                 | C <sub>2</sub> H <sub>2</sub> F <sub>4</sub> (CHF <sub>2</sub> CHF <sub>2</sub> ) |
| 11               | hydrofluorocarbon-134a                | C <sub>2</sub> H <sub>2</sub> F <sub>4</sub> (CH <sub>2</sub> FCF <sub>3</sub> )  |
| 12               | hydrofluorocarbon-143                 | C <sub>2</sub> H <sub>3</sub> F <sub>3</sub> (CHF <sub>2</sub> CH <sub>2</sub> F) |
| 13               | hydrofluorocarbon-143a                | C <sub>2</sub> H <sub>3</sub> F <sub>3</sub> (CF <sub>3</sub> CH <sub>3</sub> )   |
| 14               | hydrofluorocarbon-152a                | C <sub>2</sub> H <sub>4</sub> F <sub>2</sub> (CH <sub>3</sub> CHF <sub>2</sub> )  |
| 15               | hydrofluorocarbon-227ea               | C <sub>3</sub> HF <sub>7</sub>  |
| 16               | hydrofluorocarbon-236fa               | C <sub>3</sub> H <sub>2</sub> F <sub>6</sub>                                      |
| 17               | hydrofluorocarbon-245ca               | C <sub>3</sub> H <sub>3</sub> F <sub>5</sub>                                      |
| 18               | perfluoromethane (tetrafluoromethane) | CF <sub>4</sub>   |
| 19               | perfluoroethane (hexafluoroethane)    | C <sub>2</sub> F <sub>6</sub>   |
| 20               | perfluoropropane                      | C <sub>3</sub> F <sub>8</sub>   |
| 21               | perfluorobutane                       | C <sub>4</sub> F <sub>10</sub>  |
| 22               | perfluorocyclobutane                  | c-C <sub>4</sub> F <sub>8</sub>   |

**Schedule 2**      Greenhouse gases

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| <b>column 1<br/>item</b> | <b>column 2<br/>greenhouse gas</b> | <b>column 3<br/>chemical formula</b> |
|--------------------------|------------------------------------|--------------------------------------|
| 23                       | perfluoropentane                   | C <sub>5</sub> F <sub>12</sub>       |
| 24                       | perfluorohexane                    | C <sub>6</sub> F <sub>14</sub>       |

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## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- commencement
- disallowable instrument (see s 9)
- Minister (see s 162).

***abatement factor*** means the number of tonnes of carbon dioxide equivalent emissions that an eligible activity is taken to save.

***administrator*** means a person appointed as administrator under section 23.

***approved abatement factor***—see section 18.

***approved code of practice***—see section 25.

***auditor*** means any of the following:

- (a) an auditor registered under the Corporations Act;
- (b) a member of the Institute of Chartered Accountants in Australia;
- (c) a member of CPA Australia;
- (d) a member of the Institute of Public Accountants.

***authorised person*** means a person appointed as an authorised person under section 30.

***carbon dioxide equivalent***, of greenhouse gas emissions, means the mass of carbon dioxide measured in tonnes that has the same global warming potential as the gas emissions.

***compliance period***—see section 12.

***connected***, with an offence, for part 5 (Enforcement)—see section 29.

***electricity supplier*** means a utility licensed to supply electricity to premises in the ACT for consumption.

***eligible activity***—see section 10.

***emissions factor***—see section 9.

***energy*** includes electricity and gas.

***energy savings contribution***—see section 11.

***energy savings obligation***—see section 13.

***energy savings target***—see section 7.

***greenhouse gas*** means a gas mentioned in schedule 2, column 2.

***occupier***, of premises, for part 5 (Enforcement)—see section 29.

***offence***, for part 5 (Enforcement)—section 29.

***priority household*** means residential premises in which 1 person who lives at the premises—

- (a) is a recipient of an ACT Government energy concession; or
- (b) holds a Commonwealth pensioner concession card or health care card; or
- (c) holds a Department of Veterans Affairs pensioner concession card, TPI gold repatriation health care card, war widows repatriation health care card, or gold repatriation health care card; or
- (d) is within a class of people prescribed by regulation.

***priority household obligation***—see section 15.

***priority household target***—see section 8.

***reviewable decision***, for part 6 (Notification and review of decisions)—see section 52.

***supplier energy savings result***—see section 20.

***supplier priority household result***—see section 21.

***tier 1 electricity supplier*** means an electricity supplier that—

- (a) has at least 5 000 customers in the ACT; and
- (b) sells at least 500 000MWh of electricity to customers in the ACT annually.

***tier 2 electricity supplier*** means an electricity supplier that is not a tier 1 electricity supplier.

***utility***—see the *Utilities Act 2000*, dictionary.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 22 March 2012.

**2 Notification**

Notified under the Legislation Act on 16 May 2012.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Energy Efficiency (Cost of Living) Improvement Bill 2012, which was passed by the Legislative Assembly on 3 May 2012.

Clerk of the Legislative Assembly

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