Australian Capital Territory

Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2021

Disallowable instrument DI2021–163

made under the

Energy Efficiency (Cost of Living) Improvement Act 2012, s 11 (Energy savings contribution)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2021 (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

The *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act) provides for a NERL retailer-obligated energy efficiency scheme in the ACT (the 'Scheme'). The Act has been designed to ensure that the impact of the Scheme on NERL retailers in the ACT, especially smaller NERL retailers and new market entrants, is minimised.

A key design element of the Act developed to address this issue is the 'Energy Savings Contribution' (ESC). Section 11 of the Act requires the Minister to determine a contribution payable by smaller 'Tier 2' retailers for a compliance period in place of the retailer's requirement to achieve a retailer's energy savings obligation for the period. Smaller 'Tier 2' NERL retailers may choose to pay the ESC to meet their obligations (determined by their market share of electricity sales) under the Scheme rather than undertaking energy saving activities. This is consistent with the ACT Government's objective of supporting enhanced retail competition in the Territory.

The fee, to be applied for the period from 1 January 2022, has been determined at $32 per MWh of the Tier 2 NERL retailer's ***energy savings obligation***. This is intended to offset the cost advantage a Tier 1 NERL retailer would have if a Tier 2 NERL retailer were required to set up and deliver energy efficiency services – with such a cost advantage potentially discouraging competition in the ACT retail electricity market. This simplified obligation considers the impact of the Act on competition and reduces the risk that compliance costs may lead to a competitive disadvantage for smaller NERL retailers in electricity retail markets, thereby reducing competition.

The ESC has been set at the modelled average cost of compliance for the Tier 1 NERL retailer. Tier 1 retailer participation in the EEIS is modelled to have an overall net economic benefit to the Territory, at a negative cost of abatement.

Section 28 of the Act provides that the ESC is to 'be appropriated to support initiatives or undertake activities consistent with the Objects of the Act'. This may include covering costs associated with the administration of the Scheme. This will occur through the normal annual budget appropriations process, which will allow regular scrutiny and appropriate priority setting by Cabinet. To date, Tier 2 contributions have been used to support Scheme administration and ACT Government programs, which have been reviewed for cost effectiveness.

The *Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2015 (No 1)* (DI2015-271) and The *Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2020 (No 1)* (DI2020-220) remain in effect to permit auditing compliance.

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

A regulatory impact statement has been prepared for the Determination.

Clause Notes

Clause 1 names the instrument.

Clause 2 indicates the timing for commencement of the instrument.

Clause 3 provides that the Energy Contribution Target is $32 per MWh for the compliance period beginning on 1 January 2022 and ending on 31 December 2022.