

Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2023

Disallowable instrument DI2023–155

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 2023* (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 National Electricity Retail Law (**NERL**) retailer-obligated Energy Efficiency Improvement 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 NERL 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 opt 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 2024, has been determined at \$27.43 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 NERL retailer participation in the Scheme is modelled to have an overall net economic benefit to the Territory.

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 Government. To date, tier 2 contributions have been used to support Scheme administration and ACT Government programs relating to energy efficiency.

The *Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2015 (No 1)* (DI2015-271), *Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2020 (No 1)* (DI2020-220), *Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2021* (DI2021-163) and *Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2022* (DI2022-151) remain in effect to permit auditing compliance of the 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023 compliance periods.

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

A regulatory impact statement has been prepared for the Determination.