

Australian Capital Territory

# Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) Determination 2023

Disallowable instrument DI2023–156

made under the

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

## EXPLANATORY STATEMENT

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### Introduction

This explanatory statement relates to the *Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) 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

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 shortfall in accordance with sections 20 and/or 21 of the Act.

This instrument determines the shortfall penalty to be \$71.32 per megawatt hour (MWh) for the compliance period beginning on 1 January 2024 and ending on 31 December 2024.

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

Accordingly, the shortfall penalty has been developed in order 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 2024 and ending on 31 December 2024 has remained constant with the value set for 2023.

The instrument does not engage the *Human Rights Act 2004*.

A regulatory impact statement has been prepared for this instrument.