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Attorney-General

Minister for Consumer Affairs

Minister for Water, Energy and Emissions Reduction

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Member for Kurrajong

22/74298

Peter Cain MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

scrutiny@parliament.act.gov.au

Dear Mr Cain

I write in response to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) Scrutiny Report 21, tabled on 4 October 2022, regarding the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2022 (DI2022-181)*.

I note the Committee's ongoing concern about the disapplication of section 47(6) of the *Legislation Act 2001*.

The explanatory statement of the determination provides that section 47(6) has been disappplied because "It is not possible to republish text contained in Australian Standards documents as they are protected by copyright. It is not practical to republish information in the National Construction Code as it contains over 400 pages of information across 4 volumes."

Supplementing this explanation, the determination itself provides two notes under clause 4 informing the reader where they can obtain access to the relevant documents, specifically:

Note 1 Australian Standards are available for purchase at www.standards.org.au and are available for inspection by members of the public at the National Library of Australia.

Note 2 A copy of the National Construction Code, which incorporates the Building Code of Australia and the Plumbing Code of Australia, is freely available for inspection at www.abcb.gov.au.

Copyright in Australian Standards is owned by Standards Australia, a private organisation, while copyright in the National Construction Code is jointly owned by the Commonwealth of Australia and the States and Territories.

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In disapplying section 47(6), I note that the organisations that are subject to the declaration are already required to comply with Australian Standards and the National Construction Code and should already have a good working knowledge of these documents.

The Energy Efficiency Improvement Scheme (EEIS) mitigates risk and liability by applying nationally-recognised standards to participants, rather than attempting to define new requirements. This approach reduces red tape, provides security for businesses that are accustomed to operating under the standards and code, and ensures national best practice is applied to the scheme. It is not considered practical to apply any alternative requirements on EEIS participants outside those nationally-recognised standards, and as the ACT Government cannot breach copyright by notifying these documents on the Legislation Register, no real alternative to disapplying section 47(6) exists in this instance.

I trust this information is of assistance.

Yours sincerely

Shane Rattenbury MLA