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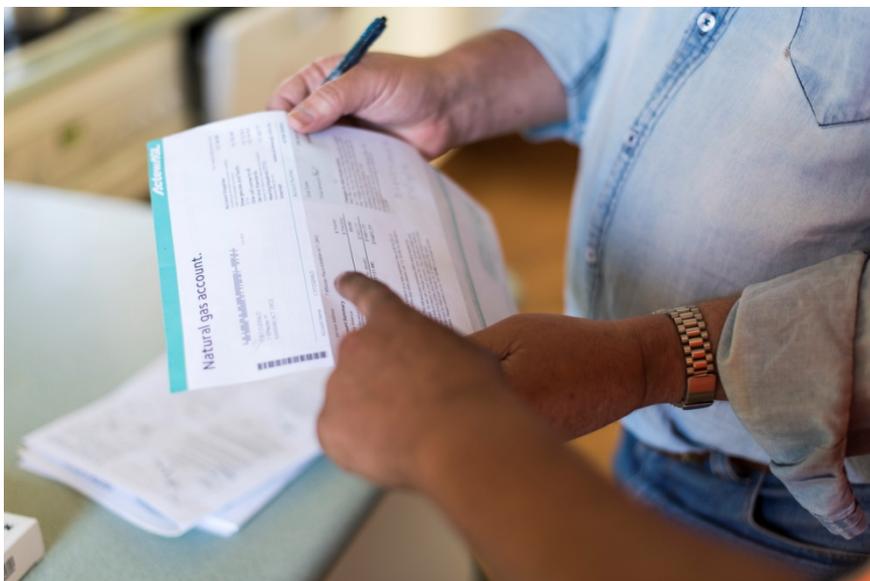
Environment, Planning and
Sustainable Development

Energy Efficiency Improvement Scheme

Regulatory Impact Statement

Prepared in accordance with Chapter 5 of the *Legislation Act 2001*

November 2017



Updating activities and streamlining instruments

Notifiable Instrument NI2017–676 – Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2017

Disallowable instrument DI2017 – 308 – Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2017

Disallowable Instrument DI2017 – 309 – Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2017

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1. Executive Summary

The *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act) establishes the Energy Efficiency Improvement Scheme (EEIS). EEIS objectives are to encourage the efficient use of energy, reduce greenhouse gas emissions, reduce household and business energy use and costs, and increase opportunities for priority households to reduce energy use and costs.

This Regulatory Impact Statement (RIS) analyses the financial and non-financial impacts of an integrated legislative update comprised of the following EEIS instruments:

- *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2017*, (the Eligible Activities Determination).
- *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2017*, (the Eligible Activities Code of Practice) and
- *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2017* (the Record Keeping Code of Practice).

EEIS works by requiring electricity retailers to deliver eligible activities that reduce emissions and provide for energy bill savings. These instruments expand and update eligible activities to support energy retailer opportunities and harmonisation with similar energy efficiency obligation schemes in other jurisdictions. New requirements are also being added for EEIS installers to pass on energy efficiency information to consumers, to support them in achieving energy and bill savings. There are also consequential amendments to activity delivery and record keeping required as a result of the new *Energy Efficiency (Cost of Living) Improvement Regulation 2017*. This RIS analyses the impacts of these updates.

2. Background

EEIS supports the ACT Government’s climate change strategy Action Plan 2 (AP2) which identified reducing energy use in existing homes as one of the most cost-effective ways for the ACT to achieve its emissions reduction targets and reduce the impact of rising electricity and gas prices over the long-term. Since the scheme extension, the *Climate Change and Greenhouse Gas Reduction Act 2010* (the CCGR Act) has been updated with new targets of 100 per cent renewable electricity by 2020 and zero net greenhouse gas emissions by 2050. The Parliamentary Agreement for the 9th Legislative Assembly for the ACT (Parliamentary Agreement) contains a commitment to “continue all necessary policy and contractual steps to achieve 100% renewable electricity by 2020”. EEIS is a key mechanism for delivering on the ACT renewable energy and emission reduction targets.

The Act establishes a Territory-wide Energy Savings Target (EST) which is a statutory obligation for individual electricity retailers based on their electricity sales in the ACT. The

EST has been set at 8.6 per cent from 2016 until the end of 2020 to provide for business certainty and to maintain the level of ambition of EEIS for the life of the scheme.

The Act requires tier 1 retailers to achieve their EST by delivering eligible activities which include installing energy efficient light globes, draught seals, efficient space heating and cooling systems, water heaters and other items that save energy and reduce greenhouse gas emissions while maintaining quality of life. Smaller, tier 2 retailers can either deliver eligible activities or pay an Energy Savings Contribution. ActewAGL Retail (ActewAGL) is currently the only tier 1 retailer. Eligible activities are determined by the Minister under Section 10 of the Act, through the notifiable instrument, the Eligible Activities Determination.

Section 8 of the Act requires tier 1 retailers to achieve a priority household target (PHT) for the total reduction in greenhouse gas emissions in priority households for each compliance period. The PHT is expressed as a percentage of the Retailer Energy Savings Obligation (RESO) and tier 1 retailers are obliged to achieve that proportion of their energy savings obligation in priority households. As the only tier 1 retailer, ActewAGL is the only entity with the PHT obligation. The Regulatory Impact Statement which set scheme parameters from 2015 until 2020 proposed that the PHT be subject to annual review¹. The PHT was set at 25 per cent from 2013-2015 and has been set at 20 per cent from 2016 until 2018.

The classes of priority households are designed to target Canberra's lower income households. Low income households are most affected by energy price rises, but least able to invest in efficient items and thus reduce their energy demand. The (PHT) ensures that a proportion of EEIS savings are delivered in these priority households.

The government undertook targeted key stakeholder consultation before continuing the 2016-17 PHT setting of 20 per cent into the 2018 compliance year. Seven written submissions were received representing 11 organisations, since the submission from the Energy Consumers Policy Consortium represented the views of five community groups. Three of the submissions argued that the PHT should remain at 20 per cent. One submission proposed a higher level and ActewAGL requested that it be reduced to 10 per cent. ActewAGL considered that a lower level was needed because of increasing difficulties in achieving the PHT. The regulatory impact statement to set the 2018 Priority Household Target indicated that three actions would be taken to manage the risks associated with maintaining a 20 per cent PHT². Those actions are:

- Reviewing the formulation of the PHT and considering alternatives if needed,

¹ *Energy Efficiency Improvement Scheme: Setting Key Scheme Parameters to 2020 – Regulatory Impact Statement*. May 2015. URL:

http://www.environment.act.gov.au/data/assets/pdf_file/0006/735990/Attachment-C-Regulatory-Impact-Statement-EEIS-Parameters-to-2020-FINAL.pdf p.20

² *Regulatory Impact Statement to set 2018 Priority Household Target* (2017)

http://www.legislation.act.gov.au/ri/db_56930/current/pdf/db_56930.pdf

- Supporting the delivery of EEIS activities to Housing ACT tenants, and
- Increasing the scope of the PHT by adding new categories of eligible households.

The Energy Efficiency (Cost of Living) Improvement Regulation 2017 (the regulation) is delivering on the third action.

Finally, it is worth noting that all EEIS targets have been met during each compliance period since the scheme commenced in 2013. EEIS has delivered savings to over 70,000 premises and avoided over 713,000 tonnes of carbon dioxide equivalent emissions (tCO₂e). Over 17,800 priority households have received EEIS activities. Energy bill savings from EEIS were estimated at over \$20.5 million during the 2016-17 financial year alone.

3. The authorising law

The Act was passed by the Legislative Assembly on 3 May 2012. EEIS was initially legislated to run until 31 December 2015 but after a 2014 review, the Legislative Assembly passed the *Energy Efficiency (Cost of Living) Improvement Amendment Act 2015* which amended the Act to continue the EEIS to 31 December 2020.

Section 6 establishes the objects of the Act. They are to:

- encourage the efficient use of energy; and
- reduce greenhouse gas emissions associated with stationary energy use in the Territory; and
- reduce household and business energy use and costs; and
- increase opportunities for priority households to reduce energy use and costs.

This Regulatory Impact Statement (RIS) is prepared in accordance with Part 5.2 of the *Legislation Act 2001*.

The Eligible Activities Code of Practice and the Record Keeping Code of Practice disallowable instruments are established under Section 25 of the Act which enables the administrator to approve codes of practice for a range of specified purposes including quality, health, safety and environmental requirements applying to eligible activities, record keeping and reporting requirements by way of disallowable instruments. These two EEIS codes of practice are being amended both to support the regulation to expand classes of priority households, and to amend several existing EEIS activities. They are also being amended for streamlining purposes.

Section 10 of the Act enables the Minister to determine eligible activities that are intended to reduce the consumption of energy by way of a notifiable instrument. The *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination* (Eligible Activities Determination) is the notifiable instrument used to determine eligible activities and ascribe activity abatement values. Although a RIS is not needed to amend a notifiable instrument,

this RIS analyses the impacts of the Eligible Activities Determination because it is a key element of the integrated legislative update.

4. Problems being addressed, policy objectives and options for achieving them

Three problems are addressed in this integrated legislative update. They are:

1. Inconsistencies exist between the ACT EEIS and sister schemes in other jurisdictions.
2. Improvements are possible to the set of activities available to retailers for delivering the EEIS.
3. Complexities and inconsistencies in current EEIS instruments generate some administrative challenges.

The integrated legislative update analysed in this RIS targets each of these problems with a separate policy objective, and amendments to different parts of the existing instruments. The subsections below discuss the problems being addressed, why government action is needed and the potential risks involved. They also state the objectives of the legislative update and the other options that were considered before drafting.

4.1 Harmonising building and exhaust fan sealing activities with other jurisdictions

4.1.1 Problems being tackled

Stakeholders of energy efficiency improvement schemes across Australia often express frustration at the different activities operating across schemes. The government is committed to tackling this problem by harmonising activities across schemes³ and is progressing this objective with these updates.

4.1.2 Risks

There are some risks associated with the removal of some previous options, such as providing draught seals to internal doors. But the risks are low since these activities are not currently being offered under EEIS, so no current business practices are affected.

4.1.3 Objectives

The objective is to harmonise the EEIS activities for building and exhaust fan sealing with those in the Victorian Energy Efficiency Target Scheme (VEET). The EEIS activities were originally modelled on the VEET equivalents, which have been updated recently to

³ *ACT leads push for alignment of climate change and energy policy* (2015). URL: http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2015/act-leads-push-for-alignment-of-climate-change-and-energy-policy

incorporate new baseline assumptions, equipment improvements and improved modelling accuracy.

4.1.4 Other options

The Eligible Activities Determination and the two codes of practice have the specific purpose of establishing EEIS activities and associated consumer protection obligations, quality, health, safety and environmental requirements. There are no other options available for updating activities.

4.1.5 Consultation

These updates were widely consulted on. Between June and July 24th, EEIS conducted a formal stakeholder consultation round on these changes. These proposed changes, and the rationale for them, were explained in detail in the EEIS *“Proposed Updates to Residential Energy Saving Activities: Consultation Paper”*, available since June 2017 at the following link, together with an on-line survey and invitation to provide feedback over a six week period: https://www.environment.act.gov.au/data/assets/pdf_file/0006/1072671/EEIS-2017-Insulation-and-Building-Sealing-Activity-Consultation-Paper-1.pdf. This report was also sent to all EEIS stakeholders including an email list of over 200 individuals and organisations.

The consultation process confirmed that EEIS stakeholders support these changes including that all building sealing and exhaust fan sealing products should have a minimum 5 year product warranty. EEIS has contacted distributors of building sealing products and these products are available in the marketplace with a 5 year minimum product warranty.

4.1.6 Assessments of benefits and costs

There are no direct or indirect costs from these changes since the activity is not currently being delivered and no adjustments need to be made to business practices.

Abatement providers and electricity retailers operating across jurisdictions will benefit from greater harmonisation across schemes. If these activities are delivered to ACT households and businesses, recipients will benefit from higher quality products with longer warranty periods. Having these longer warranty periods in all schemes creates economies of scale helping to bring down the costs of these higher quality building and exhaust fan sealing products.

4.2 Harmonising the commercial lighting activity with other jurisdictions

4.2.1 Problems being tackled

The EEIS commercial lighting activity draws on equivalent activities in the NSW Energy Saving Scheme (ESS), South Australian Retailer Energy Efficiency Scheme (REES) and VEET. Despite harmonisation efforts by all schemes, some differences across schemes persist and generate difficulties for electricity retailers and abatement providers that deliver activities across jurisdictions. The specific problems being tackled in the integrated legislative update are:

- difficulties exist in the EEIS activity in confirming that installations meet AS/NZ 1680 lighting standard for small energy using businesses, and EEIS requirements are out of step with best practice requirements in other jurisdictions,
- elements of the activity abatement values (AAVs) were not harmonised with a recent ESS update, creating confusion and frustration among retailers and abatement providers. Applying recent ESS updates to the ACT AAV reduces this risk.
- The South Australian REES will, from 1 Jan 2018, update its commercial lighting minimum product warranties for Hi-Bay commercial lighting. EEIS needs therefore to change its commercial lighting minimum product warranty to ensure harmonisation. This will also further ensure that commercial lighting products, on average, last the 10 year deeming periods.

4.2.2 Risks

There are no specific risks associated with the proposed updates other than the one-off costs associated with additional training in meeting the AS/NZ 1680 standard.

4.2.3 Objectives

The overall objectives of these changes are to:

- bring warranty requirements in line with deeming periods and other jurisdictions,
- provide certainty in how installers will demonstrate compliance with relevant standards in small business installations, and
- improve harmonisation with other schemes.

4.2.4 Other options

The Eligible Activities Determination and the two codes of practice have the specific purpose of establishing EEIS activities and associated consumer protection obligations, quality, health, safety and environmental requirements. There are no other options available for updating activities.

4.2.5 Consultation

EEIS has consulted with retailers and approved providers as well as other approved providers in other schemes plus independent experts on these issues in 2016 at the EEIS Stakeholder Forum and in 2017 in targeted stakeholder consultation. These stakeholders:

- Agreed that it was a good idea to require declaration that key aspects of AS/NZ 1680 have been met for small energy using businesses. It was agreed that many key aspects of AS/NZ 1680 could be done with minimal extra cost, but some aspects would raise costs.
- Universally supported the changes to minimum product warranties as current products all have at least these new minimum levels of minimum product warranty. Agreed to other changes that improve harmonisation like requiring LED linear tube lighting products to be on the VEET product register.

4.2.6 Assessments of benefits and costs

There are no extra costs from the change in warranty periods as the market already has moved to these higher minimum product warranties. Businesses will benefit from longer-lived lighting upgrades.

The requirement to meet key aspects of AS/NZ 1680 may incur a one-off training cost. Installers already have lux meters and so there are no additional equipment costs. Retailers have confirmed that these costs can be absorbed into the current business model. This change will remove uncertainties in audit and compliance and thus reduce associated costs.

4.3 Improving opportunities for retailers to deliver space heating activities

4.3.1 Problems being tackled

Current EEIS space heater activities are limited by the size of households that they can be delivered in. There are also some limitations to the spaces in which ducting can be installed for ducted heating activities.

4.3.2 Risks

One risk is that large houses and those with inaccessible ducting may miss out on EEIS activities. This may also restrict retailer willingness to deliver heating activities. Another risk is that heaters may be installed that are too small for the space leading to lower heating services being achieved.

4.3.3 Objectives

One objective is to support retailers and approved providers to install efficient reverse cycle heat pump products that will maintain or improve heating services for large residential premises or large room scenarios. Another is to support ducted heating upgrades in spaces where existing ducting is inaccessible, but where leaving the existing ducting will not substantially reduce the energy efficiency of new heaters.

4.3.4 Other options

The Eligible Activities Determination and the two codes of practice have the specific purpose of establishing EEIS activities and associated consumer protection obligations, quality, health, safety and environmental requirements. There are no other options available for updating activities.

4.3.5 Consultation

ACTEW AGL Retail, and a range of government, industry, research community and expert consultants have been consulted and support these new sub-activities.

4.3.6 Assessments of benefits and costs

There are no additional costs associated with the changes.

Benefits include greater opportunities for EEIS participation in larger houses. Installers report that heat pump models with larger heat capacity are the preferred option of many customers. At present, the only option for large households is the central gas heater

upgrade to efficient central gas heaters. This option provides a pathway for larger households to convert from gas to electric heating and is a cost effective option for progressing towards net zero emissions target for the ACT.

4.4 Clarifying and streamlining parts of the existing EEIS instruments

4.4.1 Problems being tackled

External experts advised EEIS of duplication and inconsistencies between the EEIS instruments. The main area for these problems was in the activity specific record keeping and reporting text that appears in both the Activities and Record Keeping codes of practice. The duplication and inconsistencies generate uncertainty for retailers and installers seeking to deliver activities in line with the codes.

4.4.2 Risks

Duplication and inconsistencies across instruments leads to uncertainty about compliance. The extensive activity-specific information in the Eligible Activities Determination and the Eligible Activities Code of Practice suggest to readers that all of the activity-specific information needed to achieve compliance can be found in those instruments.

4.4.3 Objectives

The objective is to make a simple, comprehensive amendment that substantially reduces duplication and inconsistencies between instruments. This is to remove the activity-specific record keeping information from the Record Keeping Code of Practice, and place it into the existing 'recording and reporting' section of each activity-specific listing in the Eligible Activities Code of Practice. This work also includes identifying and removing any duplication and resolving any inconsistencies. As a result of the change, the Record Keeping Code of Practice will not have a part containing activity-specific requirements, but will instead focus entirely on generic record keeping matters.

4.4.4 Other options

There are several other options available for streamlining EEIS instruments. In particular, this duplication and inconsistency could have been addressed by shifting the record keeping sections from the Eligible Activities Code of Practice into the Record Keeping Code of Practice. This option was rejected because the streamlining objective is best achieved by removing all activity-specific information from the Record Keeping Code of Practice.

These changes are a first step towards streamlining EEIS instruments. Further streamlining is planned for future instrument updates.

4.4.5 Consultation

The proposed change was discussed with retailers who have been involved in delivering EEIS activities. They confirmed that changes are needed to reduce administrative complexity and agreed that this change is a good start.

4.4.6 Assessments of benefits and costs

There are no financial costs associated with this change. Benefits will include the administrative efficiencies gained.

4.5 Providing energy efficiency information to EEIS recipients

4.5.1 Problems being tackled

Some of the new equipment provided through EEIS will only deliver energy and bill savings if it is used correctly. For instance if a heater thermostat is set to 30°Celsius for 24 hours a day throughout winter, it may cost more to run than an old, inefficient heater that was only running for a few hours a day without a thermostat. The best time to educate people about how to achieve savings from EEIS activities is at the point of installation. There are already requirements in the Eligible Activities Code of Practice for installers to be competent in explaining the use, operation and any safety requirements of installed product, but unless safety issues are identified, few activities require installers to actually provide an explanation. Further, installers are not currently provided with explanatory material to pass onto customers, other than instruction manuals of large equipment.

4.5.2 Risks

The risk is that energy efficient equipment could be installed, but incorrect usage may mean that energy bills increase instead of going down. This risk is exacerbated by current energy price rises. This means that despite saving energy, installed equipment may not lead to bill savings and this could frustrate customers. The solution proposed here is to provide energy efficiency information to consumers at the point of installation.

4.5.3 Objectives

The objective is to require EEIS activity installers to provide information to recipients explaining options and benefits of energy efficiency. The requirements do not specify the details of the requirement as ideal materials may differ between installations. Information could be as simple as a fridge magnet with phone numbers and web links, as dynamic as a thermometer showing recommended thermostat settings, or could be in the form of written material. This can be adjusted and updated as needed for new activities and settings. The changes will ensure that installers actually provide information on energy efficiency, rather than just having the competency to do so, and if the administrator requests it, will also provide broader energy efficiency advice.

4.5.4 Other options

The current practice does not require energy efficiency information to be provided to consumers, and the main other option is for this practice to continue. This was appropriate when nearly all of the EEIS activities were delivered free to householders, and were not associated with behaviour changes. Key examples are lighting upgrades, which save energy even if usage does not change. However EEIS and other scheme experience with standby power controllers (SPCs) suggests that further education is needed when an activity requires

a behaviour change. Phone surveys conducted for EEIS audit and compliance purposes showed that although 93 per cent of recipients were shown how to use the SPCs, only 71 per cent were still using them 6 to 18 months after installation. This low success rate was replicated in other jurisdictions and led to a reduction in AAVs for SPCs and their removal from the activities being offered by ActewAGL. Educational material may have meant higher success rates.

Other options for educating people on energy efficiency continue to be maintained by the territory. For instance, Actsmart will continue to offer free advice and information to all ACT residents on how to save money and reduce pollution through the Actsmart Sustainable Home Advice, Household Energy Efficiency Workshops and Low Income Energy Efficiency programs.

4.5.5 Consultation

Retailers involved in delivering activities were consulted on the proposal to provide educational material to EEIS recipients. They confirmed during consultation that they would welcome information from the government that can be used by installers to help deliver a quality product and positive outcomes.

4.5.6 Assessments of benefits and costs

There are costs associated with developing educational materials for provision to householders. The ultimate responsibility for providing information rests with ActewAGL and so in the absence of any information provided by the government or equipment manufacturers, ActewAGL will design and deliver the educational material. However the opportunity exists for the ACT government to provide information to be passed on by EEIS installers. The intention is for educational material to be small and simple and the costs could be accommodated within existing communications budgets.

There are no marginal costs associated with delivering the information as installers will already be on site and can provide the material at the end of installations, when activity record forms are signed.

5. Consistency of the regulation with the authorising law

The Act allows the Minister to determine eligible activities and the administrator to approve codes of practice. All of the elements of the integrated legislative update are consistent with the relevant heads of power in the Act.

6. Mutual recognition and consistency with the policy objectives of another Territory law

The proposed instruments are not inconsistent with the policy objectives of another Territory law.

The integrated legislative update achieves some harmonisation of regulatory regimes between the ACT, NSW, Victoria and South Australia. This has positive cross-border effect of improving consistency and reducing administrative costs for retailers and abatement providers participating in multiple energy efficiency schemes.

7. Human Rights

The determination does not affect any human right set out in the *Human Rights Act 2004*.

8. Assessment of the consistency of the proposed law with Scrutiny of Bills Committee principles

The terms of reference of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) require it to consider whether (among other things):

- (a) any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
 - i. is in accord with the general objects of the Act under which it is made,
 - ii. unduly trespasses on rights previously established by law,
 - iii. makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions, or
 - iv. contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.

The position in relation to each term of reference is as follows.

(i) is in accord with the general objects of the Act under which it is made

The instruments are in accord with the objects of the *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act). The relevant disallowable instruments support the achievement of the objects of the Act, namely:

- (a) encourage the efficient use of energy;
- (b) reduce greenhouse gas emissions associated with stationary energy use in the Territory;
- (c) reduce household and business energy use and costs; and
- (d) increase opportunities for priority households to reduce energy use and costs.

(ii) unduly trespasses on rights previously established by law

The instruments do not unduly trespass on rights previously established by law. The instruments determine codes of practice for implementing the Energy Efficiency Improvement Scheme.

(iii) *makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions*

The instruments do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions. The new codes of practice simply include updates to take account of changes since the last codes of practice were made. Decisions which may be impacted by the codes of practice, such as determining retailer energy savings result, are reviewable, see Schedule 1 of the Act.

(iv) *contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly*

The matter contained in the codes of practice is appropriate to be dealt with in subordinate legislation and is in accordance with the Act.

9. Conclusion

The RIS outlines the impacts of an integrated legislative update to EEIS instruments supporting consequential amendments required for implementing the proposed *Energy Efficiency (Cost of Living) Improvement Regulation 2017*, updates some existing EEIS activities, streamlines the existing instruments and introduces new requirements for EEIS installers to provide energy efficiency information to consumers.

The net result of these changes is to increase retailer opportunities to achieve energy efficiency savings under EEIS, while simplifying administrative arrangements.