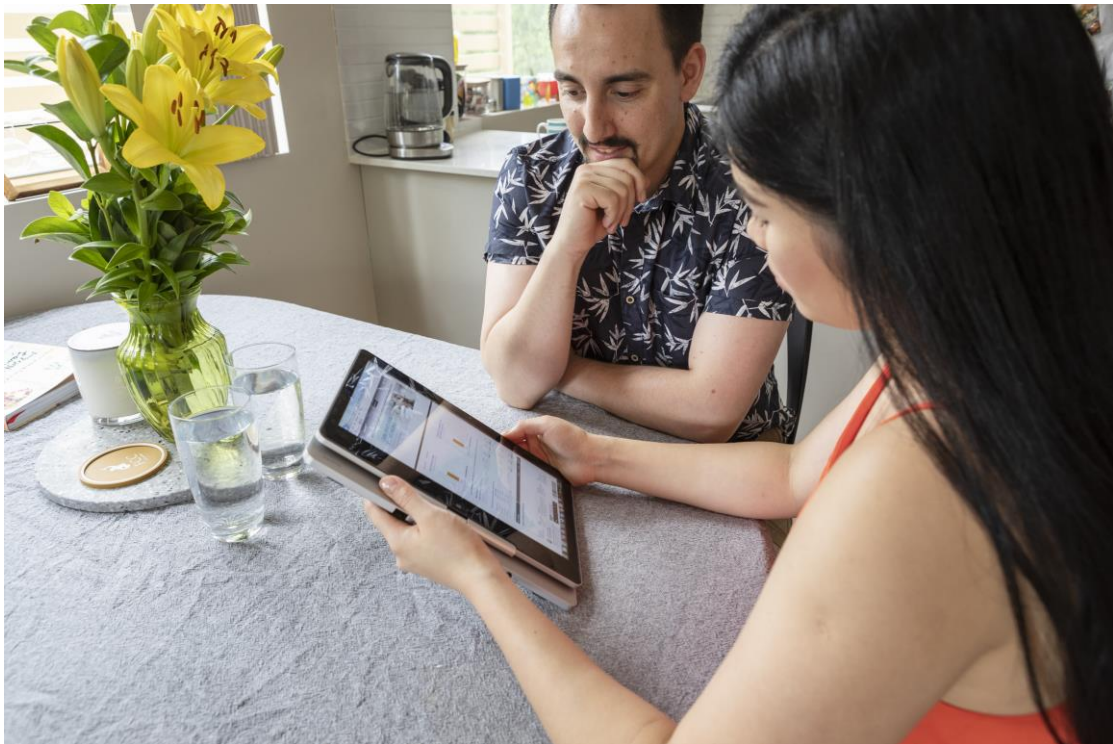


Energy Efficiency Improvement Scheme

Regulatory Impact Statement

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

February 2020



Update of Legislative Instruments

Disallowable Instrument **DI2020-32**

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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 policy impacts of updates to EEIS instruments. These updates are achieved through amendments to three existing instruments, including:

- *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2019*, (the Activities Determination).
- *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2019*, (the Activities Code of Practice) and
- *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2019* (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.

The EEIS Regulatory Impact Statement – Extension to 2030, supporting the *Energy Efficiency (Cost of Living) Improvement Amendment Bill 2019* examined the reasons for streamlining the administration of the EEIS. The first opportunity was to ensure that throughout the EEIS legislation, disallowable instruments are used to set substantive targets and policy positions while notifiable instruments are used to establish technical protocols. This RIS analyses the reasons for the instrument swap for better administration of the Scheme

2. Background

EEIS supports the ACT Government's Climate Change Strategy which identifies 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-term¹. Since the scheme extension, the *Climate Change and Greenhouse Gas Reduction Act 2010* (the CCGGR Act) has been updated with new targets of 100 per cent renewable electricity by 2020 and zero net greenhouse gas emissions by 2045. The Parliamentary Agreement for the 9th Legislative Assembly for the ACT (Parliamentary Agreement) contains a commitment to "continue all necessary policy and contractual steps

¹ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/6915/1305/0361/2017_ACT_Climate_Change_Strategy.pdf

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. The Act requires tier 1 retailers to achieve a priority household target (PHT) in priority households for each compliance period. The classes of priority households are designed to target Canberra's lower income households who 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.

Eligible activities are determined by the Minister under Section 10 of the Act, through the Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination (the Determination). This instrument is being amended in accordance with the *Energy Efficiency (Cost of Living) Improvement Amendment Bill 2019* 7A(2) and 27(2), to become a disallowable instrument, to ensure the appropriate administration of the Scheme.

Eligible Activities

The eligible activities described in the Determination are:

1. Residential building envelope activities:
 - i. Building sealing activities
 - ii. Exhaust fan sealing activities
 - iii. Ventilation opening sealing activities
 - iv. Install a thermally efficient window
 - v. Retrofit thermally efficient glazing
 - vi. Install thermally efficient window coverings
 - vii. Install window pelmets
 - viii. Install ceiling insulation
 - ix. Install underfloor insulation
2. Space heating and cooling activities
 - i. Install a high efficiency central air conditioning heat pump
 - ii. Replace a ducted gas heater with high efficiency ducted gas heater (*Revoked*)
 - iii. Install a high efficiency room air conditioning heat pump

- iv. Install insulated space conditioning ductwork
 - v. Replace separate central heating and cooling systems with a high efficiency central air conditioning heat pump system
 - vi. Replace separate room heating and cooling systems with a high efficiency room heat pump
3. Hot water service activities
- i. Decommission an electric resistance water heater and install a specified high efficiency water heater
 - ii. Decommission a gas or liquefied petroleum gas water heater and install a specified high efficiency water heater
 - iii. Replace an existing shower fixture outlet with a low flow shower fixture outlet
4. Lighting activities
- i. Residential lighting activities
 - ii. Commercial lighting upgrade activities
5. Appliance activities
- i. Decommissioning and disposal of refrigerator or freezer
 - ii. Purchase of high efficiency refrigerator or freezer
 - iii. Purchase of high efficiency electric clothes dryer
 - iv. Purchase of a high efficiency television
 - v. Install a standby power controller (*Revoked*)
 - vi. Install a high efficiency swimming pool pump
 - vii. High efficiency refrigerated display cabinet activities

These specific EEIS Eligible Activities have been previously legislated and periodically updated previous to this Regulatory Impact Statement. The regulatory impacts of all of these EEIS Eligible Activities have been covered in previous Regulatory Impact Statements from 2012-2019 as listed below:

- Regulatory Impact Statement for:
 - [Energy Efficiency \(Cost of Living\) Improvement \(Eligible Activities\) Code of Practice 2019](#) update.
- Regulatory Impact Statements for:
 - [Energy Efficiency \(Cost of Living\) Improvement \(Eligible Activities\) Code of Practice 2017](#) update.
 - [Energy Efficiency \(Cost of Living\) Improvement \(Eligible Activities\) Determination 2017](#) update.
 - [Energy Efficiency \(Cost of Living\) Improvement \(Record Keeping and Reporting\) Code of Practice 2017](#) update.
- Regulatory Impact Statements for: [Energy Efficiency \(Cost of Living\) Improvement \(Record Keeping and Reporting\) Code of Practice 2016 \(No 2\)](#) This included updates to space heating and cooling, water heating and other updates to disallowable instruments.

- Regulatory Impact Statements for: [Energy Efficiency Improvement Scheme Regulatory Impact Statement introducing commercial lighting activity and other updates to disallowable instruments in 2016](#)
- Regulatory Impact Statement for - [Inclusion of the non-residential sector, 2013](#)
- Regulatory Impact Statement for - [Energy Efficiency \(Cost of Living\) Improvement Amendment Bill 2019](#)

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. After a 2018 review, the ACT government has agreed to further extend EEIS until the end of 2030. The Agreement to extend the EEIS provided an opportunity to implement enhancements, which required amendments to the Act and to subordinate legislation. The amendments agreed to included; an energy metric and a balanced approach, with additional benefits for priority households, the capacity to expand to transport activities and some administrative streamlining. This extension means that it remains a priority to continually improve the administration of the Scheme.

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

4. Rationale for administrative streamlining of the EEIS - Problems being addressed and policy objectives.

The EEIS Regulatory Impact Statement – Extension to 2030, supporting the *Energy Efficiency (Cost of Living) Improvement Amendment Bill 2019* examined the reasons for streamlining the administration of the EEIS. The first opportunity was to ensure that throughout the EEIS legislation, disallowable instruments are used to set substantive targets and policy positions while notifiable instruments are used to establish technical protocols.

Currently, eligible activities are established by notifiable Instrument under Section 10(6) of the Act, but there are policy decisions involved in establishing eligible activities, so this is better achieved by disallowable instrument. Meanwhile, codes of practice are established by disallowable instrument, even though they reflect technical arrangements rather than policy decisions. Amendments to the Act are recommended to swap the types of instruments used to define activities and establish codes of practice consistent with the principle of disallowable instruments being used to establish policy and notifiable instruments being used for technicalities.

The amendments to the three instruments EEIS will swap:

- *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2019*, (the Activities Determination) from notifiable to disallowable;

- *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2019*, (the Activities Code of Practice) from disallowable to notifiable; and
- *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2019* (the Record Keeping Code of Practice) from disallowable to notifiable.

5. Consistency of the proposed law with other Territory Laws

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 and are consistent with other Territory Laws.

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 proposed amendments increase harmonisation of regulatory regimes between the ACT and other jurisdictions and 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. 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.

In previous EEIS instrument updates, the Scrutiny of Bills Committee has drawn attention to the instruments on the basis that they disapply sections 47(5) and (6) of the *Legislation Act 2001*, which provide that any instrument that is applied as law in the ACT is taken to be a notifiable instrument. Consistent with EPSDD's previous advice to the Committee, the reason for disapplying the application of section 47(5) to these instruments is to avoid breaching copyright. The copyright in Australian Standards is owned by a non-government organisation, Standards Australia.

While it may be prohibitive for EEIS stakeholders to purchase all of the standards referred to in the instruments, there are several factors that minimise undue expense in the case of these standards. In particular, most interested parties will already have copies of the relevant standards, and copies of many standards are available at the National Library of Australia (NLA).

The committee has previously suggested two options for improving public access to the documents, but unfortunately, neither of these options provide a practical solution.

First, the committee suggested that the directorate might list specific standards that are available at the NLA. This would be problematic, as the instruments intentionally refer to “the relevant parts of ... standards ... as in force from time to time” so that any updates of the standards are automatically applied. As standards are updated, this would render inaccurate any advice provided about which standards are available in the NLA.

The committee’s second suggestion was that the standards might be made available for viewing through the Access Canberra shopfront. This option is unfortunately unavailable due to copyright restrictions which do not apply to the National Construction Code (NCC). That code is freely available online at www.abcb.gov.au/ncc-online/NCC. In contrast, the conditions of use for the ACT Government’s access to Australian Standards provide that all copies of standards supplied are only for use within the organisation and may not be shared or distributed. Access Canberra Building Services shopfront staff can source the NCC and relevant Australian Standards to assist the public accordingly.

8. Conclusion

The RIS outlines the impacts of a set of legislative updates to EEIS instruments. The net results of these changes are to ensure that throughout the EEIS legislation, disallowable instruments are used to set substantive targets and policy positions while notifiable instruments are used to establish technical protocols