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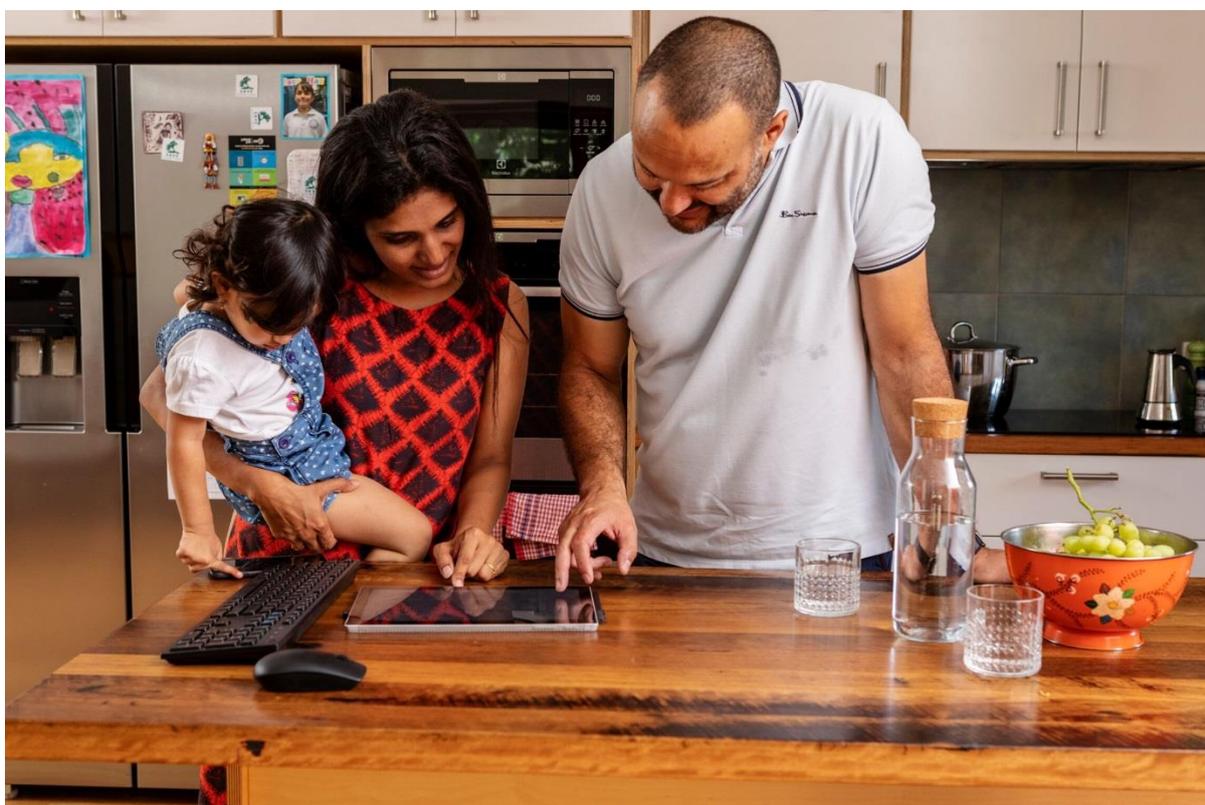
Environment, Planning and
Sustainable Development

Energy Efficiency (Cost of Living) Improvement (Priority Household) Determination 2020

Disallowable Instrument DI2020 - 255

Regulatory Impact Statement

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



Regulatory Impact Statement - Priority Household Determination 2020

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1. Executive Summary

This Regulatory Impact Statement (RIS) was prepared in accordance with Part 5.2 of the *Legislation Act 2001*, for the purposes of enhancing the Australian Capital Territory's (ACT's) Energy Efficiency Improvement Scheme (EEIS). It details the financial and other impacts of alternative options and of the specific proposal to enable classes of priority households to be determined by disallowable instrument.

The *Energy Efficiency (Cost of Living) Improvement Act 2012*¹ (the Act) establishes the Energy Efficiency Improvement Scheme (EEIS) which aims to encourage the efficient use of energy, reduce household and business energy use and costs, and increase opportunities for priority households to reduce energy use and costs.

Changes to the *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act) were recommended as a result of a detailed regulatory reform process involving:

- An independent review²;
- Consultation on recommendations from the review³;
- Evaluation of stakeholder views expressed during consultation⁴; and
- Modelling of a proposed EEIS extension⁵;

The *Energy Efficiency (Cost of Living) Improvement Amendment Act 2019*⁶ (the Amendment Act) makes the following changes:

- Extend EEIS until the end of 2030;
- Adopt an energy metric in place of the current greenhouse gas emissions metric;
- Enable classes of priority households to be determined by disallowable instrument;
- Remove the term 'stationary' from the objectives of the Act, to allow EEIS to consider transport activities in the future; and
- Streamline EEIS administration and improve data sharing.

The *EEIS Regulatory Impact Statement – Extension to 2030*⁷, for the *Energy Efficiency (Cost of Living) Improvement Amendment Bill 2019*⁸ provided the reasons for enabling classes of priority households to be determined by disallowable instrument. Determination of priority

¹ <http://www.legislation.act.gov.au/a/2012-17/default.asp>

² <https://www.environment.act.gov.au/energy/smarter-use-of-energy/energy-efficiency-improvement-scheme/publications>

³ https://www.environment.act.gov.au/_data/assets/pdf_file/0006/1384215/Results-Of-Consultation-On-An-Energy-Efficiency-Improvement-Scheme-Extension.pdf

⁴ <https://www.environment.act.gov.au/energy/smarter-use-of-energy/energy-efficiency-improvement-scheme/publications>

⁵ <https://www.environment.act.gov.au/energy/smarter-use-of-energy/energy-efficiency-improvement-scheme/publications>

⁶ <https://www.legislation.act.gov.au/a/2019-30/>

⁷ https://www.environment.act.gov.au/_data/assets/pdf_file/0004/1500817/Energy-Efficiency-Improvement-Scheme-RIS-Extension-until-2030.pdf

⁸ https://www.legislation.act.gov.au/b/db_60794/

household classes by disallowable instrument provides flexibility to review, add or remove eligible classes of households to the scheme and respond to community feedback in a timely manner. This RIS considers the impact of the proposed *Energy Efficiency (Cost of Living) Improvement (Priority Household) Determination 2020* (the Determination).

The Determination does not change the definition for Priority Households from the current definition. Consultation undertaken for the extension of the EEIS found strong stakeholder support for expanding the priority household classes. The Environment, Planning and Sustainable Development Directorate (EPSDD) is currently finalising consultation for the expansion of priority household classes and expects to further expand the priority household classes via an updated Priority Households Determination prior to 2021. Another RIS will be prepared and notified for the expansion of priority household classes in future Priority Household Determinations.

2. Background to the Energy Efficiency Improvement Scheme

The Act was passed by the Legislative Assembly on 3 May 2012. The Act establishes a retailer obligation energy efficiency scheme, referred to as the Energy Efficiency Improvement Scheme (EEIS). It establishes a Territory-wide Energy Savings Target (EST) defined as a proportion of a retailers' total electricity sales. Individual electricity retailers must deliver energy efficiency savings to their customers' equivalent to the EST. An early review of the EEIS showed that it was cost effectively delivering energy efficiency outcomes⁹, and the Act was extended by way of the *Energy Efficiency (Cost of Living) Improvement Act Amendment Act 2015*¹⁰.

The objects of the Act are established in section 6. Object (d) is to “increase opportunities for priority households to reduce energy use and cost”. This is consistent with the ACT Government's strategic objective of helping households, businesses and schools to reduce emissions, energy and costs.

The policy objective of providing benefits for low income households remains a key Government priority:

- ACT Government priorities;
 - Helping reduce peak electricity and gas demand,
 - Improving social housing and affordability,
 - Achieve net zero greenhouse gas emissions by 2045 at the latest,
 - Helping households to reduce energy and costs,
 - Healthy and smart, and

⁹ http://www.environment.act.gov.au/data/assets/pdf_file/0003/642315/ACT-EEIS-Review-Final-Report.pdf

¹⁰ https://www.legislation.act.gov.au/b/db_51862/

- Climate change mitigation and adaptation.

This objective is achieved in part through the EEIS mechanism of the Priority Household Target (PHT), which is set annually and currently obligates Tier One retailers to deliver 30% of their Energy Savings Target in priority dwellings.

An independent Review of EEIS was completed in 2018 by Point Advisory¹¹ (the Review). The Review confirmed that EEIS has been effective in reaching a large proportion of ACT households and businesses and has been efficiently delivered, with a positive benefit cost ratio of 4:1 and a majority of participants reporting bill savings¹². EEIS has achieved these outcomes by delivering over 1.3 million energy efficient items, including over 1.2 million light globes delivered in both residential and business premises, plus efficient reverse cycle air conditioners, water heaters, draught seals, exhaust fan seals, and standby power controllers. Despite these efforts, and the contributions of other complementary energy efficiency programs, market failures and opportunities still exist.

The Review recommended that the EEIS should continue beyond 2020, while shifting to an energy metric and adopting some other scheme enhancements¹³. The government agreed to adopt an energy metric, adopt scheme settings to balance emission reductions, bill savings and benefits for low income households, and to streamline administration of the scheme to allow for enhanced options to enable new classes of priority households to be included more easily.

3. Define priority household classes by disallowable instrument

Priority households are Canberra's lower income households, currently defined as households in which at least one resident holds an eligible concession card, is experiencing financial hardship or is a resident of a priority dwelling.

Changes to the Act enable eligible classes of priority households to be determined by the Minister via Disallowable Instrument rather than being defined in the Dictionary in the Act. This provides flexibility to review, add or remove eligible classes of households to the scheme and respond to community feedback in a timely manner. Most recent consultation has indicated that further expansion of the definition is required in order to remove barriers to participation in the scheme and to maintain a high PHT.

¹¹ <http://www.pointadvisory.com/>

¹² https://www.environment.act.gov.au/data/assets/pdf_file/0020/1221527/EEIS-Review-Part-1-Executive-Summary-ACCESSIBLE.pdf

¹³ https://www.environment.act.gov.au/data/assets/pdf_file/0020/1221527/EEIS-Review-Part-1-Executive-Summary-ACCESSIBLE.pdf

Priority household classes are summarised in Box 1 and currently appear across the following suite of EEIS legislation:

- three classes of priority households are defined in the dictionary of the Act, which also provides for additional classes to be prescribed by regulation.
- The *Energy Efficiency (Cost of Living) Improvement Regulation 2017* was established to prescribe additional classes of priority households and introduced six new classes. It also defines key terms such as priority dwellings, referring organisation, registered community housing providers and registered providers of support, which are used to define the six new classes.
- The *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice* and the *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice*, both list all current classes of priority households but do not include definitions for priority dwellings etc.

Box 1: Current priority household definition

An eligible priority household is defined in the dictionaries of the [EEIS Act](#) and [instruments](#) and [regulation](#) as a residential premise where **at least 1 person who lives there:**

- (1) is a recipient of an ACT Government energy concession; or
- (2) holds a Commonwealth pensioner concession card or health care card; or
- (3) holds a Department of Veterans Affairs pensioner concession card, TPI gold repatriation health care card, war widows repatriation health care card, or gold repatriation health care card; or
- (4) holds a Commonwealth seniors health card; or
- (5) holds a Commonwealth low income health care card; or
- (6) receives a Commonwealth disability support pension; or
- (7) is accessing an energy retailer's hardship program;
- (8) is referred to a retailer by one of the following referring organisations:
 - (a) ACAT (ACT Civil and Administrative Tribunal);
 - (b) Care Inc. (Financial Counselling Service and the Consumer Law Centre of the ACT);
 - (c) St Vincent de Paul Society; or
 - (d) The Salvation Army.
- (9) Any of the following tenanted dwellings are also considered to be an eligible priority household:
 - (a) a public housing property managed by Housing ACT;
 - (b) a property provided by a registered community housing provider;
 - (c) a property used for providing accommodation or tenancy support by a registered provider of supports under the National Disability Insurance Scheme Act 2013 (Cwlth);
 - (d) a property used for providing residential care under the Aged Care Act 1997 (Cwlth) if both of the following apply:
 - (i) the residential care is provided by an approved provider under that Act
 - (ii) the approved provider is a registered entity under the Australian Charities and Not-for-profits Commission Act 2012 (Cwlth).

4. Consultation

Consultation was carried out at the EEIS Stakeholder Forum in February 2019 seeking input on the extension to the Scheme.

The following stakeholders provided input at the forum:

- ACAT Energy and Water (ACAT)
- ACT Council of Social Services (ACTCOSS)
- ActewAGL
- Origin Energy
- Better Renting
- Canberra Multicultural Community Forum
- Care Financial Counselling Services (CARE)
- Housing ACT
- St Vincent de Paul (SVDP)
- Chief Minister, Treasury and Economic Development Directorate (CMTEDD)
- Tuggeranong and Inner South Community Councils
- Alexander Watson Home Insulation Company
- Office of the Commissioner for Sustainability and the Environment
- Wildlife Carers Group
- Evoenergy
- Knauf Insulation

Consultation focussed on the design of a ten-year extension, with options discussed on increasing opportunities for priority households. While direct feedback was not provided on moving the priority households definition from the Act to its own disallowable instrument, feedback was provided on increasing the PHT and expanding the definition of priority households.

EPSDD is currently undertaking the final stages of consultation to inform future expansion of the priority household classes.

5. Proposed legislation

The Determination considered in this RIS will not change the priority household classes from the current definition. This Determination will be notified prior to the commencement of Caretaker conventions to ensure legislated timeframes can be met to ensure the instrument is in place prior to the 1 January 2021 deadline prescribed in the Amendment Act. EPSDD proposes to finalise the consultation to expand the priority household classes to inform an updated Priority Household Determination after the 2020 ACT Election. Another RIS will be prepared and notified for the expansion of priority household classes in any future Priority Household Determination.

6. Complementarity

The proposed disallowable instrument is not inconsistent with the policy objectives of another Territory law.

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*
As noted above, the Determination is in accordance with the general objects of the Act.
- (ii) *unduly trespasses on rights previously established by law*
The Determination does not unduly trespass on rights previously established under law.
- (iii) *makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions*
The Determination does not make rights, liberties and/or obligations unduly dependent upon non reviewable decisions.
- (iv) *contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly*
The determination does not require further amendments to an Act and the subject matter is appropriate for a disallowable instrument.

9. Conclusion

The EEIS achieves social equity outcomes through its PHT which requires that a specified percentage of EEIS savings are delivered in low income and vulnerable households. Enabling of priority household classes to be determined by disallowable instrument allows the

Minister to review and update the priority household classes more efficiently. This will allow for flexibly to respond to market failures and barriers to uptake of energy efficiency upgrades in a timely manner, which will support and strengthen the PHT delivery.

This RIS has presented information to support the notification of the Determination. The Determination maintains the current definition of priority household classes.

EPSDD is currently undertaking the final stages of consultation to inform future expansion of the priority household classes. It is proposed that an updated Priority Household Determination will be notified prior to 2021. Another RIS will be prepared and notified for the expansion of priority household classes in any future Priority Household Determinations.