ACT Government

Environment, Planning and Sustainable Development

# Regulatory Impact Statement

## Energy Efficiency Improvement Scheme

### Setting Key Scheme Parameters for 2025 by Disallowable Instruments:

*Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2024* DI2024-269

*Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2024* DI2024-270

*Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) Determination 2024* DI2024-271

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

**June 2024**

# Contents

## 1. Executive summary

The *Energy Efficiency (Cost of Living) Improvement Act 2012* (the Act) establishes the Australian Capital Territory's (ACT's) Energy Efficiency Improvement Scheme (EEIS/the 'Scheme'), which aims to encourage the efficient use of energy; reduce greenhouse gas emissions associated with energy use in the Territory; reduce household and small to medium sized business energy use and costs; and increase opportunities for priority households to reduce energy use and costs. The EEIS establishes a Territory-wide energy savings target (EST), defined as a proportion of a retailer's total electricity sales in the ACT.

The Act requires electricity retailers to achieve energy savings by delivering eligible activities to households and small-to-medium businesses. Eligible activities are determined by the Minister and include insulation, draught sealing, efficient space heating and cooling systems, water heaters and other items that reduce energy bills and provide energy savings while maintaining quality of life. EEIS 'tier 1' retailers must deliver energy savings activities or acquire energy savings factors (ESFs) from Approved Energy Savings Providers (AESPs), while 'tier 2' retailers can either deliver eligible activities, acquire ESFs from AESPs, or opt to pay an Energy Savings Contribution (ESC). Any retailer that fails to meet its obligations under the Scheme within a given compliance period is required to pay a 'shortfall penalty'.

This Regulatory Impact Statement (RIS) was prepared in accordance with Part 5.2 of the *Legislation Act 2001*. The specific proposal considered in this document is for the following Scheme parameters to be set by the Minister for Water, Energy and Emissions Reduction in disallowable instruments for the 2025 compliance period:

- Energy Savings Target at 14.6%
- Energy Savings Contribution at $27.43/MWh, and
- Shortfall Penalty at $71.32/MWh.

These parameters are set by the following disallowable instruments (the determinations):

- *Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2024*
- *Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2024*
- *Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) Determination 2024*

## 2. The authorising law

The EEIS is the ACT's market-based Energy Efficiency Obligation (EEO) scheme established under the Act. The Act was passed by the Legislative Assembly on 3 May 2012 and the Scheme is currently legislated to run until 31 December 2030. Under the Act, an energy savings target (EST) is established, which determines the total energy savings to be achieved by individual retailers in a compliance period, expressed as a percentage of their total electricity sales in the ACT. A retailer's energy savings obligation (RESO) for a compliance period is calculated as follows: EST (%) x electricity sales (in megawatt hours or MWh).

Those tier 2 retailers that choose not to deliver energy savings activities or acquire ESFs are required to achieve their RESO through the payment of an energy savings contribution (ESC). In cases where a retailer fails to meet their RESO, a shortfall penalty applies.

The specific level of each of these parameters may be set for several years in advance and reviewed and adjusted as needed. The EST must be determined by the Minister for Water, Energy and Emissions Reductions no later than six months before the commencement of the compliance period (by 30 June) if it increases; or no later than three months before the commencement of the compliance period (by 30 September) if there is no increase.

## 3. Policy objectives of the disallowable instruments

The determinations set three of the key parameters for the EEIS. The objects of the Scheme, as set out in Section 6 of the Act, are to:

(a) encourage the efficient use of energy; and
(b) reduce greenhouse gas emissions associated with energy use in the Territory; and
(c) reduce household and business energy use and costs; and
(d) increase opportunities for priority households to reduce energy use and costs[1].

These objects also deliver on key objectives of the *ACT Climate Strategy 2019–2025*[2] including: achieving net zero emissions in the ACT by 2045 at the latest; building resilience to climate change impacts; and supporting a just transition to net zero emissions. As one of the most cost-effective ways for the ACT to reduce emissions and energy bills, the EEIS is a key delivery mechanism of the Climate Change Strategy. The EEIS supports the objective of a just transition through the priority household target, which specifies a minimum proportion of energy savings activities to be delivered to priority households.

## 4. Achieving the policy objectives

An independent review of the EEIS was completed in 2024 by Frontier Economics[3] (the Review). The Review found that the Scheme's reported savings met legislated targets and contributed to each of the four objects of the Act. The Scheme is providing a positive cost-benefit ratio of 1.5:1 and has provided $256 million in lifetime energy bill cost savings between 2021 and 2023.

Maintaining scheme settings for 2025 will allow ongoing achievement of the EEIS objectives.

[1] Note that Object (d) is addressed through a separate disallowable instrument (*Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2023.*
[2] Available at ACT Climate Change Strategy to 2019-25
[3] Available at Review of the Energy Efficiency Improvement Scheme

## 5. Considering a level of ambition

This section outlines the key Scheme parameters that have been identified through modelling conducted by Common Capital as ideal for maximising EEIS benefits in 2025.

Prior to 2020, the EEIS determined energy savings in the ACT using a greenhouse gas emissions abatement metric. When the ACT secured a 100% renewable electricity supply in 2020 the EEIS transitioned to an energy savings metric. This has implications for the Scheme settings as the numerical abatement values under the former abatement metric do not equate directly to values under the energy savings metric.

### 5.1 Setting the Energy Savings Target

The EST setting aims to optimise EEIS outcomes, which are measured in energy savings, bill savings and Net Present Value (NPV) to the ACT economy.

It is recommended that the EST be maintained at 14.6% for the 2025 compliance period as supported by analysis outlined below.

The 2018 Review into the EEIS recommended that the ACT Government continue the Scheme at the existing level of ambition (greenhouse gas savings equivalent to 8.6% of electricity sales) and with a pass-through cost of $4/MWh.

Realised pass through costs for the tier 1 retailer have been below this modelled cost. The Independent Competition and Regulatory Commission (ICRC) agreed to a pass-through cost of $3.50/MWh for 2024–25[4], which is an increase of 20.51 per cent over the $2.90/MWh pass-through for 2023-24. This increase in cost is due to demand for more expensive activities and adjustments from under-recovery during 2023-24. The pass-through cost continues to remain below the modelled figure which indicates that the EST can continue to be achieved without increasing costs to consumers.

The increase in the EST to 14.6% since 2023 represents an additional $5.72 pass-through cost to average annual residential bills as compared to the lower ambition EST of 12.5% in 2022. The increased EST is modelled to contribute to an additional: 138GWh of lifetime energy savings; 26ktCO2-e of lifetime emissions reductions and $13m of lifetime energy bill savings as compared to the lower ambition scenario.

### 5.2 Pass-through costs

The EEIS is funded via pass-through costs incorporated in the electricity bills of all ACT energy users. ActewAGL Retail is the only tier 1 retailer, and the only retailer that is currently delivering activities. ActewAGL Retail is also a regulated retailer, meaning its EEIS pass-through costs are determined by the Independent Competition and Regulatory

[4] ICRC, 2024. *Final Report: Retail electricity price investigation 2024-27.* Available at https://www.icrc.act.gov.au/__data/assets/pdf_file/0011/2457047/Final-Report-2024-27.pdf

Commission (ICRC)[5]. This determination is made annually, based on a methodology that takes account of legislative requirements and cost estimates provided by ActewAGL.

Pass-through costs of $4/MWh were modelled for the 2023-2025 compliance periods. The recommendation based on analysis by the ACT Government contractor Common Capital is that the currently modelled pass-through cost of $4/MWh be retained for the 2025 compliance period.

## 5.3 Setting the Energy Savings Contribution

Smaller tier 2 retailers can opt to pay an energy savings contribution (ESC) to meet their obligation under the EEIS. This is intended to offset the cost advantage a tier 1 NERL retailer would have if a tier 2 NERL retailer were required to set up and deliver energy efficiency services. This simplified obligation considers the impact of the Act on competition and reduces the risk that compliance costs may lead to a competitive disadvantage for smaller NERL retailers in electricity retail markets.

All tier 2 retailers currently opt to pay the ESC as an alternative to delivering activities. It is recommended that the ESC be maintained at $27.43/MWh. The ESC calculation is based on the modelled cost of compliance for a tier 1 electricity retailer.

## 5.4 Setting Penalties for Noncompliance

The shortfall penalty acts as an upper limit to potential costs for delivering activities and aims to disincentivise noncompliance, including the risk of tier 1 retailers not delivering activities. If a retailer's energy savings result is a net shortfall, the retailer is liable to pay a shortfall penalty to the Territory.

The shortfall penalty for the period 1 January 2024 to 31 December 2024 is $71.32/MWh by way of the *Energy Efficiency (Cost of Living Improvement (Penalties for Noncompliance) Determination 2023*. The ICRC uses the shortfall penalty as a ceiling on its price determination. Compliance has been high under the Scheme, and the shortfall penalty has not been applied to date.

The shortfall penalty of $71.32/MWh is 2.6 times the value of the ESC, as has been standard practice. This setting is recommended to be an incentive for retailers to deliver an energy savings result consistent with the set targets.

## 5.5 Summary of proposed key Scheme parameters

For the reasons outlined above, the EEIS settings for the 2025 compliance period are maintained as in the 2023 and 2024 compliance periods as follows:

- Energy Savings Target at 14.6%
- Energy Savings Contribution at $27.43/MWh, and

[5] Source: https://www.icrc.act.gov.au/energy/electricity

- Shortfall Penalty at $71.32/MWh.

As part of analysis to inform the 2025 settings, Common Capital modelled several alternative options for Scheme settings. The modelled 'low ambition' scenario would represent a lesser cost to the ACT economy but would have reduced effectiveness against the objects of the Scheme. In contrast, the 'high ambition' scenario would deliver the highest performance against the objects of the Scheme but would translate into a greater cost burden on consumers with a diminishing benefit to cost ratio.

Maintaining the modelled option of a 14.6% energy savings target while maintaining the expected pass-through cost of $4/MWh is considered optimal as it delivers higher effectiveness against the objects of the Scheme without imposing additional costs on ACT electricity consumers.

## 6. Strategy for further implementation, review and consultation

The regulatory revisions presented here will be achieved through a continuation of current EEIS implementation processes. The Act allows the EST and ESC to be reviewed and re-set by the Minister throughout the life of the Scheme. The Act requires that increased targets be set at least six months ahead of the relevant compliance period to provide business clarity to retailers.

The ACT Government will continue reviewing Tier 1 delivery costs, pass-through costs, and the energy savings outcomes, and adjust Scheme parameters if needed.

## 7. Consistency of the proposed law with the authorising law

The Act requires the Minister to determine an EST at least six months before the start of the compliance period if the EST is to be increased, or in any other case, at least 3 months before the start of the relevant compliance period. Compliance periods are calendar years. As the proposal is to retain, rather than increase the EST, the determination will be made at least three months before the beginning of 2025.

The Act requires the shortfall penalty to be determined at least 3 months before the start of the compliance period to which the shortfall penalty relates.

## 8. Inconsistency with the policy objectives of another territory law

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

## 9. Reasonable alternatives to the proposed law

The Act requires the Minister to make the determinations therefore not making the disallowable instruments is not an option.

## 10. Brief assessment of the benefits and costs of the proposed law

The Common Capital report modelled benefits and costs for the scheme depending on the level of ambition, the determinations have been made based on the 'medium ambition' model. The table below outlines the costs and benefits of the three options:

| Scheme setting | Unit | Low ambition | Medium ambition | High ambition |
|---|---|---|---|---|
| **EST** | *%* | 12.5% | 14.6% | 19.7% |
| **ESC** | *$/MWh* | $24.69 | $27.43 | $32.00 |
| **Shortfall Penalty** | *$* | $64.20 | $71.32 | $83.20 |
| **Lifetime energy savings from the scheme, 2013-2030** | *GWh* | 3815 | 3953 | 4303 |
| **Lifetime emission reductions from the scheme, 2013-2030** | *kt CO2-e* | 793 | 819 | 901 |
| **Lifetime bill savings from the scheme, 2013-2030** | *$ million* | $649.00 | $662.00 | $682.00 |
| **Estimated Pass through cost** | *$/MWh* | $3.10 | $4.00 | $6.30 |
| **Estimated Average annual bill increase** | *$* | $19.76 | $25.48 | $40.16 |
| **Net present value of public investment** | *$ million* | $72 | $80 | $95 |

## 11. Human rights

The determinations do not engage any human right set out in the *Human Rights Act 2004*.

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

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) must consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly:

*(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 matters 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 determinations are in accordance with the general objects of the Act.

*(ii) unduly trespasses on rights previously established by law*
The determinations do not unduly trespass on rights previously established under law.

*(iii) makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions*
The determinations do 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 subject matter of the determinations is appropriate for disallowable instruments.

## 13. Conclusion

This RIS was prepared in accordance with Part 5.2 of the *Legislation Act 2001*, to consider the following Scheme parameters for the EEIS for the 2025 compliance period:

- Energy Savings Target at 14.6%
- Energy Savings Contribution at $27.43/MWh, and
- Shortfall Penalty at $71.32/MWh.

These parameters are consistent with the objectives of the Act and translate into an appropriate level of Scheme ambition.