

2017

**The Legislative Assembly
for the Australian Capital Territory**

Energy Efficiency (Cost of Living) Improvement Regulation 2017

Regulation SL2017 – 41

EXPLANATORY STATEMENT

Circulated by authority of
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This explanatory statement relates to the Energy Efficiency (Cost of Living) Improvement Regulation 2017 (the amending regulation) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the amending regulation and to help inform debate on it. It does not form part of the amending regulation and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the amending regulation. It is not, and is not meant to be, a comprehensive description of the amending regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision: this is a task for the courts.

Background to the Energy Efficiency Improvement Scheme

The amending regulation expands the current classes of priority households under the Energy Efficiency (Cost of Living) Improvement Act 2012 (the Act). The Act establishes the Energy Efficiency Improvement Scheme (EEIS). EEIS aims to encourage efficient use of energy, reduce greenhouse gas emissions from stationary energy, and reduce household and business energy use and costs. EEIS specifically aims to increase opportunities for low income households to reduce energy use and costs by way of a Priority Household Target (PHT).

The Act was passed by the Legislative Assembly on 3 May 2012. The Energy Efficiency Improvement Scheme (EEIS) is a retailer obligation energy efficiency scheme and was initially legislated to run until 31 December 2015.

On 4 August 2015, 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:

- (a) encourage the efficient use of energy; and
- (b) reduce greenhouse gas emissions associated with stationary 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.

The Act establishes a Territory-wide Energy Savings Target (EST) which correlates to mandatory energy savings obligations for individual electricity retailers based on their electricity sales in the ACT. The specific level of the EST, and other EEIS targets, are set by disallowable instruments for each compliance period, defined as a calendar year.

The Act requires Tier 1 retailers to achieve their EST by delivering eligible activities. Eligible activities are determined by the Minister and include installing energy efficient light globes, draught seals, efficient space heating and cooling systems, water heaters and other items that save energy bills and 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.

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.

Priority households are defined in the Dictionary to the Act. The current definition follows:

priority household means residential premises in which 1 person who lives at the premises—

- (a) is a recipient of an ACT Government energy concession; or
- (b) holds a Commonwealth pensioner concession card or health care card; or
- (c) 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
- (d) is within a class of people prescribed by regulation.

The same definition of a priority household is found in the two codes of practice established under the Act. These are the Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2016 (No 2) (the Activities DI) which provides for the verification of priority households and the Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2016 (No 2) (Record Keeping DI) which provides for record keeping in relation to priority households.

Overview

Purpose of the amending regulation

The purpose of the amending regulation is to expand the classes of priority households so that more of the territory's low income households can be targeted for EEIS savings. This is consistent with object (d) of the Act, to increase opportunities for priority households to reduce energy use and costs.

The amending regulation provides for four new classes of priority households, including additional commonwealth concession card holders, households accessing approved financial hardship programs, households referred to an energy retailer by a specified community or other referral agency, and priority dwellings. Households fitting the criteria of the proposed new classes can be rigorously identified as being

low income, through independent processes that sit outside of the EEIS and are mostly already in place.

The new classes also add to administrative efficiency by enabling managers of low income housing facilities to nominate multiple dwellings as priority households without requiring tenants to show concession cards. The net result will be to increase the number of eligible priority households by up to 30 per cent. The changes were proposed and supported by key stakeholders through targeted consultation that also included the verification and reporting processes. The stakeholders who were consulted are listed under Consultation below and included several internal government agencies, the Tier 1 electricity retailer, and non-government organisations including the proposed referral agencies, housing providers and other community stakeholders.

The amending regulation will be implemented through the Priority Household Target (PHT) which is established in Section 8 of the Act. The PHT obliges large, Tier 1 electricity retailers in the ACT to deliver a percentage of greenhouse gas emission reductions in priority households. The amending regulation will increase the number of low income Canberrans who can be targeted to receive savings under the EEIS, and provide more opportunities for Tier 1 retailers to achieve the PHT. This will assist in maintaining the PHT at the government and community sector's preferred level of 20 per cent.

Legal authorisation

The legal authorisation for the amending regulation comes from the Section 6 Objects of the Act, especially s6(d) object to "increase opportunities for priority households to reduce energy use and costs" and from the dictionary definition of a priority household, especially (d) "is within a class of people prescribed by regulation". This definition provides that the classes of priority households may be expanded by regulation. This is the only regulation, to date, to propose an expansion of the classes of priority households.

The classes of priority household are actioned by way of Section 8 of the Act. Section 8 requires that large, Tier 1 electricity retailers operating in the ACT, deliver a percentage of their greenhouse gas emission reductions in priority households. By expanding the classes of priority households, the amending regulation will increase the opportunities for Canberra's low income households to be targeted for EEIS savings.

Costs and benefits

There are no direct costs associated with the amending regulation.

Indirectly, the amending regulation supports maintaining the PHT at 20 per cent, rather than reducing it to a lower level. ActewAGL is ACT's only Tier 1 retailer, and

thus the only organisation with a significant material interest in the PHT level. During the consultation to set the 2018 PHT, ActewAGL requested a reduction to 10 per cent while all other stakeholders suggested that it be maintained at 20 per cent, or raised to a higher level. The retention of a 20 per cent PHT was justified based on the government delivering on three options to manage the risk of the Tier 1 retailer missing the PHT in 2018:

- Reviewing the formulation of the PHT and considering alternatives if needed,
- Supporting the delivery of EEIS activities to Housing ACT tenants, and
- Increasing the scope of the PHT by adding new categories of eligible households.

Other work is underway to deliver the first two options. The amending regulation delivers on the third option of increasing the scope of the PHT by adding new classes.

Maintaining the PHT at 20 per cent retains the integrity of the broader EEIS cost benefit analysis which is detailed in the EEIS Extension Regulatory Impact Statement¹ (the EEIS Extension RIS). That modelling aimed to balance the costs that are passed through to consumers while ensuring that priority households in the ACT continue to benefit from the EEIS (EEIS extension RIS p.20). Maintaining a 20 per cent PHT and continuing other scheme metrics at their current levels is expected to result in a Net Present Value to the ACT economy of \$38.9 million. Aggregate lifetime bill savings for the residential sector are estimated at \$106 million in present value terms, and a 20 per cent PHT means that one-fifth of those savings will accrue to low income households.

The amending regulation has been prepared with the intention of avoiding indirect costs associated with administering the proposed new categories. Processes for verification and record keeping will be addressed through consequential amendments to EEIS Codes of Practice including the Activities DI and the Record Keeping DI. A summary of the verification and evidence proposed for the four new priority household classes is provided here:

- New classes of commonwealth concessions will be verified as per existing classes, via a concession card with number to be recorded by an EEIS installer.
- New classes for people accessing an energy retailer's hardship program will be verified through written evidence from an energy retailer, including notifications on energy bills.
- New classes for financial hardship referrals will be by email from a specified referral organisation to an electricity retailer, using an agreed form of words. The referral is not proposed to be time-bound, and would apply to the

¹ ACT Government Environment and Planning Directorate (2015) *Energy Efficiency Improvement Scheme: Setting Key Parameters to 2020. Regulatory Impact Statement*. Available at http://www.environment.act.gov.au/_data/assets/pdf_file/0006/735990/Attachment-C-Regulatory-Impact-Statement-EEIS-Parameters-to-2020-FINAL.pdf.

person, not the address. The proposed form of words is “I, (name, title and organisation) verify that (person’s name) is experiencing financial hardship and might benefit from exploring opportunities to improve the energy efficiency of their home through the Energy Efficiency Improvement Scheme.” Specified referral agencies have been consulted on this option and confirm that this is a minimal additional task which provides new options for assisting low income people. This will be supported by information to be provided from the ACT government about the range of offers that are available.

- New classes of priority dwellings will be identified through property owner confirmation that dwellings are tenanted. Managers of priority dwellings will have the option of providing a list of eligible properties to Tier 1 retailers. This reduces the administrative costs associated with arranging energy efficiency upgrades in rental properties as it removes the need for installers to sight concession cards, and enables not-for-profit providers to prepare a needs-based plan for upgrades.

The amending regulation has no effect on the Commonwealth or any other State/Territory. However the introduction of new classes of priority households based on additional Commonwealth concession cards is complementary to the Commonwealth legislation that provides for these concessions. It provides further assistance to those already identified by the Commonwealth as being eligible for government assistance based in part on a low income status.

Consultation

Consultation to expand the EEIS priority household classes was a continuation of consultation to set the 2018 PHT. That process involved consultation carried out over a six week period from late March until early May 2017. Consistent with the plan, consultation was undertaken with a wide range of stakeholder organisations including ACT and Australian government, the Tier 1 retailer, non-government organisations and research groups. Specific organisations that were consulted are highlighted below.

Consultation showed consensus on the value of the PHT, and ongoing commitment from all parties to support low income households to achieve energy efficiency savings.

Further targeted consultation was undertaken to confirm the specific expansion of priority household classes that are provided in the amending regulation. This consultation was with all of the respondents to the earlier consultation, plus any other agencies that could be affected by the regulation. This group included:

Government internal

- Community Services Directorate (Housing ACT)

- Office of the Commissioner for Sustainability and the Environment
- Australian Capital Territory Civil and Administrative Tribunal
- Human Services Regulator – for mailing list of community and disability housing.

Electricity Retailers

- ActewAGL

Non-government organisations

- Proposed referral organisations:
 - Care Financial Counselling Service Incorporated
 - St Vincent de Paul,
 - Salvation Army
- Proposed housing providers or stakeholders
 - Aged and Community Services Australia
 - Council Of The Aging
 - Tenants Union
 - ACT Shelter
- Other community stakeholders
 - Energy Consumers Australia – comprising the Energy Advocate and Energy Consortium
- ACT Council of Social Services

All who were contacted expressed support for the amending regulation. Written feedback was received from seven groups. All supported the proposed changes.

Human rights

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

Consistency 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 amending regulation is in accordance with the general objects of the Act.

- (ii) *unduly trespasses on rights previously established by law*

The regulation does not unduly trespass on rights previously established under law.

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

The amending regulation 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 Act allows for a regulation to add new classes of priority households and that is the sole purpose of the amending regulation.

Regulatory Impact Statement

A regulatory impact statement has been prepared.

Outline of Provisions

Section 1 – Name of regulation

This section names the regulation.

Section 2 – Commencement

This section provides for the commencement of the regulation on 1 January 2018.

Section 3 – Notes

Explains that notes in the regulation are explanatory and not part of the regulation.

Section 4 – Definition of *priority household*, paragraph (d) – Act dictionary

Section 4 (1) prescription of priority household classes

The classes of priority households introduced by the regulation are:

- (a) *Holders of a Commonwealth seniors health card (CSHC)*: CSHC is claimed by people who have reached the qualifying age for the Age Pension but do not qualify for a pension. To qualify for the CSHC, a person must also meet an adjusted taxable income test. The CSHC provides access to health concessions,

including cheaper pharmaceutical medicines.

- (b) *Holders of a Commonwealth low income health care card (LIC)*: LIC can be claimed by low income earners, providing them access to health concessions, including cheaper pharmaceutical medicines. Where data related to the LIC is provided in the same table as data related to the Health Care Card (HCC), HCC numbers will include those with a LIC.
- (c) *Recipients of a Commonwealth disability support pension (DSP)*: This is an income support payment for people who are unable to work for 15 hours or more per week at or above the relevant minimum wage, independent of a Program of Support due to permanent physical, intellectual or psychiatric impairment. A DSP claimant must be aged 16 years or over and under Age Pension age at date of claim, however once in receipt of DSP, a person can continue to receive DSP beyond Age Pension age.
- (d) *People accessing an energy retailer's hardship program*: Each retailer offers hardship programs to support people facing difficulty paying bills. Household eligibility is based on an outstanding debt, active customer status, presence of financial hardship factors, obligation acknowledgement and willingness to pay. They are self-identified or proactively identified by retailers and remain in a hardship scheme until the debt is paid or the customer defaults. The programs involve a formal agreement for a specified time period that support people to catch up on energy bill payment. Households are to be considered priority households for the term of their hardship program agreement.
- (e) *People referred to a NERL (National Energy Retail Law) retailer by a referring organisation for access to eligible activities carried out by the retailer*: This group will be defined by referral from a specified referring organisation including the Australian Capital Territory Civil and Administrative Tribunal (ACAT), Care Inc, St Vincent de Paul, or the Salvation Army (see definition of referring organisation in new subsection (2) inserted by clause 4. These organisations can provide referrals for financial hardship directly to energy retailers following a needs assessment.
- (f) *People living in a priority dwelling*: Priority dwellings include public houses and not-for-profit community, disability and aged care housing facilities.

These new classes provide for a moderate expansion of priority households which together are expected to add about 30 per cent above classes presently prescribed by the Act.

Regarding prescribed classes (a) to (c), data from the Australian Department of Human Services and the Department of Veteran's Affairs list just over 61,000 ACT residents as holding these types of concession cards in March 2017. The Department of Human Services list nearly 20,000 of ACT residents hold one of the proposed new groups of concession cards. This suggests that the expansion could be as high as a 32 per cent increase. However some people in the new classes will also hold some of

the existing eligible concession cards and so the actual expansion will be lower than this figure.

Class (d) is a minor expansion as the largest retailer, ActewAGL, reports that about 400 households without concessions are currently accessing financial hardship schemes.

Class (e) is expected to be a minor expansion. This is because many households experiencing financial hardship would benefit from lower energy bills but may not be in a position to enter into co-contribution arrangements for energy efficient equipment. However the category is included because of special circumstances that may apply to some households in this category, such as health needs requiring comfortable conditions, and the possibility of future activities not requiring co-payment.

Class (f) is expected to be a minor expansion in the number of priority households because tenants of most priority dwellings will already hold eligible concession cards. The value of introducing a class of priority dwellings is to add significantly to administrative efficiency. It will enable strategic planning by managers of low income housing facilities to identify dwellings in most need of upgrades, while removing the on-site requirement for concession cards to be shown to installers. It also specifically targets the split incentive problem whereby tenants are responsible for paying energy bills, while landlords provide energy-using equipment such as heaters. This new class will support direct financial incentives for landlords to invest in energy efficient household equipment without providing 'middle class welfare'.

Section 4 (2) – defining priority dwellings, referring organisations, registered community housing provider and registered provider of supports

(g) Section 4(2) establishes four categories of priority dwellings, each owned and managed by a specified type of government or not-for-profit organisation. The four categories are:

1. a public housing property managed by Housing ACT;
2. a property provided by a registered community housing provider;
3. a property used for providing accommodation or tenancy support by a registered provider of supports under the *National Disability Insurance Act 2013* (Cwlth);
4. a property used for providing residential care under the *Aged Care Act 1997* (Cwlth) if both of the following apply:
 - the residential care is provided by an approved provider under that Act; and
 - the approved provider is a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth).

The prescription is attached to the tenants, not properties because the priority household definition in the Act limits the regulation to prescribing a 'class of people', and not a class of property. The terms used in the Regulation to

describe types of housing providers are consistent with terms used in the Community Housing Providers National Law (ACT), section 4 (1) and the National Disability Insurance Act 2013 (Cwlth), section 9.

Section 4(2) defines referring organisation as including a specific prescribed group. These organisations are already involved in working with electricity retailers and the ACT government in assisting low income households to find solutions to energy hardship. Additional classes may be added in the future if other organisations become involved in energy hardship referrals. The current group is ACAT (the ACT Civil and Administrative Tribunal), Care Inc. (also known as Care Financial Counselling Service), St Vincent de Paul Society and The Salvation Army.