

Australian Capital Territory

Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2022 (No 2)

Disallowable instrument DI2022–244

made under the

Energy Efficiency (Cost of Living) Improvement Act 2012, s 10 (Eligible activities)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2022 (No 2)* (the **Determination**). It has been prepared in order to assist the reader of the Determination. It does not form part of the Determination and has not been endorsed by the Assembly.

This explanatory statement clarifies the intent of the Determination and must be read in conjunction with the Determination. It is not, and is not intended to be, a comprehensive description of the Determination. What is written about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The *Energy Efficiency (Cost of Living) Improvement Act 2012* (the **Act**) establishes the Australian Capital Territory's Energy Efficiency Improvement Scheme (**EEIS** or 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 individual electricity retailers to achieve energy savings by delivering eligible activities to households and small-to-medium enterprises. The purpose of the Determination is to establish the eligible activities that can be undertaken by energy retailers to achieve the EST. The Determination is a disallowable instrument made under the Act, section 10.

This Determination retains the suite of EEIS Eligible Activities previously legislated but contains the following amendment to clauses 1.8.2, 1.9.2 and 2.4.2

Schedule Clause	Change
1.8.2 (d)	Delete “(d) not be otherwise required by law, for example under the National Construction Code;” Consequential renumbering of the paragraphs
1.9.2 (c)	Delete “(c) not be otherwise required by law, for example under the National Construction Code;” Consequential renumbering of the paragraphs
2.4.2 (c)	Delete “(c) not be otherwise required by law, for example as condition of a development approval;” Consequential renumbering of the paragraphs

The amendments remove the requirement for insulation activities under the EEIS to not be otherwise required by law.

A new minimum energy efficiency standard for rental properties will be introduced within the ACT requiring rental premises with ceiling insulation with an R-value less than R2 to install or upgrade to a minimum of R5.

This new standard disqualifies installation of ceiling insulation as an eligible activity under the EEIS due to the requirement that insulation activities under the EEIS not be otherwise required by law.

This requirement was initially introduced to the EEIS to harmonise with existing activities under the then South Australian Retailer Energy Efficiency Scheme. The requirement is not applied under any other approved activity of the EEIS.

Ensuring insulation activities can continue to be delivered through the EEIS, including if required by law, will reinstate the activity as an eligible option for retailers to select to meet their energy efficiency obligations.

Delivery of insulation activities under the EEIS may support the transition of rental homes to become increasingly energy efficient, noting delivery of this activity is a business decision for retailers.

The amendment has positive impacts on obligated retailers that are delivering activities by reinstating the eligibility of ceiling insulation activities. This avoids restricting retailers’ opportunities to meet their obligations under the Scheme. Further, it increases opportunities and pathways for ACT residents to upgrade insulation within their homes, increasing thermal comfort and reducing energy needs.

The Determination does not affect any Tier 2 retailers as none of these are currently delivering activities under the EEIS. However, the amendment will provide Tier 2 retailers the possibility to deliver all insulation activities to meet their obligations if they should choose to do so.

Regulatory impact statement (RIS)

A RIS is not required for this determination due to section 36(1)(b) of the *Legislation Act 2001*, which provides that a RIS need not be prepared for a matter that does not operate to the disadvantage of anyone. This determination does not impose appreciable costs on the community, or part of the community.

Human Rights

The Determination does not engage the *Human Rights Act 2004*.

Clause Notes

Clause 1 names the instrument.

Clause 2 provides for the commencement of the instrument.

Clause 3 determines the eligible activities, in the schedule, that can be undertaken by electricity retailers and approved energy savings providers to meet the EST.

In summary, the schedule of the Determination defines the eligible activities, and for each activity:

- (a) sets minimum performance specifications;
- (b) outlines installed product requirements;
- (c) specifies when activities are complete; and
- (d) sets out how the energy savings factor is calculated for each activity.

The eligible activities described in the Determination are categorised as:

1. Residential building envelope activities
2. Space heating and cooling activities
3. Hot water service activities
4. Lighting activities
5. Appliance activities

Clause 4 disapplies the *Legislation Act 2001*, section 47 (5) and (6). This section is disapplied because it stipulates that any external text which is to be applied as law in the ACT needs to be republished as a notifiable instrument. It is not possible to republish text contained in Australian Standards documents as they are protected by copyright. It is not practical to republish information in the National Construction Code as it contains over 400 pages of information across 4 volumes.

Clause 5 revokes the *Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2022* (DI2022-181).