

Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2020 (No 2)

Disallowable instrument DI2020–218

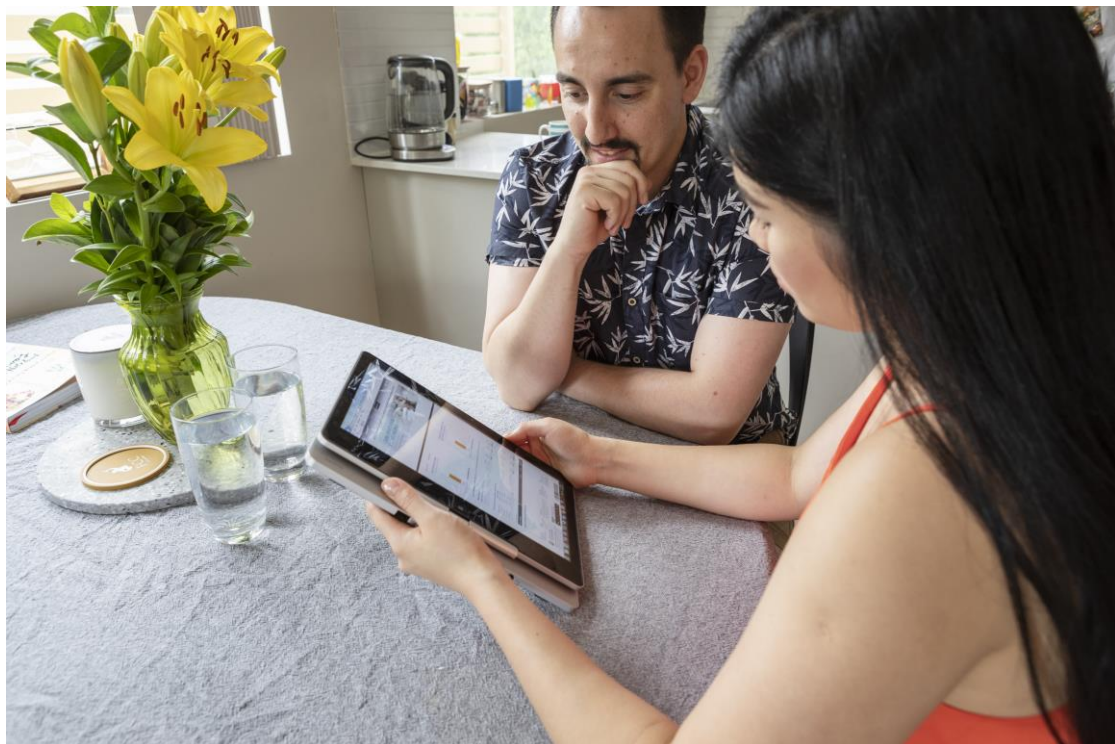
made under the

Energy Efficiency (Cost of Living) Improvement Act 2012, s10 (Eligible activities)

Regulatory Impact Statement

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

June 2020



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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.

EEIS works by requiring electricity retailers to deliver eligible activities that reduce emissions and provide for energy bill savings.

This Regulatory Impact Statement (RIS) analyses the policy impacts of the Energy Efficiency (Cost of Living) Improvement (Eligible Activities Determination 2020 (No 2) (the Determination), one of the EEIS instruments.

In accordance with recommendations stemming from the 2018 Review of the Energy Efficiency Improvement Scheme (Point Advisory 2018), the Determination uses a different core metric from previous Determinations to calculate and award credits under the Scheme. The Determination uses an energy saving metric, rather than a greenhouse gas emissions metric.

In the context of the ACT policy of a 100% Renewable Energy Target (RET) by 2020, this new Determination will ensure that the Scheme will continue to deliver on its objectives particularly in relation to activities under the Scheme designed to save on electricity consumption.

Without this new Determination, the Scheme's objectives would be compromised particularly in relation to the Scheme's capacity 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.

The *Energy Efficiency (Cost of Living) Improvement Amendment Act 2019* (the Amendment Act) is partially commenced. The remaining uncommenced sections of the Amendment Act, which will commence on 1 January 2021, include numerous provisions to allow for the metric to change from a greenhouse gas emissions saving metric to an energy saving metric.

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 to achieve 100% renewable electricity by 2020”. EEIS is a key mechanism for delivering on the ACT’s 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 in the ACT. The Act also 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.

1. Eligible activities are determined by the Minister under Section 10 of the Act. This instrument differs from previous Determinations to reflect the policy change in the Amendment Act from using greenhouse gas emissions metric to using an energy saving metric. This change was made in accordance with recommendations stemming from the 2018 *Review of the Energy Efficiency Improvement Scheme* (Point Advisory 2018), to change the Scheme’s core metric used to award credits under the Scheme from a greenhouse gas emissions metric to an energy saving metric.

Eligible Activities

The eligible activities described in the Determination are:

1. Residential building envelope activities:
 - i. Building sealing activities

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

- 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 a 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 \(Eligible Activities\) Determination 2020](#) update.
- 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 \(Eligible Activities\) Determination 2019](#)

2. 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*

3. Rationale for changing the metric - Problems being addressed and policy objectives.

Activities undertaken by energy retailers in order to meet their obligations under the Scheme are awarded credits. These credits are termed “Activity Abatement Values” (AAVs) and are specified in the determination. AAVs are expressed in terms of tonnes of carbon dioxide-equivalent (tCO₂-e) of greenhouse gas emissions saved by the activity.

The change proposed is to now calculate (and award) credits not on the basis of saved greenhouse gas emissions but rather on the basis of saved energy. Under the new arrangements the energy savings are termed “Energy Savings Factors” (ESFs) and are expressed in terms of Megawatt-hours (MWh) saved by the activity.

The original greenhouse gas emissions metric served the EEIS objectives well for many years. However, in recent years under the ACT policy of a 100% Renewable Electricity Target (RET) by 2020, there has been a dramatic decrease in the electricity network’s greenhouse gas emissions intensity factor to the point where the intensity for electricity in the ACT (tCO₂-e / MWh) is now effectively zero.

This means that those activities designed to reduce electricity consumption (primarily via efficiency improvements) which constitute a majority of activities available under the Scheme would, post 2020, offer virtually zero credit². This would effectively eliminate any incentive amongst retailers to deliver these types of activities, despite the fact that these activities would still deliver on most of the EEIS objectives including:

- 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.

Continuation with the current greenhouse gas emission metric would therefore severely limit the field of cost-effective emission reducing activities to choose from and result in significant lost opportunities to deliver on the other important objectives of the Scheme as detailed above.

The proposed change from Scheme credits based on greenhouse gas emissions savings to credits based on energy savings is intended to remedy this situation whereby under the current trajectory of the electricity network’s greenhouse gas emissions intensity, activities designed to reduce electricity usage would no longer be viable options.

² In fact, the assumed greenhouse gas intensity of electricity was downgraded in the scheme in 2016 in anticipation of the impact of the 100% RET target. Post 2016 this was seen to have a dramatic impact on the credits awarded dropping the Territory-wide emissions savings well below those forecast in earlier RIS.

It should be noted that whilst the proposal is to alter the metric of the activity credit, there are no other differences between the new Determination and its predecessor, i.e. there has been no alteration to the eligibility criteria, performance specifications, installed product requirements or the specifics of completing an activity.

Therefore, the new Determination is consistent with the authorising law and its policy objectives.

From an industry perspective there should be no need to adjust business practices or training requirements as a result of this change. The only change will be in the relative cost effectiveness of the various activities offered under the Scheme. Credits for activities that simply involve reductions in electricity usage will gain significantly greater credits under the proposed new energy saving metric compared to the current greenhouse gas abatement metric. Activities that reduce natural gas and woodfire consumption previously received higher emissions abatement credits than electricity activities. These activities will now receive equal abatement values to electricity savings measures based on the MWh of energy saved. The Environment, Planning and Sustainable Development Directorate will monitor the effects of the change to the energy saving metric and make further adjustments to the EEIS settings if necessary.

5. Consistency of the proposed law with other Territory Laws

All of the elements of this 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 instrument is not inconsistent with the policy objectives of another Territory law.

The proposed instrument increases harmonisation of regulatory regimes between the ACT and other jurisdictions and this has a 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 matters which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.

The new Determination is considered to have no material impact on any of these objectives. As discussed above, the Determination is consistent with the general objects of the Act and does not trespass on rights previously established by Law. The Determination does not make rights, liberties and/or obligations unduly dependent on non reviewable decisions. The subject matter is appropriate for a Disallowable Instrument.

8. Conclusion

The RIS outlines the impacts of a new Determination instrument. The net result of this new Determination is to ensure that the Scheme will continue to deliver on its objectives. Without the new Determination these objectives would be compromised particularly in relation to the Scheme's capacity 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.