ACT Government
Environment, Planning and Sustainable Development

Regulatory Impact Statement

Energy Efficiency Improvement Scheme

Setting Key Scheme Parameters for 2024 by Disallowable Instruments:

Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2023 DI2023-154

Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2023 DI2023-155

Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) Determination 2023 DI2023-156

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

June 2023

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 individual 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, efficient space heating and cooling systems, water heaters and other items that reduce energy bills and provide energy savings while maintaining quality of life. Whereas 'tier 1' retailers must deliver energy savings activities or acquire energy savings factors (ESFs) from Approved Energy Savings Providers (AESPs), smaller, '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 2024 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:

- *Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2023*
- *Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2023*
- *Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) Determination 2023*

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, a Territory-wide 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 disallowable instruments 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 specifically supports the objective of a just transition through the priority household target, by which at least a specified proportion of savings are delivered to priority households. The objects of the Scheme further align with the current 10th Labor – Greens Parliamentary Agreement[3], the first action under which is to 'phase out fossil-fuel-gas in the ACT by 2045 at the latest, support energy grid stability and support vulnerable households'.

4. Achieving the policy objectives

An independent review of the EEIS was completed in 2018 by Point Advisory[4] (the Review). The Review confirmed that the EEIS had fulfilled its four objects and has been effective in

[1] Note that Object (d) is addressed through a separate disallowable instrument (*Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2023* and regulatory impact statement.
[2] Available at ACT Climate Change Strategy to 2019-25
[3] Available at Parliamentary-Agreement-for-the-10th-Legislative-Assembly.pdf (act.gov.au)
[4] Source: https://www.environment.act.gov.au/__data/assets/pdf_file/0020/1221527/EEIS-Review-Part-1-Executive-SummaryACCESSIBLE.pdf

reaching a large proportion of ACT households and businesses. Moreover, it has been efficiently delivered, with a positive benefit cost ratio of 4:1 and most participants reporting bill savings. Further research conducted in 2022 found that the EEIS is performing well and operating as intended, with:

- energy efficient products being offered at competitive prices;
- complementary programs enhancing scheme benefits; and
- activity delivery aligning well with the objects of the Act.

Updating the parameters for 2024 will enable continued achievement of the Objects of the EEIS.

5. Considering a level of ambition

Based on analysis conducted by Common Capital, this section outlines the key Scheme parameters that have been identified through modelling as the ideal for maximising EEIS benefits in 2024.

It is important to note that prior to 2020, the EEIS determined energy savings in the ACT using a greenhouse gas emissions abatement metric. As of 2020, the ACT secured a 100% renewable electricity supply and, in line with this, the EEIS transitioned to an energy savings metric. This has implications for the Scheme settings because the numerical abatement values under the former abatement metric do not equate directly to the 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 2024 compliance period. This is supported by detailed analysis, as 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. This was partly on the basis that there was some uncertainty introduced into the modelling through changes to eligible activities (namely the removal of low-cost lighting measures, which had featured prominently in the early years of the Scheme's operation).

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 $3.04/MWh for 2022–23[5]. This was a decrease from the 2021–22 ICRC agreed cost of $3.19/MWh and the cost has been trending downward over time. Consequently, it is likely

[5] ICRC, 2022. *Final decision: Retail electricity price recalibration 2022-23.* Available at https://www.icrc.act.gov.au/__data/assets/pdf_file/0004/2013781/Report-retail-electricity-price-recalibration-2022-23.pdf p. 24.

the 2024 pass-through cost of the scheme may remain closer to $3.04/MWh than the forecast $4/MWh. As a result, modelling suggests that the EST can continue to be achieved without requiring an increase in the cost to consumers.

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

In addition to ensuring that the EEIS continues to deliver on its key objectives, the EST will further incentivise the delivery of a range of cost-efficient energy savings measures in the ACT and interactions with complementary programs, such as the Sustainable Household Scheme, which has created a new cost-efficient pathway in 2022–23 for the tier 1 retailer to meet its obligations under the Scheme. Interactions with other programs demonstrably allows a higher target to be pursued at the same level of pass-through cost, which may allow for higher levels of ambition in the future.

5.2 Pass-through costs

This section describes processes for estimating the pass-through costs and how those will translate into key Scheme parameters.

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 that its EEIS pass-through costs are determined by the Independent Competition and Regulatory Commission (ICRC)[6]. This determination is made annually, based on a methodology that takes account of legislative requirements and cost estimates provided by ActewAGL, and is "…subject to a forward-looking prudency and efficiency assessment by the Commission"[7]. For 2022–2023, this review resulted in an approved pass-through cost of $3.04/MWh[8].

Pass-through costs of $4/MWh were modelled for the 2023-2025 compliance periods. The recommendation based on contractor, Common Capital's analysis is that the currently modelled pass-through cost of $4/MWh be retained for the 2024 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

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

[7] ICRC, 2019. *Electricity Model and Methodology Review 2018-19*, available at https://www.icrc.act.gov.au/__data/assets/pdf_file/0011/1369190/Report-5-of-2019-Electricity-Model-and-Methodology-ReviewFinal-Report.pdf, pp.33-34.

[8] ICRC, 2022. *Final decision: Retail electricity price recalibration 2022-23.* Available at https://www.icrc.act.gov.au/__data/assets/pdf_file/0004/2013781/Report-retail-electricity-price-recalibration-2022-23.pdf p. 24.

services – with such a cost advantage potentially discouraging competition in the ACT retail electricity market. 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, thereby reducing competition.

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. This figure will continue to be monitored and adjusted based on the actual costs determined by the ACT's ICRC.

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 2022 to 31 December 2022 is $71.32/MWh by way of the *Energy Efficiency (Cost of Living Improvement (Penalties for Noncompliance) Determination 2022*. 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 2024 compliance period are maintained as in 2023 as follows:

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

As part of analysis to inform the 2024 settings, Common Capital modelled several alternative options for Scheme settings. The modelled 'low ambition' scenario would represent a lesser cost to the ACT economy than the other modelled scenarios 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 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 than the modelled low ambition scenario. Importantly, this outcome will be achieved without imposing additional costs on ACT electricity consumers as the current pass-through cost borne by households are maintained.

A final option of not setting parameters at all would be inconsistent with instructions of the Act, and would render the Scheme ineffective.

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. It is important to set key Scheme parameters with a long lead time to provide business certainty, which is why the Act requires that increased targets be set at least six months ahead of the relevant compliance period.

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. Complementarity

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

8. Human rights

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

9. Assessment of the consistency of the proposed law with Scrutiny of Bills

9.1 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.

(v) *is in accord with the general objects of the Act under which it is made*
As noted above, the proposed settings are in accordance with the general objects of the Act.

(vi) *unduly trespasses on rights previously established by law*
The proposed settings do not unduly trespass on rights previously established under law.

(vii) *makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions*
The proposed settings do not make rights, liberties and/or obligations unduly dependent upon non reviewable decisions.

(viii) *contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly*

The proposed settings do not require further amendments to an Act and the subject matter is appropriate for disallowable instruments.

10. Conclusion

This Regulatory Impact Statement was prepared in accordance with Part 5.2 of the *Legislation Act 2001*, to consider the following Scheme parameters for the EEIS for the 2024 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 in light of the current declining trend in delivery costs and the impacts of the transition to an energy metric.