



CONSULTATION PAPER

Minimum energy efficiency standards for rental homes in the ACT

Environment, Planning and
Sustainable Development
Directorate

November 2021

CONTENTS

OVERVIEW	4
HOW TO PROVIDE FEEDBACK	4
BACKGROUND.....	5
The problem.....	5
The need for a regulation.....	5
REGULATORY IMPACT STATEMENT.....	6
Options considered	6
Initial stakeholder consultation	7
Summary of RIS results.....	8
PROPOSED STANDARD	9
SUPPORT FOR INTRODUCTION OF THE STANDARD	10
IMPLEMENTATION ISSUES	10
What exemptions should be allowed?	11
When should compliance be required?.....	12
Should any complementary measures be considered?	12
What safety measures should be required?	13
How should the quality of installation be ensured?	14
How should compliance be monitored and enforced?	15
EVALUATION AND REVIEW	16

NEXT STEPS	16
OTHER ACT GOVERNMENT MEASURES	17
ATTACHMENT 1: ENERGY EFFICIENCY STANDARDS IN OTHER JURISDICTIONS.....	18
England and Wales.....	18
Scotland	18
New Zealand	18
Victoria.....	19
ATTACHMENT 2: REASONS FOR THE OPTION CHOSEN.....	20
Reasons for proposing the ceiling insulation standard	20
Reasons for not proposing the other options.....	21
ATTACHMENT 3: WHAT WE WANT TO KNOW - LIST OF CONSULTATION QUESTIONS.....	22

MINIMUM ENERGY EFFICIENCY STANDARDS FOR RENTAL HOMES IN THE ACT

OVERVIEW

Many renters in the ACT, often those with the least capacity to pay, are living in energy inefficient properties that are expensive to heat or cool. This can lead to financial stress and/or negative impacts on health and wellbeing, particularly for Canberra's most vulnerable households.

The ACT Government is committed to ensuring that renters can enjoy the liveable homes that all Canberrans have a right to expect and is therefore seeking to enact minimum energy efficiency standards for rental homes. A Regulatory Impact Statement (RIS) has been undertaken to consider possible options for an initial minimum standard.

The government is now seeking views on a proposed minimum energy efficiency standard for ceiling insulation and on the best way for it to be implemented. It is likely that there will be an array of views on these issues and the ACT Government is keen to hear from community members and organisations.

To support community engagement on these issues, this Consultation Paper outlines the proposed minimum energy efficiency standard and explores issues around implementation in some detail. The paper poses questions to guide consultation feedback, however, feedback in addition to the consultation questions is also welcome.

For members of the community who would like a shorter outline of the key issues, a [two-page summary](#) has also been provided on the [Minimum Energy Efficiency Standard for Rental Homes YourSay site](#).

Consultation on other minimum standards for rental properties has been undertaken by the Justice and Community Safety Directorate. For further information please see: <https://yoursayconversations.act.gov.au/expanding-rights-renters>

HOW TO PROVIDE FEEDBACK

You can have your say by:

- completing an on-line feedback form on the ACT Government's [YourSay site](#); or
- providing a written submission by email to EPSDDComms@act.gov.au.

The Consultation Paper poses questions to guide feedback throughout. All the consultation questions are also listed in Attachment 3 for ease of reference. If you provide a written submission you may choose to respond to any or all of these questions or, alternatively, you may provide your feedback in any format

that suits you. Please indicate in your submission if you are a rental provider, a renter, rental property manager or are responding on behalf of an organisation.

Please also indicate whether you are happy for your submission or extracts from it (with any personal identifying details removed) to be made public for other Canberrans to read. An indication that you are happy for your submission to be made public does not necessarily mean that it will be published.

The consultation period will close on **Sunday 19 December 2021**.

A Listening Report summarising the feedback received will be published following the consultation period.

BACKGROUND

The problem

In the last twenty years, the number of Canberra households in private rentals has almost doubled to over 40,000. Currently, including public housing, more than one third of Canberra households live in properties they do not own. As a community, we need to ensure that Canberrans in rental homes have access to housing of acceptable standards.

Energy inefficient housing that is expensive to heat and cool, contributes to high energy bills and poor thermal comfort. Renters living in such properties are often those who are least able to afford these high energy costs and are generally not in a position to install insulation or afford other energy efficiency measures such as curtains and energy efficient appliances. As a consequence, many low-income and vulnerable renters and families face additional financial stress and negative impacts on their health and well-being. It is inequitable that those with the lowest capacity to pay often have no choice but to live in dwellings that are the most expensive to heat and cool.

The need for a regulation

A “split incentive” occurs when the person who benefits from an action is not the same as the person who bears the cost (and who, therefore, has no financial incentive to undertake the action). This is the case in the problem outlined above, where the rental provider would incur the cost of any energy efficiency upgrade, but it is the tenant who would benefit from lower bills and better living conditions. This split incentive, coupled with low vacancy rates, means that the market alone will not solve the problem and so government intervention is warranted.

The *Residential Tenancies Act 1997* (the Act) provides the framework for residential tenancy agreements in the ACT and applies to public housing as well as private tenancies. It seeks to balance the interests of rental providers and renters. Section 136(1) of the Act, as amended in 2020, allows for regulations to be made to require minimum standards for residential rental properties. Section 136(2)(d) of the Act specifies that regulated minimum standards may relate to energy efficiency.

In Action 4.7 of the [ACT Climate Change Strategy \(2019-2025\)](#) the ACT Government committed to: ‘by 2021 introduce legislation for staged minimum energy performance requirements for rental properties to come into force in 2022-23.’ This was reaffirmed in the 2020 [Parliamentary and Governing Agreement](#).

To fulfill this commitment and to address the split incentive and market failure outlined above, the ACT Government is planning to introduce a regulation under the Residential Tenancies Act to mandate an initial minimum energy efficiency standard in order to reduce energy hardship for renters in dwellings that are energy inefficient and expensive to heat or cool.

REGULATORY IMPACT STATEMENT

A Regulatory Impact Statement (RIS) is required whenever a proposed regulation is likely to impose an appreciable cost on the community, or a part of the community.¹ A minimum energy efficiency standard could potentially impose significant costs on rental providers, with possible broader rental property market implications. Therefore, a RIS was deemed necessary to consider options and potential impacts of a minimum energy efficiency standard.

The ACT Government engaged ACIL Allen through a competitive tender process to develop the RIS and undertake the supporting economic and impact analysis of various options. The final RIS was delivered at the end of August and a copy of the full [RIS](#) can be accessed on the government's [YourSay site](#). A summary of the results is provided below.

Options considered

The regulatory policy options formally analysed in this RIS were:

1. Feature-based options of a minimum standard for ceiling insulation, where rental properties are required to have a minimum thickness of insulation material². Two options for a ceiling insulation standard were considered:
 - a. rental homes with less than R2 ceiling insulation are required to install/upgrade to a minimum of R3;
 - b. rental homes with less than R2 ceiling insulation are required to install/upgrade to a minimum of R5.
2. A feature-based minimum standard for energy efficient electric heaters³ in rental properties. One option with three elements was considered:
 - a. rental homes without a fixed heater must have a minimum 1.5⁴ star fixed electric heat pump heater installed that can heat the living area with a phase-in period;

¹ ACT *Legislation Act 2001*, s. 34

² Insulation performance is often given as an R-value where the higher the value the greater the thickness and greater the ability to reduce heat flow. R5 is the grade of roof insulation currently commonly used in new builds in Canberra.

³ Typically, a heat pump heater such as a reverse cycle air conditioner (which can also provide cooling in summer).

⁴ The 1.5-star requirement above is under the new Zoned Energy Rating Label scheme for air conditioners (see <https://www.energyrating.gov.au/about-e3-program/understanding-label>)

- b. fixed resistance electric heater/s or resistance electric concrete slab heaters in rental homes must be replaced with a minimum 1.5 star fixed electric heat pump heater that can heat the living area with a phase-in period;
 - c. other heaters in rental homes must be replaced at end of life or, if demonstrably older than 20 years, within the phase-in period, by a minimum 1.5 star fixed electric heat pump heater that can heat the living area.
- 3. Performance-based options⁵ where rental properties are required to meet a minimum “star rating” under a performance rating system.⁶ Two options for a performance standard were considered:
 - a. rental properties rated as 1 star or less must be upgraded to at least 2 stars;
 - b. rental properties rated as 2 stars or less must be upgraded to at least 3 stars.

For each of the above policy options, a two-year and a four-year phase-in period were considered as sub-options, giving a total of ten scenarios that were modelled.

Initial stakeholder consultation

To “road test” these options and to identify any associated issues, including around implementation, the views of key external and internal stakeholder groups were sought through a series of interviews and workshops organised and facilitated by ACIL Allen and conducted in the second half of April 2021. External stakeholder organisations consulted through this process, included:

1. **Rental provider organisations and advocates:** Owners Corporation Network of the ACT, Ratepayers Association of the ACT, CHC Australia, Law Society of the ACT property committee.
2. **Renter organisations and advocates:** Legal Aid ACT – Tenant Advice Service, the Tenants Union ACT, Better Renting, Canberra Community Law, Care Financial Counselling.
3. **Community organisations and advocates:** ACT Council of Social Services, St Vincent de Paul Society, ACT Shelter, Better Renting, Conservation Council ACT.
4. **Industry groups:** Real Estate Institute ACT, Insulation Australasia, Australian Building Sustainability Association, Master Electricians Australia, Insulation Council of Australia and New Zealand, National Electrical and Communications Association.

A summary of the stakeholder views can be found in Appendix D of the [RIS](#).

In addition, a survey of rental providers and renters was undertaken in May 2021 through the YourSay Community Conversations website. The survey sought opinions on the options for a minimum energy efficiency standard being considered as part of the RIS, as well as background

⁵ Performance-based options were considered rather than multi feature-based options (such as requiring both insulation and an energy efficient heater) as they allow rental providers greater flexibility on how to meet the standard. They also require fewer exemptions than feature-based options and, being tied to energy usage, more reliably achieve the desired outcome of reducing energy hardship.

⁶ For modelling purposes, the Victorian Residential Scorecard was assumed to be the rating tool for this standard. Using this tool, a 3-star rating corresponds to a property having average energy costs and 2-star rating corresponds to a property having double the average energy cost.

information that could inform the analysis and modelling. A summary of the survey results can be found in the Listening Report which can be found on the government's [YourSay site](#).

As part of the RIS, ACIL Allen also undertook a survey of minimum energy efficiency standards for rental homes in other jurisdictions. The full survey can be found in Appendix A of the [RIS](#) and a summary for some of the key jurisdictions is also provided in Attachment 1 to this paper.

Summary of RIS results

ACIL Allen analysed the five minimum standards options, each with a two- and four-year phase-in period. The results, based on the modelling conducted by ACIL Allen, are outlined in the Executive Summary of the [RIS](#) (pages 1 – 4) and are summarised below:

- The insulation options would have a positive net value to the ACT community overall, while the heater and performance standard options would result in a net cost to the community.
- At the household level, all options would provide a positive net benefit⁷ on average to renters in upgraded properties. Even with full cost pass through as increased rents over the life of the upgrade, the impacts on renters are likely to be positive for all options.
- All of the options entail rental providers of residential properties that require an upgrade to make up-front investments in energy efficiency improvements.
- For rental providers able to pass on the costs of the upgrade as increased rent, the minimum standard options are unlikely to have sizable impacts on their net rental returns: likely in the order of a fraction of a percentage point over the life of the asset.
- Even in the case of no cost pass through, where rental providers do not or cannot pass on this cost in the short-term, the RIS notes that the impacts are likely to be small for most investors. Yet, it also notes that the impacts could be significant for some rental providers with already low net rental returns, for those already under mortgage stress or for those with low property values which require the most extensive upgrading to meet the minimum standards. Such impacts could be partially alleviated through financial assistance and through a longer phase-in period.⁸
- With no cost pass-through of the upgrade costs to rent, the 3-star performance standard has the highest benefit for renters. On a full cost pass-through basis, the R5 insulation option provides the highest benefit for renters — in excess of \$8,300 on average over the life on the upgrade.
- All options would result in energy savings and lower greenhouse gas emissions from reductions in domestic burning of gas and firewood. Measured over the life of the upgrade, the 3-star performance rating had the greatest expected savings (around 7,000 petajoules of energy and around 400,000 tonnes of greenhouse gas emissions). The R5 roof insulation minimum standard has the second highest savings (around 5,900 petajoules and 290,000 tonnes).

⁷ Benefits were calculated on the basis of them being taken largely as energy cost savings but could also be taken in the form of increased thermal comfort, or a mix of the two.

⁸ See discussion on financial assistance and phase-in periods below.

Based on the analysis undertaken, the preferred option in the RIS is for a minimum standard for ceiling insulation, specifically that rental dwellings currently with lower than R2 ceiling insulation are required to install or upgrade to a minimum of R5.

The impact analysis in the RIS shows that this minimum standard, with a four-year phase-in, would provide around \$18 million in benefits for the ACT. The analysis also shows that for every dollar spent on the minimum standard, it returns \$1.30 to the community.

PROPOSED STANDARD

The ACT Government is proposing that the preferred option from the RIS be adopted as the basis of an initial minimum energy efficiency standard for rental homes in the ACT:

Rental homes with less than R2 ceiling insulation are required to install or upgrade to a minimum of R5.

A regulation to enact the standard will be drafted with a view to it starting in mid-2022 with the standard being phased-in over a number of years.

Other aspects of the proposed standard or associated matters include:

- The R2 threshold ensures the least efficient properties in the market are targeted through the standard, while R5 is the grade of roof insulation commonly used in new builds.⁹
- The majority of rental properties, particularly those built after 1997, will already meet the standard or be exempt.¹⁰
- The regulation would apply to Housing ACT and social housing properties, as well as to the private rental market.
- A phase-in period of between two and five years is proposed to allow time for rental providers to comply, and to avoid putting undue pressure on the rental market or industry capacity. The precise length of the phase-in period will be determined following this consultation.
- Along with the regulation, programs supporting complementary measures, such as draught proofing (which enhances the effectiveness of insulation), may be made available.
- A comprehensive communication and education campaign will be developed to run in the lead up to the regulation coming into force and during the phase-in period to ensure rental providers, renters, and other stakeholders, understand what is required.

The reasons for adopting a ceiling insulation standard are detailed in Attachment 2.

Questions

1. Are you a rental provider, renter, or otherwise have a particular interest in this matter?
2. Given the ACT Government has committed to the introduction of a minimum energy efficiency standards for rental homes and noting the reasons provided in Attachment 2, do you support the initial adoption of a ceiling insulation standard? Why or why not?

⁹ The increased cost of requiring R5 rather than R3 is only marginal as labour costs are the largest component of the installation cost.

¹⁰ See discussion on exemptions below.

3. If you are a rental provider, do you anticipate you would need to install or upgrade ceiling insulation in your property/properties in order to meet the proposed standard?

SUPPORT FOR INTRODUCTION OF THE STANDARD

The ACT Government recognises that the new standard will impose costs on both public and private rental providers who need to install or upgrade the ceiling insulation in their properties.

The ACT Government has committed to supporting the introduction of the standard through the \$50 million Vulnerable Household Energy Support Scheme (VHESS).

Housing ACT and community housing providers will receive funding to meet the costs associated with upgrading their properties to meet the new standard through the VHESS.

In the private rental market, financial assistance through the VHESS will be targeted to support rental providers to meet the standard who provide housing to vulnerable and low-income households. The extent and type of assistance made available to housing providers (e.g., a rebate, no-interest loan, or some combination) are still being determined. Where financial assistance is provided by the ACT Government, a number of conditions would likely be attached. For example:

- An accredited insulation installer would need to be used (see discussion on safety below).
- The value of any financial assistance would need to be deducted if the rental provider seeks a rent increase above the prescribed amount due to the upgrade cost.¹¹
- The rental provider must be up to date in their payment of land tax.

Questions

For rental providers:

4. What type of assistance would most help you support vulnerable and low-income renters?
- a. A no-interest loan to cover all or part of the cost of upgrades;
 - b. A partial rebate for the cost of upgrades; or
 - c. Other types of non-financial assistance (please indicate what these might be); or
 - d. Some combination of these.
5. How would this affect the rent that you would charge?

IMPLEMENTATION ISSUES

As part of this consultation, the ACT Government is also seeking the views of the ACT community, particularly renters and rental providers, but also key stakeholder organisations, on how the proposed minimum energy efficiency standard should be implemented. A number of significant implementation issues are canvassed below:

- What exemptions should be allowed?

¹¹ Currently, if a rental provider wants to increase the rent above the amount prescribed by regulation they can only do so if: the rent increase is provided for as part of the tenancy agreement; the tenant agrees to the increase; or the rental provider obtains consent from the ACT Civil and Administrative Tribunal (ACAT) for the increase. ACAT must allow the increase if it is not excessive. In determining whether an increase is excessive ACAT must take into account a range of factors including (but not limited to) the rental provider's costs or outgoings in relation to the premises.

- When should compliance be required?
- Should any complementary measures be considered?
- What safety measures should be required?
- How should the quality of installation be ensured?
- How should compliance be monitored and enforced?

What exemptions should be allowed?

The proposed regulation will not apply to lower floor units in apartment blocks, where it is usually not physically feasible to install ceiling insulation and where upper units effectively provide insulation from outside temperatures.

Other exemptions could include:

- other dwellings where the roof design means that ceiling insulation cannot feasibly be physically installed;
- dwellings where ceiling insulation installation is not feasible due to very high cost, e.g. the cost would be significantly greater than the long-term benefits or would be above a set threshold cost; and/or

Temporary exemptions may also be warranted where:

- the rental provider has plans to demolish or substantially rebuild the property shortly after the final compliance date for the new standard;¹²
- the tenant was the former owner of the property and is renting the property from the new owner on a temporary basis;¹² or
- the tenant strongly objects (with clear and specific reasons) to the work being undertaken.

Where there was a temporary exemption due to the strong objection of the tenant, if a new tenant moves into the property, the previous objection to work being undertaken would no longer be valid.

Where a rental dwelling had an exemption, the rental provider would be required to disclose this when advertising their property for rent and to prospective tenant/s ahead of entering into any rental agreement.

Questions

6. What exemptions to the minimum energy efficiency standard should be allowed?
7. Should any of the temporary exemptions listed above, or others, be allowed, and for how long?
8. What form of evidence (e.g., a building report, statutory declaration) should be required to support an exemption?
9. Should rental providers be required to formally apply for an exemption, including submitting evidence? OR should rental providers just be able to claim an exemption on accepted grounds but be required to disclose the exemption and maintain the supporting evidence?

¹² These exemptions were included in the New Zealand healthy homes standards. See <https://www.tenancy.govt.nz/healthy-homes/exemptions-to-the-healthy-homes-standards/> for more information.

10. Should there be a program of compliance auditing to assess that dwellings genuinely meet an exemption, including evidence being available on request by an authorised entity?

When should compliance be required?

The proposed standard is anticipated to come into force mid-2022, but with a phase-in period of between two and five years. This is to allow time for rental providers to comply, and to not put undue pressure on the rental market or industry capacity. The precise length of the phase-in period will be determined following input from this public consultation.

All non-exempt dwellings will be required to meet the standard by the end of the phase-in period and, after the phase-in period, all dwellings entering the rental market would need to meet the standard before a lease begins.

As well as the length of the phase-in period, we are interested in feedback about when during the phase-in period rental providers will be required to comply with the standard. Some options for consideration are:

- By the end of the phase-in period: all non-exempt rental dwellings in the ACT would need to comply by the end of the phase-in period. While this gives maximum flexibility to rental providers it could potentially lead to a demand “bubble” for insulation to be installed near the end of the phase-in period.
- On entering a new lease: the requirement for compliance would be triggered when the rental provider enters into a new lease or renews a lease over the property. The end of the phase-in period would then provide the final date for compliance to capture longer term tenancies that are not renewed during the phase-in period or month to month (periodic) tenancies. This option will spread out the work of installing or upgrading insulation across the phase-in period. If this latter option is adopted, a decision would also need to be made as to whether the standard needed to be met prior to a new lease being entered into or whether a grace period of, say 3 or 6 months, would be allowed for any required upgrade or installation to be undertaken.

Questions

11. How long (between 2 and 5 years) should the phase-in period be?
12. Should rental dwellings be required just to meet the standard by the end of the phase-in period OR at the start or renewal of a lease, but no later than the end of the phase-in period?
13. If the requirement to meet the standard is triggered by the start of a lease, should the work be required to be undertaken before a new lease can be entered into, or should there be a grace period of say 3 or 6 months to get the work done?

Should any complementary measures be considered?

While ceiling insulation is generally an effective measure for improving energy efficiency in a dwelling, its effectiveness can be significantly reduced if the dwelling is draughty. A lot of heat can also be lost through single glazed windows with no or inadequate curtaining. Programs supporting complementary measures such as draught proofing or curtaining can therefore significantly enhance

the effectiveness of insulation (see also the section at the end of this paper on other ACT Government programs in support of improving energy efficiency for renters).

Questions

14. What complementary measures should be considered?
15. Should the ACT Government include any complementary measures as part of the regulation (e.g., requiring draught proofing, where needed, along with insulation)?
16. Should the ACT Government consider delivering complementary measures (whether through existing or new programs)? If so, how should they be targeted?

What safety measures should be required?

As was tragically evidenced by the Commonwealth Government's Home Insulation Program in 2009-10, there is a range of risks associated with the installation of ceiling insulation. Some of the most serious risks include:

- Electrical hazards which create risk of death, fire, electric shock or other injury caused directly or indirectly by electricity;
- Working at heights, where falling from a ladder or scaffold, or falling through the ceiling, can result in serious injury or death.

Risks associated with installing ceiling insulation are generally greater in existing buildings, as opposed to new buildings, due to uncertainty around pre-existing conditions such as wiring and electrical equipment, accessibility issues and the potential exposure to hazardous substances.

Risks can also be exacerbated by inadequate training and a low level of competency,¹³ particularly when an untrained householder elects to self-install or "DIY."

The ACT Government is proposing to manage these risks through the following safety measures:

- coordinating with CIT and relevant industry organisations to provide training and accreditation for insulation installers;
- requiring similar safety standards as to those put in place for insulation installation activities under the Energy Efficiency Improvement Scheme (EEIS);¹⁴
- tying any financial assistance to using accredited installers and the required safety standards;
- an education campaign to discourage "DIY" installation; and
- allowing sufficient time for implementation so as not to put excessive capacity demand on the industry.

Additional or alternative measures that could be introduced include:

¹³ As well as safety issues, a poor-quality installation (e.g., leaving unnecessary gaps) can drastically reduce the effectiveness of the insulation.

¹⁴ Safety precautions for installation of insulation in the EEIS were developed in recognition that a government endorsed program must meet best practice safety standards. Full details of the safety, recording and reporting requirements are found in the Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2020 (pp 49-54 for roof insulation, located at: [Energy Efficiency \(Cost of Living\) Improvement \(Eligible Activities\) Code of Practice 2020 \(No 2\)](#) | Notifiable instrument. The Code of Practice states at 1.8.4.1 that a pre-installation electricity check must be performed, and an electrical safety report signed by a licenced technician in accordance with the code of practice and the electricians Safe Work Method Statements.

- commissioning independent audits of insulation installations completed under the regulation;
- maintaining a list of products that have been verified to meet the current version of the relevant Australian Standard;¹⁵ and/or
- maintaining a list of companies that are pre-approved to retrofit insulation.

An additional safety issue arises from the question of whether insulation that does not meet the standard can be “topped up” or whether it must be replaced. While the costs are higher if existing insulation needs to be removed, if new insulation is installed on top of existing insulation, there is a potential for increased fire risk. This could occur, for example, if fibreglass batts are placed over cellulose insulation (which can be combustible) or if new insulation is placed on top of original insulation which has electrical wiring running over it (where there is a risk of the wiring overheating). It would also, of course, be essential that the original insulation is in reasonable condition, both from a safety perspective, but also in terms of effectiveness.

Questions

17. What safety measures should be required? Are the proposed measures adequate?
18. Should “DIY” or use of unaccredited installers in rental properties be disallowed?
19. Should top-ups of insulation be allowed and under what circumstances?

How should the quality of installation be ensured?

As well as the safety issues flagged above, poor installation of insulation can compromise its performance. For example, if there are gaps in insulation (e.g., insulation hasn’t been installed up to the edges of joists or to the edges of the roof cavity), it can significantly reduce the effective R-value. If only 5% of an area is left un-insulated, up to 30% of the potential benefits may be lost.¹⁶

Measures to ensure the quality of the installation could include:

- a requirement to hold evidence that the installation meets the required quality, e.g., photographs of roof spaces and/or thermal imagery of rooms;¹⁷
- requiring quality assurance checks (which could also include safety checks), either for all installations following the work, or for a sample through an ongoing audit process of inspections; and/or
- a requirement for the use of trained and accredited installers.

Questions

20. What quality assurance measures should be put in place?

¹⁵ AS/NZS 4859.1 Materials for the thermal insulation of buildings.

¹⁶ For insulation installation activities under the EEIS, as well as the safety standards, there is a requirement that a minimum of 95% of all safely accessible eligible areas in the ceiling must be treated (excluding garages and sheds).

¹⁷ A number of installers in the ACT already currently offer this service.

How should compliance be monitored and enforced?

The ACT Government's preference is to start with a relatively light-handed approach to monitoring and enforcing compliance of the regulation, with more intrusive and/or punitive measures to be introduced only if required by poor compliance.

Possible approaches include:

- Incorporating compliance with the minimum standard into the Standard Tenancy Terms in Schedule 1 of the Residential Tenancies Act such that it becomes a condition of the tenancy agreement. This would place a positive obligation on the rental provider to ensure the property meets the standard and, on the tenant, to report anything that requires maintenance or repair.
- Alternatively, or in addition, mandatory disclosure statements by the rental provider could be required in rental advertisements and to be provided to the tenant before a tenancy agreement begins to indicate whether the property meets the minimum standard, or if there is a valid exemption.

Tenants should also have options for recourse where they have entered into tenancy agreements for properties that do not meet the minimum standard after the phase-in period, or where a false claim to meet the standard was made during the phase-in period.

For example, one option may be to create a 'without penalty' ground of termination if the tenant has not yet taken possession of the property.¹⁸ Where they have taken possession, work to meet the standard will be treated as urgent, with penalties for failure to comply attached¹⁹ and if the standard is not met, the tenant may terminate their lease by giving notice for a specified period.²⁰ It may be justifiable to allow the rental provider the opportunity to meet the standard within the notice period and if the standard is met, the notice will become invalid. This would fall within the approach currently taken in the ACT when a notice to remedy is issued for a breach other than non-payment of rent and the breach is remedied within 2 weeks.²¹ If the tenant wants to end their lease despite any rectification, then the break lease terms in the agreement would apply.

In relation to deterrence, one possibility is to allow the relevant compliance body to temporarily reduce the rent payable by a prescribed amount if the property does not meet the minimum standard.²²

¹⁸ This is the approach taken in Victoria.

¹⁹ Ibid.

²⁰ This is an option provided to tenants in Tasmania. For more information see Consumer, Building and Occupational Services Department of Justice, [A Guide to the Residential Tenancy Commissioner \(October 2019, Version 3\)](#) page 21.

²¹ Above (n 28) Schedule 1 cl 93(a). This is also the approach taken in Tasmania. For more information, see Consumer, Building and Occupational Services Department of Justice, [A Guide to the Residential Tenancy Commissioner \(October 2019, Version 3\)](#) page 22.

²² This is the approach taken in South Australia. For more information see *Housing Improvement Act 2016* (SA) s 25.

Questions

21. What measures to monitor compliance of the regulation should be put in place?
22. What evidence of compliance would be acceptable?
23. Should mandatory disclosure of whether a property meets the minimum standard (or has a valid exemption) be required in rental advertisements and to be provided to a tenant before entering a lease?
24. How should the minimum standard be enforced and non-compliance addressed?

EVALUATION AND REVIEW

An evaluation plan for the introduction of the minimum standard will be developed in the lead up to the regulation coming into force. This will seek to:

- measure outputs over the phase-in period, such as the number of properties upgraded, average costs of upgrades, the level of compliance;
- monitor and deal with any issues arising during the implementation of the regulation;
- evaluate the impacts of the regulation during and following the phase-in period to assess whether it is meeting its objectives to reduce energy hardship and increase comfort and wellbeing, particularly for low-income renters; and
- to determine whether further minimum energy efficiency standards are required.

Questions

25. Do you have any suggestions on how the implementation of the regulation should be monitored and evaluated?
26. Do you have any suggestions on how and when to assess that the regulation has met its objectives?
27. Are there any other issues that have not previously been covered that you would like to raise?

NEXT STEPS

- During the consultation period, key stakeholder organisations representing rental providers, renters and industry groups will also be consulted. This Consultation Paper will form the basis of those consultations.
- Along with responses from the community to this Consultation Paper submitted by email or through the on-line feedback form, the feedback received will be analysed and considered following the conclusion of the consultation period.
- An analysis and summary of the consultation will be provided on the ACT Government's YourSay website.
- The results of the consultation will inform the implementation of the standard, including the drafting of the regulation, and the design of any accompanying measures.
- The resultant regulation will come into force in mid-2022.
- A comprehensive communication and education plan will run in the lead up to the regulation coming into force and during the phase-in period to ensure rental providers, renters, and other stakeholders, understand what is required.

OTHER ACT GOVERNMENT MEASURES

In addition to plans for a minimum energy efficiency standard, the ACT Government currently supports rental households in the ACT to reduce their energy costs by offering free home energy assessments that are specifically tailored for renters through the [Renters' Home Energy Program](#). Expert energy assessors provide the assessments and advice either by phone or in the home. Each participating household receives a report with advice on energy saving techniques, to help them reduce energy costs.

The ACT Government has also developed a free webtool which allows renters to assess their home's energy efficiency and instantly download a tailored report listing the best actions they can take to reduce energy use on things like heating, cooling, appliances, hot water, lighting and cooking. The webtool also generates a report with steps that the building owner can take, such as installing insulation. The webtool can be found at actsmart-hea.com.au.

The ACT Government also supports low-income renters to utilise a number of other energy efficiency measures through the [Low Income Household Program](#), which is delivered by St Vincent De Paul Society. This Program offers in-home assessments that provide practical ways for low-income households in the ACT to reduce energy and water bills with advice, draught proofing and curtains. The ACT Government also funds energy efficient appliance upgrades in Housing ACT properties.

Questions

28. Were you already aware of these ACT Government programs?
29. Have you made use of them?

ATTACHMENT 1: ENERGY EFFICIENCY STANDARDS IN OTHER JURISDICTIONS

As part of the RIS, ACIL Allen undertook a survey of minimum energy efficiency standards for rental homes in other jurisdictions. The full survey can be found in Appendix A of the [RIS](#) and a summary for some of the key jurisdictions is also provided below:

England and Wales

In England and Wales, properties newly rented out or at lease renewal must have a minimum energy performance rating of E on a scale which goes from A (very efficient) to G (inefficient). This is disclosed on an Energy Performance Certificate (EPC) which must be provided to tenants before a lease is signed.

The standard was initially introduced in 2007 for large properties and has gradually been extended to smaller properties. Since 2018, all dwellings must meet the rating at the renewal of the lease, and from 2020 the regulation has applied to all existing tenancies. The standard makes provision for some exemptions.²³

Scotland

Scotland is currently implementing a minimum standard similar to that in England and Wales, where rental properties must reach a minimum EPC energy rating of E, progressively moving to a D rating at the start of a new tenancy (by 2022). All rental properties will need a D rating regardless of the start of the tenancy by 2025. The standards were to be introduced in 2020 but have been delayed due to COVID-19. Some exemptions will be allowed.²³

New Zealand

Under its Healthy Homes Standards, the New Zealand Government introduced regulations to ensure that all rental properties that currently have no or substandard insulation in the ceiling or underfloor must have new insulation installed in all habitable spaces (where it can practically be installed) to a defined value depending on climatic zone.

The minimum standards were introduced with a number of other standards, including ventilation, moisture ingress and draught proofing. All properties must also have a heating appliance installed, which can heat the premises to 18°C. Inefficient, unaffordable or unhealthy heater options — for example, open fire or unflued gas heaters — may not be compliant.

The standards were introduced in July 2016 for public and community housing and July 2019 for all private rental providers. All rental properties must be compliant by 2024. All new tenancy agreements will have to include a statement from the rental provider about the extent of insulation in the ceiling, underfloor and walls of their property. Provision is made for exemptions.²³

²³ These are outlined in Appendix A of the RIS.

Victoria

The Victorian Government²⁴ is currently implementing minimum standards for rental properties as part of a suite of reforms to rental laws and property standards. The initial standard requires energy-efficient heating appliances and began in 2021 with a phase-in period. During this period rental providers have a responsibility to ensure their property has a heater when a new rental agreement is signed, an existing fixed-term rental agreement rolls over into a periodic agreement, or a fixed-term rental agreement is renewed. From March 2023 all rental dwellings, unless exempted, must have an energy efficient heater to meet the standard.

The Victorian Government is also planning to add insulation and hot water systems requirements to the minimum standards.

²⁴ Other Australian states and territories, besides Victoria and the ACT, are expected to introduce minimum energy efficiency standards in coming years. A *National Framework for Minimum Rental Energy Efficiency Requirements* is being developed as part of the [Trajectory for Low Energy Buildings](#) under the auspices of the Energy Ministers' Meeting (EMM), through which jurisdictions have committed to supporting national initiatives on energy-related matters.

ATTACHMENT 2: REASONS FOR THE OPTION CHOSEN

The ACT Government is proposing the adoption of an initial minimum energy efficiency standard based on a ceiling insulation option. The standard will require that rental dwellings currently with ceiling insulation rated lower than R2 are required to install or upgrade to a minimum of R5. (In the discussion below this will be referred to as the “R5 ceiling insulation minimum standard.”)

Reasons for proposing the ceiling insulation standard

This reasons for proposing this option are:

- The ceiling insulation standard was the option recommended by ACIL Allen in the RIS based on their impact analysis and modelling:
 - The RIS found that an R5 ceiling insulation standard with a four-year phase-in period had the strongest supporting evidence of the considered policy options.
 - The RIS found that both the R5 and R3 ceiling insulation options would result in a net positive outcome economy wide. In contrast, the RIS found that the energy efficient heater option and performance ratings options were found to result in a net cost economy wide.
 - The RIS modelling found that, even with full cost pass-through to tenants, R5 ceiling insulation provides a net positive benefit to tenants and the highest net benefit of all options. With no cost pass-through, R5 ceiling insulation has the highest net benefits to tenants of the features-based options.
 - The RIS determined that installation of ceiling insulation was a relatively less expensive option for rental providers compared to the performance rating options.
 - The R5 ceiling insulation minimum standard had the second highest energy and greenhouse gas emissions savings of the proposed minimum standard options.
- The R5 ceiling insulation minimum standard, as a feature-based standard, is simpler and easier to understand than a performance-based standard, providing a relatively straightforward introduction of a minimum energy efficiency standard for rental properties.
- The ceiling insulation option also generated the most consensus between rental providers and tenants, as the second-most preferred options for both groups, based on the YourSay survey consultation conducted for the RIS.²⁵
- The survey results found that 90 percent of tenants who responded agreed or strongly agreed and 39 percent of rental providers agreed or strongly agreed to ceiling insulation being the option implemented as the minimum standard.
- The R5 ceiling insulation option delivers a range of immediate benefits for tenants including reduced energy consumption and energy bills as well as longer term health benefits without additional heating or cooling costs. Tenants of insulated homes are half as likely to report respiratory illness symptoms compared to those in uninsulated homes.

²⁵ Renters preferred the energy efficient heater option and rental providers preferred a performance-based option.

- In addition to reducing peak electricity demand, the insulation option also avoids unintended consequences for renters which could arise from the energy efficient heating option due to additional heating or cooling costs where such appliances were not previously used.
- Stakeholders (internal and external), consulted by ACIL Allen for the RIS, suggested a features-based minimum standard would be a preferable short-term option, with a performance-based option preferred potentially in the longer term. Ceiling insulation is a “no regrets” option if there is a later move to a performance-based standard.

Reasons for not proposing the other options

The ACT Government is not proposing an energy efficient heater standard or a performance-based rating standard be adopted as the initial minimum energy efficiency standard for rental properties:

- The impact analysis conducted in the RIS found the energy efficient heater option had a negative net present value (i.e., at a societal level the costs exceeded the benefits) and a lower benefit cost-ratio than the ceiling insulation options.
- The energy efficient heater option was also found to result in the least benefit for tenants. It should also be noted, that if most vulnerable households are facing cost pressures, they may avoid using the energy efficient heater to lower their energy costs. As a result, increases in thermal comfort and associated health benefits may not be realised if this option were implemented as the standard.
- The performance rating options also had a negative net present value and lower benefit-cost ratio than the other options considered as a minimum standard.
- Although the 3-star performance rating would have the highest benefit to tenants if rental providers did not pass on the costs to tenants, almost 60 percent of surveyed rental providers said they would increase rents in response to the implementation of minimum standards, and a large number reported they would pass on the additional cost in full to tenants. Where there is cost pass through to tenants R5 insulation had the highest benefit to tenants.
- An appropriate rating tool is not yet available for a performance-based rating standard to meet the Government’s stated implementation timeframes. An accredited national tool is planned to become available in mid-2022 and additional time would be required to train up a sufficient number of assessors in its use.

ATTACHMENT 3: WHAT WE WANT TO KNOW - LIST OF CONSULTATION QUESTIONS

Proposed standard (pp. 9-10)

1. Are you a rental provider, renter, or otherwise have a particular interest in this matter?
2. Given the ACT Government has committed to the introduction of a minimum energy efficiency standards for rental homes and noting the reasons provided in Attachment 2, do you support the initial adoption of a ceiling insulation standard? Why or why not?
3. If you are a rental provider, do you anticipate you would need to install or upgrade ceiling insulation in your property/properties in order to meet the proposed standard?

Support for introduction of the standard (p. 10)

4. *For rental providers:* What type of assistance would most help you support vulnerable and low-income renters?
 - a. A no-interest loan to cover all or part of the cost of upgrades;
 - b. A partial rebate for the cost of upgrades; or
 - c. Other types of non-financial assistance (please indicate what these might be); or
 - d. Some combination of these.
5. *For rental providers:* How would this affect the rent that you would charge?

What exemptions should be allowed? (pp. 11-12)

6. What exemptions to the minimum energy efficiency standard should be allowed?
7. Should any of the temporary exemptions listed above, or others, be allowed, and for how long?
8. What form of evidence (e.g., a building report, statutory declaration) should be required to support an exemption?
9. Should rental providers be required to formally apply for an exemption, including submitting evidence? OR should rental providers just be able to claim an exemption on accepted grounds but be required to disclose the exemption and maintain the supporting evidence?
10. Should there be a program of compliance auditing to assess that dwellings genuinely meet an exemption, including evidence being available on request by an authorised entity?

When should compliance be required? (p. 12)

11. How long (between 2 and 5 years) should the phase-in period be?
12. Should rental dwellings be required just to meet the standard by the end of the phase-in period OR at the start or renewal of a lease, but no later than the end of the phase-in period?
13. If the requirement to meet the standard is triggered by the start of a lease, should the work be required to be undertaken before a new lease can be entered into, or should there be a grace period of say 3 or 6 months to get the work done?

Should any complementary measures be considered? (pp. 12-13)

14. What complementary measures should be considered?
15. Should the ACT Government include any complementary measures as part of the regulation (e.g., requiring draught proofing, where needed, along with insulation)?
16. Should the ACT Government consider delivering complementary measures (whether through existing or new programs)? If so, how should they be targeted?

What safety measures will be required? (pp. 13-14)

17. What safety measures should be required? Are the proposed measures adequate?
18. Should “DIY” or use of unaccredited installers in rental properties be disallowed?
19. Should top-ups of insulation be allowed and under what circumstances?

How should the quality of installation be ensured? (p. 14)

20. What quality assurance measures should be put in place?

How should compliance be monitored and enforced? (pp. 15-16)

21. What measures to monitor compliance of the regulation should be put in place?
22. What evidence of compliance would be acceptable?
23. Should mandatory disclosure of whether a property meets the minimum standard (or has a valid exemption) be required in rental advertisements and to be provided to a tenant before entering a lease?
24. How should the minimum standard be enforced and non-compliance addressed?

Evaluation and review (p. 16)

25. Do you have any suggestions on how the implementation of the regulation should be monitored and evaluated?
26. Do you have any suggestions on how and when to assess that the regulation has met its objectives?
27. Are there any other issues that have not previously been covered that you would like to raise?

Other ACT Government measures (p. 17)

28. Were you already aware of these ACT Government programs?
29. Have you made use of them?

