

ACT AUDITOR–GENERAL'S **PERFORMANCE AUDIT REPORT**

Energy efficiency standard for rental properties

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The ACT Audit Office acknowledges and respects their continuing culture and the contribution they make to the life of this city and this region.

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The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
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Dear Mr Speaker

I am pleased to forward to you a Performance Audit Report titled 'Energy efficiency standard for rental properties' for tabling in the Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

The audit has been conducted in accordance with the requirements of the *Auditor-General Act 1996* and relevant professional standards including *ASAE 3500 – Performance Engagements*.

Yours sincerely



Michael Harris
Auditor-General
9 May 2025

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Summary

On 1 April 2023, the ACT Government commenced a new minimum standard for ceiling insulation in rental properties by way of regulation.

The standard requires owners of rental properties in the ACT with no insulation, or existing ceiling insulation below an R-value of R2, to install or upgrade the ceiling insulation to a minimum R-value of R5. Rental properties with existing insulation of R2 or higher are considered to meet the standard.¹

The audit assessed the effectiveness of the implementation of the minimum standard for ceiling insulation in rental properties from the pre-commencement period in 2022 through to mid-2024.



Conclusions

Planning for implementation

EPSDD undertook a variety of planning activities to prepare for the implementation of the minimum standard. This included the preparation of project planning and communication documentation. Most of the planned activities were undertaken as planned.

One activity that wasn't undertaken, as planned, was the preparation of a *Compliance and Decision-Making Policy*. By not developing such a policy, ACT Government agencies' activities to monitor and enforce compliance with the standard is impaired.

Risk management

EPSDD did not develop a standalone risk management plan or risk register for the implementation of the minimum standard, including with respect to risks of fraudulent or unethical behaviour. This means that EPSDD's activities to identify and manage risks in the implementation of the standard have not been explicitly recognised and documented.

It is apparent, however, that EPSDD has undertaken a range of activities to manage and mitigate electrical, fire and safety risks associated with the installation of ceiling insulation. This includes requiring ceiling installation to be installed by installers certified under an ACT Government recognised certification framework and relying on Access Canberra's Electrical Safety Inspection Program to provide assurance over the safe installation of ceiling insulation.

¹ 'R-value' refers to the thermal resistance of ceiling insulation and is defined in the *AS/NZ Standard 4859.1 Thermal Insulation Materials*.¹ The higher the R-value the more the insulation slows heat flow and insulates a home.

Monitoring, evaluation and reporting

EPSDD engaged Common Capital to monitor and evaluate the implementation of the minimum standard. A series of monitoring and evaluation reports were produced which, inter alia, reported on landlord compliance with the requirement to install ceiling insulation and disclose the status of the ceiling insulation in rental advertisements.

The final monitoring and evaluation report (May 2024) identified a need for further data to verify landlords are complying with their obligations under the minimum standard as well as opportunities for enhanced compliance and enforcement activity to obtain such data.

Compliance and enforcement

ACT Government agencies do not have adequate information on landlord compliance with requirements for the installation of required ceiling insulation or the requirement to adequately disclose the status of the insulation. As a result, ACT Government agencies' ability to report on implementation of the standard and its contribution to policy outcomes is compromised. Compliance and assurance activity was initially planned for, and supported by, a range of stakeholders but has not been progressed.

Enforcement of the standard relies on tenants seeking recourse through ACAT to enforce contractual rights associated with residential tenancy agreements. This places an unfair burden on tenants, who may not be equipped to undertake such an action.



Key findings

Planning for implementation

Paragraph

Planning for the new standard

The ACT Government has implemented financial support schemes to support ACT households to improve the energy efficiency of their homes. The interest-free loans and rebates for eligible homeowners may also be used by landlords to assist with improving the energy efficiency of rental properties. These include the Sustainable Household Scheme and the Home Energy Support Program. There have been a very low number of Sustainable Household Scheme loans taken out by landlords for the purposes of ceiling insulation.

2.11

Communication with stakeholders

EPSDD sought to communicate the requirements of the minimum standard to various stakeholder groups. To guide its communication activities EPSDD developed an *Announcement Communications Plan* in October 2022 and a *Post Announcement*

2.33

Communications Plan in June 2023. Communication activities have included industry briefings, emails to landlords, tenants and real estate agents / property managers and social media posts. The communication activities identified in the plans were undertaken as identified.

With respect to the conduct of communications, Common Capital's final monitoring and evaluation report in May 2024 noted 'a comprehensive communications strategy was implemented to ensure key stakeholders were kept informed' but there were 'limitations with [channels available to the Government to reach stakeholders] which impacted their reach and efficacy'. Feedback to the Audit Office from owners corporations suggests that communication about the implementation of the minimum standard to this stakeholder group was not effective. 2.34

Project documentation

EPSDD developed a *Minimum Standard for Energy Efficiency for Rental Properties Project Plan* to support the implementation of the regulation. The Project Plan documented deliverables, scheduling requirements, risks to implementation, reporting processes and stakeholder management activities. 2.52

EPSDD achieved some of the Project Plan deliverables, but did not achieve others such as the conduct of a Risk Register Review, the development of a *Compliance and Decision-Making Policy* or a plan for the transfer of policy responsibilities to JACS. Internal reporting against the Project Plan occurred on four occasions: 30 October 2023; 15 January 2023; 9 February 2024; and 27 August 2024. By not developing a *Compliance and Decision-Making Policy* ACT Government agencies' activities to monitor and enforce compliance with the standard is impaired. 2.53

Transition of policy responsibility to JACS

The *Minimum Standard for Energy Efficiency for Rental Properties Project Plan* identified an intention to develop a *Plan for Transference of Regulatory Responsibilities* for the transfer of policy responsibility from EPSDD to JACS. The Project Plan was not prepared, as JACS was of the view that it was not required. Notwithstanding this, informal discussions and meetings took place between EPSDD and JACS and transition activities had been identified. Without an agreed and documented transition plan, however, there is a risk that roles, responsibilities and implementation actions are not defined, and policy responsibility is ineffectively transferred. 2.60

Risk management

Risk management documentation

EPSDD did not develop a standalone risk management plan or risk register for the implementation of the minimum standard. EPSDD did, however, identify implementation and delivery risks in a range of early program documents including: the original program logic that was developed prior to the Regulatory Impact 3.22

Statement; and the *Minimum Standard for Energy Efficiency for Rental Properties Project Plan*. EPSDD did not, however, identify specific controls or mitigation strategies for these risks in either the original program logic or Project Plan.

There are risks associated with the minimum standard that may lead to fraudulent or unethical behaviour. This includes the risk of a landlord seeking to avoid or minimise the cost of insulation by stating that the rental property has an R2 value, or higher, when it does not. However, EPSDD has not undertaken a separate, stand-alone fraud risk assessment, nor has EPSDD separately categorised risks with reference to fraudulent or unethical behaviour. 3.23

Risks associated with implementation of the standard

EPSDD has introduced measures to mitigate risks associated with untrained and unqualified installers installing ceiling insulation. Two Notifiable Instruments were enacted to the effect that: 3.29

- only certified installers or provisionally certified installers under an ACT Government recognised certification framework are able to install ceiling insulation; and
- landlords were exempt from the minimum standard between 1 January 2024 through to 30 June 2024 if they could not source a certified installer.

EPSDD, along with its counterparts in other jurisdictions, engaged the Energy Efficiency Council (EEC) to develop a professional certification framework for ceiling insulation installers. EPSDD also funded eight training courses for installers through a Memorandum of Understanding with CIT. These arrangements sought to build knowledge and capacity in the sector and reduce risks associated with the improper installation of ceiling insulation. 3.42

As at July 2024, the Energy Efficiency Council portal identified a total of 57 fully certified insulation installers operating in the ACT. Seventeen of these installers have been certified through EPSDD-funded training provided by CIT. The balance of these installers have been certified through providers other than CIT (such as the Green Building Institute, Best Option Training and Master Builders ACT) which also offer relevant training to installers to support accreditation. 3.43

Access Canberra's Electrical Safety Inspection Program seeks to mitigate electrical safety risks in the ACT building and construction industry, including those associated with the installation of ceiling insulation. All planned installations of ceiling insulation must ensure that a licensed electrician undertakes an electrical safety check before work is undertaken. Access Canberra's *Standard Operating Procedure – Thermal Insulation Roof Space Inspections* (March 2023), provides for Access Canberra's Electrical Inspections Team to audit 10 percent of all *Certificates of Electrical Safety* to ensure the requirements of the *Electrical Safety Act 1971* are met. A review of *Certificates of Electrical Safety* issued for the period 1 September 2023 to 8 April 2024 shows that the overall pass rate for electrical safety checks for ceiling insulation is extremely high; the data analysis identified a 95.89 percent pass rate. This 3.50

indicates that there are very few electrical risks detected from licensed electricians who are performing electrical checks of ceiling insulation in both rental and non-rental properties.

There is some guarantee of the quality of installation as new installations must be undertaken by a certified or provisionally certified installer. However, for those rental properties that already comply with a minimum R-value of R2 (or more) and do not need to upgrade their insulation to comply, there are no explicit provisions in the regulations to guarantee the quality of the pre-existing insulation, such as the completeness of its coverage in the roof cavity. 3.58

The minimum standard requires rental properties with no insulation or existing ceiling insulation with an R-value below R2, to install or upgrade the ceiling insulation to a minimum R-value of R5. Landlords are taken to comply with the standard once they have reached a \$10,000 limit for installing ceiling insulation in as many designated rooms as possible. For new installations, the quality of insulation is supported because only certified or provisionally certified installers be used. However, for pre-existing insulation the regulation does not explicitly specify pre-existing insulation be safe, in reasonable condition and/or complete in its coverage. 3.59

The regulation does not refer to the Australian Standard for *Thermal Insulation of Dwellings* which covers the correct installation of ceiling insulation. This means that the performance of the insulation may be less than optimal and may hinder the ACT Government's emissions reduction targets and decrease the energy efficiency of the rental property. 3.60

Monitoring, evaluation and reporting

Monitoring and evaluation

EPSDD engaged Common Capital to monitor and evaluate the implementation of the minimum standard. Common Capital prepared an Evaluation Plan and delivered three quarterly reports on 24 October 2023, 19 December 2023 and 28 March 2024. A final monitoring and evaluation report was provided to EPSDD with findings and observations in May 2024. 4.21

The monitoring and evaluation activities found that 85 to 88 percent of rental advertisements complied with the obligation to disclose whether the rental property complied with the standard, but that 15 to 20 percent of these reported that they were non-compliant with the standard. The final monitoring and evaluation report identified that further data was required to verify: disclosure and insulation compliance for non-listed lease renewals; the veracity of self-reported compliance; and the quality of insulation upgrades undertaken. In the absence of this data, it is not clear whether the policy outcomes being sought from the implementation of the minimum standard are being met. 4.22

Common Capital's final monitoring and evaluation report identified that there was a strong case to introduce additional compliance measures for the standard. Common 4.30

Capital identified eight opportunities for improvement, many of which relate to compliance arrangements. They include *inter alia*:

- the establishment of a portal or central publicly searchable register ‘to provide auditors, tenants and landlords with transparent and low-cost desktop access to compliance data’;
- a pilot program to provide insulation audits to tenants and landlords with the intention of ‘[providing] reassurance to tenants and landlords that assessments have been conducted accurately’;
- ‘a framework for ongoing access to rental listing data for compliance and enforcement purposes’; and
- ‘a regulatory amendment to require the insulation assessment to be conducted by a certified assessor. This would ensure accurate assessment and reporting of compliance with the Standard’.

As of August 2024, there is no intention by EPSDD and/or JACS to undertake compliance and assurance activity to determine whether landlords are compliant with the standard. 4.31

Reporting

Reporting on the implementation of the minimum standard for ceiling insulation in rental properties has occurred through periodic reporting to Cabinet in response to the climate change commitments made in the ACT Government’s Parliamentary and Governing Agreement for the 10th Legislative Assembly. EPSDD provided status updates to CMTEDD for the purposes of this reporting. The third status report for the Parliamentary and Governing Agreement states that the regulation has been delivered. EPSDD has also provided regular reports to the Minister for Water, Energy and Emissions Reduction on aspects of the regulation that require ministerial consideration and decision. 4.38

Compliance and enforcement

Planning for compliance

During the planning stage in 2021 and prior to the commencement of the standard on 1 April 2023, ACT Government agencies considered compliance and enforcement arrangements for the minimum standard. The need for compliance and enforcement was identified in a 2020 Issues Paper (*Minimum Building Energy Performance Requirements for Rental Properties*), the September 2021 Regulatory Impact Statement, the November 2021 Consultation Paper and *Minimum Standard for Energy Efficiency for Rental Properties Project Plan*. Common Capital’s quarterly monitoring and evaluation reports identified risks in the implementation of the standard and gaps in data and identified opportunities for enhanced compliance and enforcement arrangements. The final monitoring and evaluation report (May 2024) identified eight ‘opportunities for improvement’ to the standard, many of which relate to compliance and enforcement arrangements. 5.15

Monitoring landlord compliance

The minimum standard relies on landlords maintaining records of their compliance with the requirements of the standard, and to truthfully disclose the status of their compliance. Records can include quotations, electrical reports, Certificates of Electrical Safety and/or statutory declarations. There is no assurance process undertaken by ACT Government agencies to verify landlords have retained satisfactory evidence of compliance with the standard. Furthermore, the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998* do not explicitly provide ACT Government agencies with the right to verify landlord records. This means that a landlord's evidence is only reviewed if a tenant brings a matter before the ACT Civil and Administrative Tribunal (ACAT). 5.20

Section 11 of the *Residential Tenancies Regulation 1998* sets out the temporary and permanent exemptions to the minimum standard that are available to landlords, e.g. when a property is going to be demolished within two years, or a tenant objects to the installation of ceiling insulation. ACT Government agencies do not verify the validity of landlord exemptions, and the onus is on the landlord to retain proof that they are exempt. Without effective monitoring of landlord exemptions, there is a risk that the exemptions process may not operate as intended. 5.26

Access Canberra's Electrical Safety Inspection Program mitigates electrical, fire and safety risks by ensuring the safe and effective installation of ceiling insulation. Data is collected through *Certificates of Electrical Safety* whereby a licensed electrician certifies whether a property complies with the *Electricity Safety Act 1971* (ACT) and the *Australia/ New Zealand Wiring Rules* (AS/NZS 3000). If the property does not pass, remediation works must take place before the ceiling insulation is installed. 5.30

Through Common Capital's monitoring and evaluation activity EPSDD obtained some insights into the requirement for advertisements for rental properties to state whether: the premises comply with minimum housing standards (which include energy efficiency standards); or is otherwise exempt. This was reflected in the findings of the monitoring and evaluation reports, which showed that there was some non-compliance with the disclosure requirement and non-compliance with the standard. There was no verification of the data and disclosure could be subject to misrepresentation or inaccuracy by landlords and/or property managers. 5.37

There is no established ongoing process by which ACT Government agencies monitor disclosure obligations in rental advertisements and/or lease agreements to determine if the rental property is compliant, non-compliant or otherwise exempt from the minimum standard. Without effective ongoing monitoring and compliance oversight, there is a risk that landlords and property managers do not comply with this requirement and that the effectiveness of, and community confidence in, the regulation is jeopardised. 5.38

Enforcement of compliance

In the absence of compliance and assurance activity on the part of ACT Government agencies, enforcement of the minimum standard relies on tenants seeking recourse for landlord non-compliance. Under the *Residential Tenancies Act 1997*, tenants may seek recourse via the ACT Civil and Administrative Tribunal (ACAT). The onus is on the tenant to prepare an application and bring a matter before the Tribunal. As of October 2024, ACAT has heard no matters nor made any orders in response to a tenant challenging a landlord over non-compliance with the minimum standard. 5.51

It is a criminal offence under the *Residential Tenancies Act 1997* to: fail to disclose if a property complies with, or is exempt from, the minimum standard in a rental advertisement or new lease for the property; or make a false or misleading statement in rental advertisements about a key aspect of the property’s compliance with the minimum standard. In the absence of compliance and assurance activity on the part of ACT Government agencies, however, ACT Government agencies are not in a position to identify potential non-compliance. 5.58

Unlike other jurisdictions, the ACT does not have a penalty for non-compliance with the standard itself. However, the potential penalty for making a false or misleading statement about compliance (a maximum of \$800 for an individual landlord and \$4,050 for a corporation) is less than the cost of compliance given that installing ceiling insulation can range from an estimated cost of \$5,000 to \$15,000. Other jurisdictions that have minimum rental standards, such as New Zealand and the United Kingdom, have penalties in place for non-compliance with the standard. 5.59



Recommendations

Recommendation 1 Communication of the minimum standard

JACS should review and document the ongoing communication needs of different stakeholder groups (including owners corporations) and develop relevant, targeted communication material as required.

Recommendation 2 Access to landlord records

The ACT Government should seek amendments to section 12 of the *Residential Tenancies Regulation 1998* to provide a mechanism for ACT Government agencies to request landlord records to demonstrate compliance with the standard for the purpose of compliance and enforcement.

Recommendation 3**Monitoring compliance with the minimum standard**

The ACT Government should develop and implement risk-based compliance activity for the minimum standard, which provides assurance with respect to:

- (a) landlord compliance with the requirements to:
 - i) install ceiling insulation according to the requirements of the standard (unless there is a valid exemption); and
 - ii) accurately disclose the status of ceiling insulation in rental advertisements; and
- (b) insulation company compliance with the requirement to use certified and/or provisionally certified installers.

Agencies' responses

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the Environment, Planning and Sustainable Development Directorate, Justice and Community Safety Directorate and Chief Minister, Treasury and Economic Development Directorate were provided with:

- a draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report; and
- a final proposed report for further comment. All comments were considered and required changes were reflected in the final report.

In accordance with subsection 18(3) of the *Auditor-General ACT 1996*, other entities with an interest in the report were provided with extracts of the draft proposed report and final proposed report for comment. All comments were considered and required changes were reflected in the final proposed report.

As part of the final proposed report process, agencies were invited to provide comments for inclusion in the final report in the Summary chapter. No comments were provided for inclusion in this Summary chapter.

1 Introduction

Energy efficient housing

- 1.1 Canberrans who rent are more likely to be living in a less energy efficient home. Better Renting, a tenant advocacy organisation, identified that rental properties tend to have poorer energy performance than owner-occupied properties and that this results in renters spending more on heating and cooling (*Cold and Costly Renter Researchers' Experiences of Winter 22 (2022)*).² Better Renting's *The energy efficiency of rental properties in the ACT* (2018) report also notes that rental properties in the ACT are more likely to have a zero-energy efficient rating compared with houses that are owner-occupied.³
- 1.2 Increasing the energy efficiency of rental properties not only benefits renters through increased thermal performance and lower heating and cooling costs but also reduces greenhouse gas emissions and contributes to the ACT's climate change goals.

Ceiling insulation

- 1.3 The *Value of Ceiling Insulation: Impacts of Retrofitting Ceiling Insulation to Residential Dwellings in Australia* (2011) report, prepared by Energy Efficient Strategies, identified that thermal insulation of ceilings has long been recognised as one of the most significant and cost-effective means for improving the thermal performance of a property.⁴ Effective ceiling insulation can be expected to:
 - improve thermal comfort for inhabitants;
 - reduce heating and cooling costs to householders;
 - improve health outcomes for occupants; and
 - mitigate the impact of peak loads on power supply networks.
- 1.4 Many homes built in the ACT prior to 1997 have little or no ceiling insulation.

² Better Renting (2022) *Cold and Costly Renter Researchers' Experiences of Winter 22*

³ Better Renting (2018) *The energy efficiency of rental properties in the ACT*

⁴ Energy Efficient Strategies, Report for ICANZ (2011) *The Value of Ceiling Insulation: Impacts of Retrofitting Ceiling Insulation to Residential Dwellings in Australia*

Policy commitments for a minimum standard for ceiling insulation

1.5 Various ACT Government policy commitments have supported the introduction of a minimum energy efficiency standard for ceiling insulation. These include:

- the **Parliamentary and Governing Agreement for the 10th Legislative Assembly 2020**. The Agreement outlined policy commitments to enact minimum energy efficiency regulations for rental properties in 2021 with implementation to be progressed from that time. Ceiling insulation was identified as one way to help phase out fossil fuel use in the ACT by 2045, support energy grid stability and support vulnerable households.
- Goal 4C of the **ACT Climate Change Strategy 2019–2025**. The Strategy lists two actions directly relevant to the minimum energy efficiency standard for ceiling insulation:
 - Action 4.6 – *Introduce mandatory disclosure of energy performance for all rental properties by 2022; and*
 - Action 4.7 – *By 2021 introduce legislation for staged minimum energy performance requirements for rental properties to come into force in 2022-23.*
- the **ACT Wellbeing Framework 2020**. The Framework outlines two relevant aspirations:
 - Canberrans have access to secure, suitable and affordable housing throughout their lives; and
 - Canberrans are economically secure and have the means to help manage their lives.

Minimum standard for ceiling insulation in rental properties

1.6 The *Residential Tenancies Act 1997* governs residential tenancies and occupancy agreements in the ACT. The ACT Government made changes to the *Residential Tenancies Act 1997* in 2020 to enable minimum standards to be set for rental properties.

1.7 On 1 April 2023, a new minimum standard for ceiling insulation in rental properties commenced by way of regulation. The new regulation was to have a phase-in period extending to November 2026. Part 3 of the *Residential Tenancies Regulation 1998* now provides for ‘Minimum housing standards – ceiling insulation standards’.

1.8 The standard requires owners of rental properties in the ACT with no insulation, or existing ceiling insulation below an R-value of R2, to install or upgrade the ceiling insulation to a minimum R-value of R5. Rental properties with existing insulation of R2 or higher are considered to meet the standard.

R-Values

- 1.9 'R-value' refers to the thermal resistance of ceiling insulation and is defined in the *AS/NZ Standard 4859.1 Thermal Insulation Materials*. The higher the R-value the more the insulation slows heat flow and insulates a home. In properties without adequate ceiling insulation, up to 35 percent of a dwelling's heat loss is through the ceiling. Properties that have ceiling insulation with an R-value of R2 or less are much more expensive to heat and cool.
- 1.10 The *Building Code of Australia* recommends an R-value of R5 for ceiling insulation in Canberra. An R5 value means that ceiling insulation batts are approximately 25cm thick.

Development of the minimum standard

- 1.11 Community consultation on the minimum standard for ceiling insulation in rental properties commenced in May 2021. A summary paper was prepared by the Environment, Planning and Sustainable Development Directorate (EPSDD), which was based on responses from an online survey that sought views about ceiling insulation, energy efficient heaters and a performance based 'star' rating. The summary report identified that tenants were overwhelmingly supportive of the introduction of the standard whereas landlords had more negative reactions.

Regulatory Impact Statement (September 2021)

- 1.12 EPSDD engaged a consultant to prepare a Regulatory Impact Statement (RIS) and conduct economic and impact analysis of various policy options for the standard. Ten different options were modelled for the purpose of the Regulatory Impact Statement. The Regulatory Impact Statement concluded that:

The option with the strongest supporting evidence is the installation of R5 ceiling insulation with a four-year phase-in.

- 1.13 The recommended option was arrived at based on:
- distributional impact on both tenants and rental providers;
 - the extent of the regulatory burden on stakeholders;
 - the degree of difficulty in implementation; and
 - the views and preferences of the impacted parties.

- 1.14 The Regulatory Impact Statement identified that:

The impact analysis shows that this minimum standard, with a four-year phase-in, would provide around \$18 million in benefits for the ACT — shared across the community, including rental providers and tenants. The analysis shows that for every one dollar spent on the minimum standard, it returns \$1.30 to the community.

Consultation Paper (November 2021)

1.15 In November 2021 EPSDD released a public Consultation Paper to seek views and put forward key questions on the standard and options for implementation. Implementation issues, such as exemptions, compliance, safety and quality issues and monitoring and enforcement were raised for feedback.

Second Listening Report (December 2021)

1.16 Two online YourSay surveys were released in late 2021 – one for rental providers (landlords and real estate agents) and one for tenants. Online workshops were held with key community and stakeholder organisations and stakeholders were invited to prepare written submissions for consideration by EPSDD.

1.17 A second Listening Report was published on the Canberra YourSay platform. The Report concluded that there was strong support for the standard.

Timeframes for landlord compliance

1.18 The minimum standard for ceiling insulation is being phased-in to allow landlords sufficient time to source a certified insulation installer and allow the industry time to build maturity and capability to meet increased demand.

1.19 Table 1-1 describes the three main time periods and associated requirements for the phase-in for the minimum standard for ceiling insulation in rental properties.

Table 1-1 Timeframes for compliance

From 1 April 2023 – disclosure requirements	From 1 April 2023 to 30 November 2026	From 1 December 2026
<p>All rental adverts must disclose whether the rental property complies with the standard.</p> <p>All new lease agreements must disclose whether the rental property complies with the standard.</p>	<p>Unless a temporary or permanent exemption exists, landlords have nine months to comply with the minimum standard after signing a new lease.</p> <p>If a temporary exemption ceases, the landlord must meet the minimum standard within nine months of it ceasing (between 1 April 2023 and 30 November 2026) or within three months of it ceasing (after 30 November 2026).</p> <p>If landlords could not access a certified insulation</p>	<p>Any new rental property has three months from the date the lease is signed to comply with the standard.</p>

From 1 April 2023 – disclosure requirements	From 1 April 2023 to 30 November 2026	From 1 December 2026
	<p>installer, they were granted an exemption through to 1 June 2024 only.⁵</p> <p>If no new lease is signed in this period, the landlord must nevertheless comply with the standard by 30 November 2026.</p>	

Source: ACT Audit Office analysis of information from Justice and Community Safety Directorate website.

Roles and responsibilities

Environment, Planning and Sustainable Development Directorate (EPSDD)

1.20 EPSDD was responsible for the establishment and implementation of the standard. The responsible business unit in EPSDD is the Adaptation and Resilience Policy Team in the Climate Change Policy Branch of the Climate Change, Energy and Water Division.

1.21 EPSDD's role involved preliminary planning, consultation with community stakeholders and industry and development of the Consultation Paper and the Regulatory Impact Statement. EPSDD also worked with the Energy Efficiency Council (EEC) and Canberra Institute of Technology (CIT) to develop and implement a professional certification framework for the insulation industry.

1.22 Other relevant business units in EPSDD include:

- the Climate Change and Energy Communications Team in the Communications and Engagement Branch, which had a role developing communication materials to support the standard;
- the Sustainable Household Scheme Delivery Team in the Climate Change and Energy Programs Branch, which has a role in administering the Home Energy Support Program (HESP) and the Sustainable Household Schemes (SHS); and
- the Energy Efficiency Improvement Scheme (EEIS) Team in the Climate Change and Energy Branch, which requires electricity retailers (through an Energy Savings Target) to help households and small-to-medium businesses save energy. Ceiling insulation is included in this scheme.

⁵ Residential Tenancies (Ceiling Insulation Standard Compliance Exemption) Determination 2023, Notifiable Instrument NI2023-810 made under the *Residential Tenancies Regulation 1998*.

Common Capital

1.23 Common Capital was engaged by EPSDD to provide monitoring and evaluation services for the minimum standard for ceiling insulation in rental properties. Common Capital focussed on:

- monitoring and evaluating the effects of the minimum standard on the private rental sector focusing on compliance, disclosure and identification of any changes in the rental market; and
- evaluating the implementation of the minimum standard across the private rental sector focusing on property and strata managers and private rental providers.

Justice and Community Safety Directorate

1.24 The Justice and Community Safety Directorate (JACS) administers rental and occupancy laws in the ACT, namely the *Residential Tenancies Act 1997* and associated legislation.

1.25 Regulatory responsibility for the minimum standard was intended to transition to JACS in June 2024. This timeframe was to coincide with EPSDD concluding its post-announcement implementation work. The transition actually occurred at the end of August 2024.

1.26 The responsible business unit in JACS is the Housing and Consumer Protection Team in the Civil Law Branch in the Legislation, Policy and Programs Group. Information for landlords, tenants and property managers about the minimum standard for ceiling insulation is available on the ACT Government website (previously the JACS website).

Access Canberra (CMTEDD)

1.27 Access Canberra is responsible for the Electrical Safety Inspection Program. Through this program Access Canberra seeks to ensure the quality and safety of work performed by electricians. Access Canberra's electrical inspectorate seeks to conduct a safety check on 10 percent of insulation installations.

1.28 To ensure compliance with the *Electrical Safety Act 1971*, an electrician is expected to assess any wiring system that is affected by the installation of insulation and complete a *Certificate of Electrical Safety* for lodgement with Access Canberra within 14 days of the assessment. Access Canberra electrical inspectors inspect and audit completed electrical work.

Stakeholders

1.29 There are several government and non-government stakeholders with a role in the implementation of, and compliance with, the minimum standard for ceiling insulation in rental properties. These include:

- landlords / rental providers
 - landlords must ensure their rental property meets the minimum standard or have a temporary or permanent exemption.
- real estate agents / property managers / owners corporations
 - landlords are obliged to ensure their appointed real estate agent discloses in the rental advertisement whether the rental property meets the minimum standard.
 - real estate agents / property managers deal with queries from tenants and organise insulation inspections and work to be carried out in rental properties.
 - owners corporations help ensure that any ceiling insulation fitted in common area ceiling spaces (such as in apartment complexes) have the required approval.
- industry
 - insulation companies and installers and electrical contractors undertake the ceiling insulation installation and electrical remediation works as necessary. Electrical contractors are also responsible for ensuring electrical safety and submitting Certificates of Electrical Safety to Access Canberra.
 - the Energy Efficiency Council (EEC) is responsible for certifying insulation installers under the EEC Professional Certification Framework.
- other ACT Government stakeholders
 - the ACT Administrative and Civil Tribunal (ACAT) is the legal avenue for tenants seeking recourse in cases of non-compliance with the ceiling insulation standard by landlords.
 - WorkSafe ACT has an interest in ensuring the work health and safety of insulation installers.

Audit objective and scope

Audit objective

1.30 The objective of the audit was to assess the effectiveness of the implementation of the minimum standard for ceiling insulation in rental properties.

Audit scope

1.31 The audit considered the activities of ACT government agencies to implement the minimum standard for ceiling insulation in rental properties. This included consideration of:

- administrative arrangements for the implementation of the minimum standard for ceiling insulation in rental properties; and
- monitoring, compliance and enforcement arrangements to support the implementation of the minimum standard for ceiling insulation in rental properties.

1.32 The audit focused on the implementation of the minimum standard for ceiling insulation in rental properties provided through the private rental market in Canberra.

1.33 Key issues considered in the audit included:

- planning and governance arrangements for implementing the minimum standard for ceiling insulation in rental properties;
- controls and processes relating to the operating, risk and safety environments for installing ceiling insulation; and
- arrangements for managing the phase-in requirements and temporary and permanent exemptions.

1.34 The audit also considered ACT Government agencies' activities to:

- monitor and report landlord compliance with the requirements and resolve regulatory and enforcement matters; and
- continually review and refine the implementation arrangements (where appropriate) in a time effective manner.

1.35 A key consideration for the audit was the extent to which ACT Government agencies obtain assurance with respect to rental advertisements and new rental agreements to ensure landlords have complied with legislative requirements.

Out of scope

1.36 The audit did not assess the implementation of the minimum standard for ceiling insulation in rental properties in ACT public housing provided by Housing ACT.

1.37 The audit did not consider the ACT Government's energy support programs, namely the Vulnerable Household Energy Support Scheme (VHESS), the Sustainable Household Scheme (SHS) and the Home Energy Support Program (HESP).

- 1.38 The audit did not consider the merits of government policy for minimum ceiling insulation for rental properties, including:
- the appropriateness of the standard chosen (properties below an R2 value must be raised to R5); or
 - the modelling undertaken, or options proposed in the Regulatory Impact Statement, to support the policy.

Audit criteria, approach and method

Audit criteria

- 1.39 To form a conclusion against the objective, the following criteria and sub-criteria were used:
- Criterion 1 - Have ACT Government agencies established effective governance and administrative arrangements for the implementation of the minimum standard for ceiling insulation in rental properties?
 - Are there documented policies, procedures and processes to support the administration of the minimum standard?
 - Have risks been appropriately considered and mitigated?
 - Are there systems and controls to ensure the safety and quality of ceiling insulation?
 - Have adequate and appropriate resources been assigned to effectively manage and communicate the standards and manage stakeholders?
 - Criterion 2 - Have ACT Government agencies established effective monitoring and reporting arrangements for the implementation of the minimum standard for ceiling insulation in rental properties?
 - Are there systems and processes to effectively report and measure performance?
 - Is performance information used to support continuous improvement?
 - Are there processes for the formal review and evaluation of the implementation of the standards?
 - Criterion 3 - Have ACT Government agencies established effective compliance and enforcement arrangements for the implementation of the minimum standard for ceiling insulation in rental properties?
 - Are there clear roles and responsibilities for compliance and enforcement activity?
 - Are there systems and controls to monitor compliance with the minimum standard? There are two elements of compliance:
 - (a) landlord compliance with the minimum standard (or having a valid temporary or permanent exemption); and
 - (b) the requirement that all rental advertisements state whether the property complies with the standards.

- Are there systems and controls to support regulatory / enforcement action for non-compliance with the minimum standard?

Audit approach and method

- 1.40 The audit was performed in accordance with *ASAE 3500 – Performance Engagements*. The audit adopted the policy and practice statements outlined in the Audit Office's *Performance Audit Methods and Practices (PAMPr)* which is designed to comply with the requirements of the *Auditor-General Act 1996* and *ASAE 3500 – Performance Engagements*.
- 1.41 In the conduct of this performance audit the ACT Audit Office complied with the independence and other relevant ethical requirements related to assurance engagements

Audit method

- 1.42 The Audit Office engaged Energy Efficient Strategies (EES) for technical advice. EES provides policy development, program and technical support for the development and implementation of energy efficiency programs.
- 1.43 The audit approach and method consisted of:
- a walkthrough of the implementation, monitoring and enforcement arrangements;
 - reviewing relevant legislation (the *Residential Tenancies Act 1997*, the *Residential Tenancies Regulation 1998*, Notifiable Instruments and explanatory memoranda), the governance and accountability framework, policies and procedures, research documents, and relevant reports and publications;
 - identifying and documenting internal controls and procedures in EPSDD, JACS and Access Canberra that relate to minimum ceiling insulation standards for rental properties and evaluating the effectiveness of those controls;
 - reviewing any relevant risk management documentation; and
 - conducting interviews and discussions with key staff in relevant ACT Government entities and other stakeholders (such as industry and advocacy bodies) who have roles and responsibilities in relation to the standard.

1.44 Representatives from twelve stakeholder organisations met with the Audit Office:

- peak bodies
 - Insulation Council of Australia and New Zealand (ICANZ);
 - Real Estate Institute of the ACT (REIACT); and
 - Energy Efficiency Council (EEC).
- non-government organisations
 - ACT Council of Social Services (ACTCOSS);
 - Better Renting; and
 - Owners Corporation Network of the ACT.
- real estate agents
- insulation companies
- electrical companies

2 Planning for implementation

2.1 This chapter discusses planning for the implementation of the minimum energy efficiency standard for ceiling insulation in rental properties. It considers:

- planning for the new standard;
- communication with stakeholders; and
- the development of project documentation.



Summary

Conclusions

EPSDD undertook a variety of planning activities to prepare for the implementation of the minimum standard. This included the preparation of project planning and communication documentation. Most of the planned activities were undertaken as planned.

One activity that wasn't undertaken, as planned, was the preparation of a *Compliance and Decision-Making Policy*. By not developing such a policy, ACT Government agencies' activities to monitor and enforce compliance with the standard is impaired.



Key findings

Planning for the new standard

Paragraph

The ACT Government has implemented financial support schemes to support ACT households to improve the energy efficiency of their homes. The interest-free loans and rebates for eligible homeowners may also be used by landlords to assist with improving the energy efficiency of rental properties. These include the Sustainable Household Scheme and the Home Energy Support Program. There have been a very low number of Sustainable Household Scheme loans taken out by landlords for the purposes of ceiling insulation.

2.11

Communication with stakeholders

EPSDD sought to communicate the requirements of the minimum standard to various stakeholder groups. To guide its communication activities EPSDD developed an *Announcement Communications Plan* in October 2022 and a *Post Announcement Communications Plan* in June 2023. Communication activities have included industry briefings, emails to landlords, tenants and real estate agents / property managers and social media posts. The communication activities identified in the plans were undertaken as identified.

2.33

With respect to the conduct of communications, Common Capital's final monitoring and evaluation report in May 2024 noted 'a comprehensive communications strategy was implemented to ensure key stakeholders were kept informed' but there were 'limitations with [channels available to the Government to reach stakeholders] which impacted their reach and efficacy'. Feedback to the Audit Office from owners corporations suggests that communication about the implementation of the minimum standard to this stakeholder group was not effective. 2.34

Project documentation

EPSDD developed a *Minimum Standard for Energy Efficiency for Rental Properties Project Plan* to support the implementation of the regulation. The Project Plan documented deliverables, scheduling requirements, risks to implementation, reporting processes and stakeholder management activities. 2.52

EPSDD achieved some of the Project Plan deliverables, but did not achieve others such as the conduct of a Risk Register Review, the development of a *Compliance and Decision-Making Policy* or a plan for the transfer of policy responsibilities to JACS. Internal reporting against the Project Plan occurred on four occasions: 30 October 2023; 15 January 2023; 9 February 2024; and 27 August 2024. By not developing a *Compliance and Decision-Making Policy* ACT Government agencies' activities to monitor and enforce compliance with the standard is impaired. 2.53

Transition of policy responsibility to JACS

The *Minimum Standard for Energy Efficiency for Rental Properties Project Plan* identified an intention to develop a *Plan for Transference of Regulatory Responsibilities* for the transfer of policy responsibility from EPSDD to JACS. The Project Plan was not prepared, as JACS was of the view that it was not required. Notwithstanding this, informal discussions and meetings took place between EPSDD and JACS and transition activities had been identified. Without an agreed and documented transition plan, however, there is a risk that roles, responsibilities and implementation actions are not defined, and policy responsibility is ineffectively transferred. 2.60

Planning for the new standard

Implementation timeline

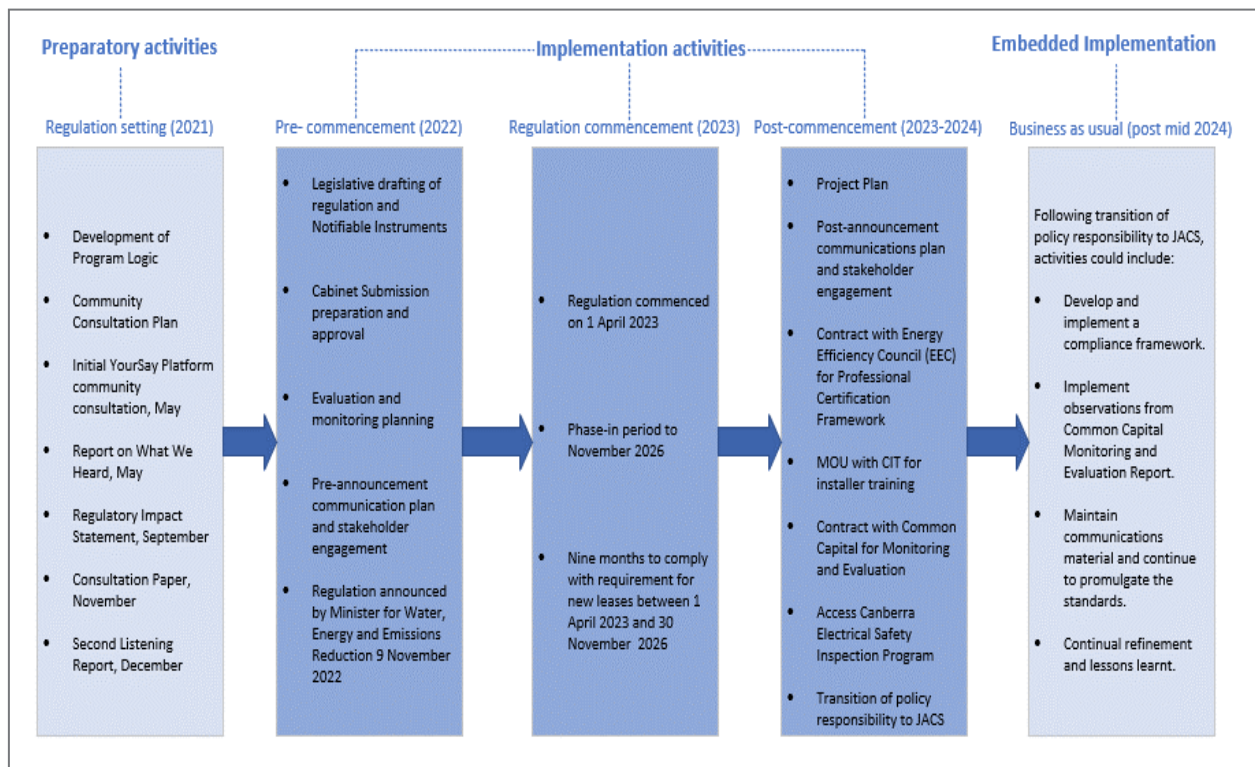
- 2.2 ACT Government agencies commenced preparatory work on the minimum standard for ceiling insulation in rental properties in 2021. The standard will be fully operational when the phase-in period concludes in November 2026.

2.3 The audit focuses on implementation activities between 2022 and 2024. For the purposes of the audit, the Audit Office has characterised these activities as occurring in three periods:

- Pre-commencement (2022) - this period focused on legislative drafting, stakeholder engagement and evaluation planning;
- Regulation commencement (2023) - this period focused on the commencement of the regulation; and
- Post-commencement (2023 to 2024) - this period focused on stakeholder communications, arrangements for the installer Certification Framework and commissioning of monitoring and evaluation activities.

2.4 Figure 2-1 provides an overview of the planning and implementation activities that occurred between 2021 and 2024. The audit does not specifically consider the business-as-usual phase, which is identified as occurring from mid-2024.

Figure 2-1 Preparatory and implementation activities for the minimum standard for ceiling insulation in rental properties



Source: ACT Audit Office. The phases and activities were identified by the ACT Audit Office during the conduct of audit fieldwork.

Government financial incentives

2.5 There are a variety of loan and financial support schemes to support ACT households to improve the energy efficiency of their homes. The interest-free loans and rebates for eligible homeowners may also be used by landlords to assist with improving the energy efficiency of rental properties.

The Sustainable Household Scheme (SHS)

- 2.6 The Sustainable Household Scheme was introduced in July 2021. It provides zero-interest loans of up to \$15,000 to eligible homeowners (or community groups) to support the cost of energy-efficient upgrades such as rooftop solar, household battery storage systems, electric stove tops, hot water heat pumps and ceiling insulation. Ceiling insulation was added to the scheme following the introduction of the minimum standard for ceiling insulation in rental properties in April 2023.
- 2.7 As of 26 July 2024, approximately 23,500 loan applications had been received from ACT households and over 19,000 loans had been settled for a total of \$213.2 million for solar, battery and electrification upgrades under the Sustainable Household Scheme.
- 2.8 Of these Sustainable Household Scheme loans, only 266 are for ceiling insulation (with a value of \$2.1 million). Twenty-nine loans were taken out by landlords for the purposes of complying with the minimum standard for ceiling insulation in rental properties.

Home Energy Support Program (HESP)

- 2.9 The Home Energy Support Program was introduced in 2021. The Program provides a one-off 50 percent rebate (capped initially at \$5,000 and then reduced to \$2,500) for eligible homeowners for the upfront costs of installing ceiling insulation. The scope of the program is small and eligibility is linked to the *Affordable Community Housing Land Tax Exemption Scheme*. This Scheme supports landlords who are a registered community housing provider. For those eligible, the rebate may be combined with the Sustainable Household Scheme.
- 2.10 In 2020-21, 54 eligible landlords upgraded their properties and received the higher rebate of \$5,000. Since April 2023, three landlords have applied for the Home Energy Support Program. This lower number may reflect that most landlords who have the land tax exemption already applied for, and were granted, the rebate in the first year of the program.



- 2.11 The ACT Government has implemented financial support schemes to support ACT households to improve the energy efficiency of their homes. The interest-free loans and rebates for eligible homeowners may also be used by landlords to assist with improving the energy efficiency of rental properties. These include the Sustainable Household Scheme and the Home Energy Support Program. There have been a very low number of Sustainable Household Scheme loans taken out by landlords for the purposes of ceiling insulation.

Communication with stakeholders

- 2.12 EPSDD sought to communicate the requirements of the minimum energy efficiency standard for ceiling insulation in rental properties to various stakeholder groups.

Announcement Communications Plan (October 2022)

2.13 EPSDD prepared an *Announcement Communications Plan* in October 2022. The purpose of the plan was:

To inform impacted community members and industry groups about the minimum energy efficiency standard regulation so that they can prepare for its implementation and understand their rights and obligations under the regulation; and

To inform the ACT community about the positive wellbeing and environmental impacts of ceiling insulation and generate community support for the new regulation.

2.14 The *Announcement Communications Plan* identified communications deliverables from September 2022 through to the announcement of the standard on 1 April 2023, including:

- a Minister's information brief;
- stakeholder briefings with target groups, including property advertising platforms; and
- media materials and website content.

2.15 The activities identified in the *Announcement Communications Plan* were undertaken as expected. For example, presentations and webinars were prepared by EPSDD for the stakeholder briefings, including briefings for the real estate sector and information briefs were prepared for Ministerial consideration. Attendance reports from the pre-announcement stakeholder briefings were maintained. For example, an online information session for real estate agents had 90 participants and an online information session for industry had 13 participants.

2.16 JACS and EPSDD also sent emails to landlords, tenants and agents with a listed rental bond in Canberra at the time the regulation commenced (approximately 60,000 persons). The email campaign was in addition to articles in the *Our Canberra* newsletter, which were distributed to households across Canberra with information about the reforms.

Website information

2.17 EPSDD developed information for landlords, tenants and strata managers, owners corporations and apartment owners. The information has been available on the JACS website (now the ACT Government website) since the ACT Government announced the standard on 9 November 2022.

2.18 The website material communicates what the standard is, what the timeframes for compliance are and why there is a need to improve ceiling insulation in rental properties. The website material outlines the temporary and permanent exemptions that are available and provides information about the Sustainable Household Scheme. There is also information pertaining to safety and the skills installers are required to possess.

- 2.19 The ACT Government website also has fact sheets targeted towards specific audiences. The factsheets appropriately outline the requirements, key implementation dates and timeframes and information about enforcement of the standard through the ACT Civil and Administrative Tribunal (ACAT). The factsheets identify the need to retain evidence of compliance and outline safety requirements. A landlord checklist is also provided to support compliance with the standard.

ACT Government Renting Book

- 2.20 The ACT Government's *Renting Book* (developed by JACS) provides a guide to rental laws in the ACT. Ceiling insulation in rental properties is referred to widely in this handbook and features as part of the tenant's checklist.
- 2.21 The *Renting Book* provides information on the minimum standard for ceiling insulation, compliance requirements, the permanent and temporary exemptions, safety and electrical considerations and the need for tenants to provide access to a property for the purposes of installation. Tenants' legal rights are also discussed where they do not wish to provide access to a property.

Post Announcement Communications Plan (June 2023)

- 2.22 EPSDD produced a *Post Announcement Communications Plan* in June 2023. The Plan stated:

The regulation is now in effect. For the next 12 months, EPSDD will action short bursts of communications activity to remind impacted community members and industry groups of their rights and obligations under the regulation.

- 2.23 Similar to the *Announcement Communications Plan*, the *Post Announcement Communications Plan* targets relevant stakeholder groups. The Plan identified an intention to deliver:

- a factsheet each for rental providers and renters;
- a news item on the Energy Efficiency Council website;
- additional JACS website (now the ACT Government website) material;
- emails to landlords, strata managers and property managers to communicate the standard;
- an online information session for the insulation and electrical industry (including building assessors); and
- three social media posts on the EPSDD Facebook page aimed at a general audience, renters and rental providers.

- 2.24 The activities identified in the *Post Announcement Communications Plan* were undertaken as expected.

- 2.25 Shortly after commencement, JACS, EPSDD and Access Canberra also worked together to prepare and disseminate a follow up email that was sent to all licensed real estate agents in the ACT to provide information about the minimum standard and invite them to a webinar.

Effectiveness of communication

Feedback from owners corporations

- 2.26 Feedback to the Audit Office from owners corporations suggests that communication about the implementation of the minimum standard to this stakeholder group was not effective. Feedback also suggests that compliance with the requirements of the standard amongst landlords of apartments may be very low.
- 2.27 A strata manager interviewed for the purpose of the audit advised that the minimum standard for ceiling insulation has been raised at very few of the Body Corporate Annual General Meetings (AGM) that they had attended (AGMs are typically annual meetings attended by all lot holders in an owners corporation arrangement). Another stakeholder identified that more communication and assistance was needed for owners corporations to address questions relating to compliance with the minimum standard.

Evaluation of communications material

Campaign evaluation report

- 2.28 EPSDD produced a communications campaign evaluation report covering social media and Google activity for the period 19 April to 26 May 2023. The report noted that the approach was:

An integrated approach across paid, owned and earned channels to inform and educate ACT renters and rental providers about the new regulation.

- 2.29 Key findings of the evaluation were that:
- social activity performed well, achieving all its respective benchmarks;
 - a total of 3,244 clicks on the website information were received; and
 - Facebook posts were tracked to see how users interacted with the material – the engagement rate was 0.56 percent which was well below the EPSDD average engagement rate for social media (6.7 percent).
- 2.30 The evaluation report indicates that EPSDD has been proactive in measuring its own success through social media channels.

Common Capital Final monitoring and evaluation report (May 2024)

2.31 In April 2023, EPSDD engaged Common Capital to provide monitoring and evaluation services for the implementation of the standard (refer to paragraphs 4.5 to 4.22). Common Capital’s final monitoring and evaluation report discussed communications:

A comprehensive communications strategy was implemented to ensure key stakeholders were kept informed ...

The communication strategy included two rounds of public consultation and used all channels available to the Government to reach stakeholders. However, there were limitations with these channels which impacted their reach and efficacy. This included a limit on the number of direct mailouts to landlords. In addition, use of these channels to reach landlords was not possible before the regulation’s enabling legislation was amended.

2.32 There are no further plans to evaluate communication material and/or undertake additional stakeholder communications.



2.33 EPSDD sought to communicate the requirements of the minimum standard to various stakeholder groups. To guide its communication activities EPSDD developed an *Announcement Communications Plan* in October 2022 and a *Post Announcement Communications Plan* in June 2023. Communication activities have included industry briefings, emails to landlords, tenants and real estate agents / property managers and social media posts. The communication activities identified in the plans were undertaken as identified.



2.34 With respect to the conduct of communications, Common Capital’s final monitoring and evaluation report in May 2024 noted ‘a comprehensive communications strategy was implemented to ensure key stakeholders were kept informed’ but there were ‘limitations with [channels available to the Government to reach stakeholders] which impacted their reach and efficacy’. Feedback to the Audit Office from owners corporations suggests that communication about the implementation of the minimum standard to this stakeholder group was not effective.



Recommendation 1

Communication of the minimum standard

JACS should review and document the ongoing communication needs of different stakeholder groups (including owners corporations) and develop relevant, targeted communication material as required.

Project documentation

2.35 The following section of the report considers project documentation that was developed to support the implementation of the minimum energy efficiency standard for ceiling insulation in rental properties. Good project documentation supports appropriate management and monitoring. This is especially the case where multiple government agencies are involved, as good project documentation can enable agreement on objectives, outputs and outcomes and the tracking of progress.

Minimum Standard for Energy Efficiency for Rental Properties Project Plan

2.36 In June 2023, two months after the standard was announced, EPSDD developed a *Minimum Standard for Energy Efficiency for Rental Properties Project Plan* (the Project Plan). The Project Plan was approved by the Director of the Adaptation and Resilience Policy Team. The objective of the Project Plan was to support the implementation of the regulation by documenting deliverables, scheduling requirements, risks to implementation, reporting processes and stakeholder management activities.

2.37 EPSDD's Adaptation and Resilience Policy Team is responsible for the implementation of the Project Plan and its activities and deliverables. Support is provided by the Climate Change and Energy Communications Team and Common Capital consultants.

2.38 EPSDD was of the view it was not necessary for JACS to be closely involved in project planning. Nevertheless, EPSDD did consult JACS for the purpose of implementation. For example, the Adaptation and Resilience Policy Team held periodic meetings with the Housing and Consumer Protection Team in JACS to discuss changes, decision points, challenges and mitigation actions. The teams worked together to plan meetings and stakeholder engagement activities for the implementation of the project.

Scope and deliverables of the Project Plan

2.39 The Project Plan identified activities for the implementation of the minimum standard including:

- implementing, managing and facilitating a monitoring and evaluation contract with Common Capital;
- periodically updating the communication strategies and completing relevant tool and template updates;
- project managing the transition of responsibility for the regulation to JACS; and
- updating the regulation as required in response to any implementation issues.

2.40 The deliverables of the Project Plan are outlined in Table 2-1.

Table 2-1 Project Plan deliverables

Item	Due Date
Risk Register Review and Compliance Decision Making Policy	September 2023
Delivery of webinars to internal and external stakeholders	September 2023
Plan to transfer regulatory responsibilities to JACS	October 2023
Briefs to the Executive – 6 -12 months after commencement	October / November 2023
Monitoring and Evaluation Quarterly and Final Reports	June 2024

Source: Audit Office, based on *Minimum Standard for Energy Efficiency for Rental Properties Project Plan, Deliverables*.

Risks

2.41 Risks were identified in the Project Plan. Three ‘moderate’ risks in relation to implementation were identified:

- rental provider non-compliance;
- industry raising a previously unidentified insulation safety or compliance risk; and
- no or slow uptake of training and certification, including certification delays.

2.42 The management of risks is discussed further in Chapter 3.

Program logic

2.43 A program logic represents inputs, goals and activities, operational and organisational resources, techniques and practices and the expected outputs and effects of a program. A program logic is a tool used for both planning and evaluation purposes.

2.44 Prior to the development of the Regulatory Impact Statement in 2021, EPSDD developed an initial program logic titled *Program Logic – Minimum energy efficiency standards for rental properties* for the period 2020 to 2022. The initial program logic has since been adapted and maintained as a part of the current Project Plan.

Achievement of Project Plan deliverables

2.45 The Project Plan and its activities and deliverables have been partially implemented and achieved. The following deliverables have been fully achieved:

- monitoring and evaluation – quarterly and final reports (discussed in Chapter 3);
- webinars to internal and external stakeholders; and
- a brief to the Minister 12 months after commencement.

2.46 The following deliverables have not been achieved as intended:

- *Risk Register Review*
 - EPSDD advised that a Risk Register was not developed as intended but risks were assessed as they arose and/or via the Adaptation and Resilience Policy Team’s operational risk register. The implications of such an approach, as opposed to preparing a standalone Risk Register to manage risks, is discussed further in Chapter 3.
- *Compliance and Decision-Making Policy*
 - a *Compliance and Decision-Making Policy* was not prepared as intended.
- a brief to the Minister six months after commencement
 - EPSDD advised that a six-month brief to the Minister was deemed unnecessary due to inconclusive findings from the monitoring and evaluation work and that a ‘watch and wait’ approach was advised by Common Capital consultants because of the early stage of implementation.
- *Plan for Transference of Regulatory Responsibilities*
 - JACS indicated to EPSDD that a formal plan to transfer policy responsibility was not required as JACS felt that it had sufficient knowledge of the regulation through informal discussions with EPSDD.

2.47 The Project Plan is updated and reviewed on a monthly to bi-monthly basis, which provides updated information on deliverables, scheduling (via a Gantt chart) and reporting. Various versions of the Project Plan were sighted confirming it is used, regularly monitored and updated.

Reporting against the Project Plan

2.48 Internal reporting against the Project Plan occurred on four occasions: 30 October 2023; 15 January 2023; 9 February 2024; and 27 August 2024. Reports were prepared by the Assistant Director, Adaptation and Resilience Policy and provided to the Director, Adaptation and Resilience Policy.

2.49 The reports typically comprised:

- a traffic light project status update;
- a listing of issues and concerns – such as new or increased risks or blockers; and
- a listing of forthcoming priorities.

2.50 The most current report against the Project Plan was dated 27 August 2024. The report identified that the implementation of the minimum standard for ceiling insulation in rental properties was on schedule, within scope and on budget. The report also identified:

- the uptake of training and industry capability to meet demand was on track and being monitored; and
- outcomes of monitoring and evaluation findings will be taken forward by the Adaptation and Resilience Policy Team, subject to remaining funding.

2.51 The 27 August 2024 report also identified that:

- despite the monitoring and evaluation report identifying the benefits of compliance activity, and the broad stakeholder support for such activity, no such activity had been prepared prior to handover to JACS; and
- there was no knowledge bank or subject-matter expertise to address technical queries regarding ceiling insulation.



2.52 EPSDD developed a *Minimum Standard for Energy Efficiency for Rental Properties Project Plan* to support the implementation of the regulation. The Project Plan documented deliverables, scheduling requirements, risks to implementation, reporting processes and stakeholder management activities.



2.53 EPSDD achieved some of the Project Plan deliverables, but did not achieve others such as the conduct of a Risk Register Review, the development of a *Compliance and Decision-Making Policy* or a plan for the transfer of policy responsibilities to JACS. Internal reporting against the Project Plan occurred on four occasions: 30 October 2023; 15 January 2023; 9 February 2024; and 27 August 2024. By not developing a *Compliance and Decision-Making Policy* ACT Government agencies' activities to monitor and enforce compliance with the standard is impaired.

Transition of policy responsibility to JACS

2.54 JACS is responsible for administering the *Residential Tenancies Act 1997* and associated rental legislation.

2.55 It was anticipated by both EPSDD and JACS that policy responsibility for the minimum standard for ceiling insulation in rental properties would be transferred to the JACS Housing and Consumer Protection Team from June 2024. JACS and EPSDD agreed that this was appropriate as it would coincide with the final Common Capital monitoring and evaluation report (refer to paragraphs 4.17 to 4.22). JACS was responsible for addressing the findings and observations made in the Common Capital report.

- 2.56 The Project Plan referred to the need to establish a pathway to transfer policy functions to JACS with a *Plan for Transference of Regulatory Responsibilities* being a deliverable due in October 2023. The plan was not developed as intended, as JACS indicated that a formal plan was not necessary.
- 2.57 A revised Project Plan, developed by EPSDD in April 2024, identified the transition activities, which were to include:
- briefing the Minister on monitoring and evaluation activities (June/early July 2024).
 - this Brief was important to put forward the issues and opportunities for improvement that are identified in the final monitoring and evaluation report.
 - administrative considerations such as information governance, legal policy, communications, Access Canberra engagement, ongoing knowledge transfer options and procedures (end July 2024).
 - administrative considerations are important to enable complete records transfer to JACS and website material and contact points to be updated in a timely manner. It is also important to ensure all stakeholders, including Access Canberra, are aware of the transfer.
 - Transition Brief to Minister (end July 2024).
 - this is important as Ministerial agreement on the date for the formal transfer of administrative responsibility to JACS is required.
- 2.58 The Transition Brief to the Minister for Water, Energy and Emissions Reduction, intended for the end of July 2024, was provided by EPSDD in August 2024. It recommended that the handover to JACS of administrative responsibilities for the standard occur by 1 September 2024. The brief noted that EPSDD would offer subject matter expertise for a period after the transfer, as required. Policy responsibility was formally handed to JACS in late August 2024. The brief did not address the reasons for the delay between the planned transfer date (June 2024) and the actual transfer date (August 2024).
- 2.59 Documenting the transition arrangements is critical to ensure that there is clear agreement and acceptance of the arrangements by all relevant staff included senior executive managers. It also promotes transparency of the transaction and accountability. There is a risk that corporate knowledge associated with the implementation of the standards, such as challenges, issues and priority action items, is lost.



2.60 The *Minimum Standard for Energy Efficiency for Rental Properties Project Plan* identified an intention to develop a *Plan for Transference of Regulatory Responsibilities* for the transfer of policy responsibility from EPSDD to JACS. The Project Plan was not prepared, as JACS was of the view that it was not required. Notwithstanding this, informal discussions and meetings took place between EPSDD and JACS and transition activities had been identified. Without an agreed and documented transition plan, however, there is a risk that roles, responsibilities and implementation actions are not defined, and policy responsibility is ineffectively transferred.

3 Risk management

3.1 This chapter discusses the risk management activities undertaken to support the implementation of the minimum standard for ceiling insulation in rental properties.

Summary



Conclusions

EPSDD did not develop a standalone risk management plan or risk register for the implementation of the minimum standard, including with respect to risks of fraudulent or unethical behaviour. This means that EPSDD's activities to identify and manage risks in the implementation of the standard have not been explicitly recognised and documented.

It is apparent, however, that EPSDD has undertaken a range of activities to manage and mitigate electrical, fire and safety risks associated with the installation of ceiling insulation. This includes requiring ceiling installation to be installed by installers certified under an ACT Government recognised certification framework and relying on Access Canberra's Electrical Safety Inspection Program to provide assurance over the safe installation of ceiling insulation.



Key findings

Risk management documentation

Paragraph

EPSDD did not develop a standalone risk management plan or risk register for the implementation of the minimum standard. EPSDD did, however, identify implementation and delivery risks in a range of early program documents including: the original program logic that was developed prior to the Regulatory Impact Statement; and the *Minimum Standard for Energy Efficiency for Rental Properties Project Plan*. EPSDD did not, however, identify specific controls or mitigation strategies for these risks in either the original program logic or Project Plan.

3.22

There are risks associated with the minimum standard that may lead to fraudulent or unethical behaviour. This includes the risk of a landlord seeking to avoid or minimise the cost of insulation by stating that the rental property has an R2 value, or higher, when it does not. However, EPSDD has not undertaken a separate, standalone fraud risk assessment, nor has EPSDD separately categorised risks with reference to fraudulent or unethical behaviour.

3.23

Risks associated with implementation of the standard

EPSDD has introduced measures to mitigate risks associated with untrained and unqualified installers installing ceiling insulation. Two Notifiable Instruments were enacted to the effect that:

3.29

- only certified installers or provisionally certified installers under an ACT Government recognised certification framework are able to install ceiling insulation; and
- landlords were exempt from the minimum standard between 1 January 2024 through to 30 June 2024 if they could not source a certified installer.

EPSDD, along with its counterparts in other jurisdictions, engaged the Energy Efficiency Council (EEC) to develop a professional certification framework for ceiling insulation installers. EPSDD also funded eight training courses for installers through a Memorandum of Understanding with CIT. These arrangements sought to build knowledge and capacity in the sector and reduce risks associated with the improper installation of ceiling insulation.

3.42

As at July 2024, the Energy Efficiency Council portal identified a total of 57 fully certified insulation installers operating in the ACT. Seventeen of these installers have been certified through EPSDD-funded training provided by CIT. The balance of these installers have been certified through providers other than CIT (such as the Green Building Institute, Best Option Training and Master Builders ACT) which also offer relevant training to installers to support accreditation.

3.43

Access Canberra's Electrical Safety Inspection Program seeks to mitigate electrical safety risks in the ACT building and construction industry, including those associated with the installation of ceiling insulation. All planned installations of ceiling insulation must ensure that a licensed electrician undertakes an electrical safety check before work is undertaken. Access Canberra's *Standard Operating Procedure – Thermal Insulation Roof Space Inspections* (March 2023), provides for Access Canberra's Electrical Inspections Team to audit 10 percent of all *Certificates of Electrical Safety* to ensure the requirements of the *Electrical Safety Act 1971* are met. A review of *Certificates of Electrical Safety* issued for the period 1 September 2023 to 8 April 2024 shows that the overall pass rate for electrical safety checks for ceiling insulation is extremely high; the data analysis identified a 95.89 percent pass rate. This indicates that there are very few electrical risks detected from licensed electricians who are performing electrical checks of ceiling insulation in both rental and non-rental properties.

3.50

There is some guarantee of the quality of installation as new installations must be undertaken by a certified or provisionally certified installer. However, for those rental properties that already comply with a minimum R-value of R2 (or more) and do not need to upgrade their insulation to comply, there are no explicit provisions in the regulations to guarantee the quality of the pre-existing insulation, such as the completeness of its coverage in the roof cavity.

3.58

The minimum standard requires rental properties with no insulation or existing ceiling insulation with an R-value below R2, to install or upgrade the ceiling insulation to a minimum R-value of R5. Landlords are taken to comply with the standard once they have reached a \$10,000 limit for installing ceiling insulation in as many designated rooms as possible. For new installations, the quality of insulation is supported because only certified or provisionally certified installers be used. However, for pre-existing insulation the regulation does not explicitly specify pre-existing insulation be safe, in reasonable condition and/or complete in its coverage.

3.59

The regulation does not refer to the Australian Standard for *Thermal Insulation of Dwellings* which covers the correct installation of ceiling insulation. This means that the performance of the insulation may be less than optimal and may hinder the ACT Government's emissions reduction targets and decrease the energy efficiency of the rental property.

3.60

Risk management documentation

Project documentation

- 3.2 EPSDD did not develop a standalone risk management plan or risk register for the implementation of the minimum standard for ceiling insulation in rental properties.
- 3.3 In response to the final proposed report, ACT Government agencies advised 'while no formal risk register was created, legislative, regulatory, and process-based treatments were implemented to address identified risks'.
- 3.4 EPSDD did identify implementation and delivery risks in the following project documents:
- the original program logic that was developed prior to the Regulatory Impact Statement. The risks include:
 - opposition by some rental providers weakening community support;
 - regulation leading to perverse outcomes in the rental market;
 - 'do it yourself' installation and safety issues;
 - insufficient industry capacity and capability may mean demand can't be met;
 - delays in implementation can impact on government reputation; and
 - complexities in implementation if an energy rating tool to assess ceiling insulation needs to be developed.
 - the *Minimum Standard for Energy Efficiency for Rental Properties Project Plan*. The risks identified include:
 - rental provider non-compliance (rated as a moderate risk);
 - industry raises an insulation safety or compliance risk to EPSDD (rated as a low risk);

- no or slow uptake of training and certification, including certification delays (rated as a moderate risk);
 - JACS team extends timeframe of regulatory transition (rated as a low risk);
 - consumer issues with initial installations (rated as a low risk);
 - safety issues, such as fire or installer injury (rated as a moderate risk); and
 - insufficient or incomplete data for successful monitoring and evaluation (rated as a moderate risk).
- 3.5 There are no specific controls or mitigation strategies identified against the risks in either the original program logic or Project Plan.
- 3.6 According to EPSDD, implementation risks are reviewed and addressed dynamically as issues arise and/or as part of the Adaptation and Resilience Policy Team’s operational risk register, which is periodically updated.

Home Energy Support Program

- 3.7 In 2022, prior to the commencement of the minimum standard in 2023, EPSDD’s Household Programs Team engaged Charterpoint to develop a risk management plan and assurance report for ceiling insulation upgrades in residential properties delivered through ACT Government programs. This is known as the *Home Energy Support Program Assurance Report*.
- 3.8 Even though the *Home Energy Support Program Assurance Report* was produced for the purposes of the Home Energy Support Program, it provides a view of risks associated with ceiling insulation.
- 3.9 The *Home Energy Support Program Assurance Report* was developed with reference to various source documents directly applicable to the minimum standard for energy efficiency in rental properties such as:
- the Regulatory Impact Statement;
 - the Commonwealth of Australia’s *Report of the Royal Commission into the Home Insulation Program (2014)*;
 - the *National Construction Code* (the Building Code of Australia); and
 - various Australian Standards that relate to ceiling insulation such as *AS3999:2015 Bulk Thermal Insulation – Installation*, *AS 3999 - Thermal Insulation of Dwellings – Installation Requirements* and *AS/NZS3000: Wiring Rules*.
- 3.10 The objective was to:
- ... develop a strategic risk management plan for the ACT Government to manage risks that may arise in delivering ceiling insulation upgrades in residential properties through EPSDD programs, in order to protect all interested parties (the public, industry, and government).

3.11 Seven risks were identified:

- failure to ensure installer safety;
- failure to ensure home occupier and property safety;
- inferior quality installs and illegal systems;
- lack of industry capacity/capability;
- poor program design;
- poor financial payback to households; and
- poor service delivery by the Financial Services Provider to support the program.

3.12 Controls associated with each of the risks were identified and mapped against the ‘three lines of defence’ model. An assurance map and risk register was produced to accompany the report. The report concluded:

Based on the assurance mapping and workshops conducted, we confirm that we are satisfied that the controls identified by the EPSDD to mitigate risks that may arise in delivering ceiling insulation upgrades in residential properties through EPSDD programs provide reasonable assurance across the three lines of defence to mitigate any potential adverse impacts resulting from the implementation of the ceiling insulation related programs.

3.13 However, the report also stated ‘we note that Charterpoint has not undertaken any work to validate that any of the controls have been implemented and operative at the time of this report’.

Risks of fraudulent or unethical behaviour

3.14 EPSDD has not undertaken a separate, stand-alone fraud risk assessment to support the implementation of the minimum standard for ceiling insulation in rental properties, nor has EPSDD separately categorised risks with reference to fraudulent or unethical behaviour.

3.15 There are risks associated with the minimum standard that may lead to fraudulent or unethical behaviour. For example:

- where the landlord seeks to avoid or minimise the cost of insulation; and
- where the insulation installer misstates either the existing ceiling insulation level or the installed insulation level.

Where the landlord seeks to avoid or minimise the cost of insulation

3.16 A landlord may seek to avoid or minimise the cost of insulation by stating that the rental property has an R2 value, or higher, when it does not. This may be done in good faith where the landlord does not properly understand the requirement. It may also be done to avoid

the additional cost. In both cases, continual education of landlords (and certified insulation installers) may help to minimise misrepresentations.

3.17 Alternatively, landlords may install R2 value insulation in an uninsulated rental property and declare that the property already complies with the minimum standard for ceiling insulation and that an upgrade is not required.

3.18 The original program logic identified a potential control in relation to this (being the identification or development of a suitable energy rating tool) but actually articulated it as a risk that may lead to delays in implementation:

... if a performance based option is chosen the identification/development of a suitable energy rating tool may require a delay (and resources).

Where the insulation installer misstates either the existing ceiling insulation level or the installed insulation level

3.19 To obtain work and increase profits, insulation installers may state the insulation installed in the ceiling does not meet the minimum requirements when it does. An installer may take advantage of the situation and either overcharge or provide insulation with a lower R-value than required by the regulations (thereby overstating the R-value in the receipt to the landlord) to maximise profits.

3.20 In response to the draft proposed report, ACT Government agencies advised that this risk would be mitigated by the provision of ‘support to increase the number of certified installers and firms with certified installers to provide competition, and the ability for landlords or property managers to obtain multiple quotes’.

3.21 In response to the final proposed report, ACT Government agencies noted that ‘in relation to fraudulent or unethical behaviour by installers, landlords are protected under the Australian Consumer Law, which provides recourse against unethical conduct by insulation installers’ and there is a ‘requirement for landlords to maintain, and make available to tenants, evidence of compliance’.



3.22 EPSDD did not develop a standalone risk management plan or risk register for the implementation of the minimum standard. EPSDD did, however, identify implementation and delivery risks in a range of early program documents including: the original program logic that was developed prior to the Regulatory Impact Statement; and the *Minimum Standard for Energy Efficiency for Rental Properties Project Plan*. EPSDD did not, however, identify specific controls or mitigation strategies for these risks in either the original program logic or Project Plan.



3.23 There are risks associated with the minimum standard that may lead to fraudulent or unethical behaviour. This includes the risk of a landlord seeking to avoid or minimise the

cost of insulation by stating that the rental property has an R2 value, or higher, when it does not. However, EPSDD has not undertaken a separate, stand-alone fraud risk assessment, nor has EPSDD separately categorised risks with reference to fraudulent or unethical behaviour.

Risks associated with implementation of the standard

Electrical, fire and safety risks

3.24 Insulation placed on top of, or too close to halogen down lights, or fitted over the top of a bathroom heater, for example, are fire risks for ceiling insulation. Fire and safety risks were identified in the *Minimum Standard for Energy Efficiency for Rental Properties Project Plan* and the program logic, specifically with respect to homeowners being unaware of fire and safety risks and installing insulation themselves.

Requirement for certified installers

3.25 EPSDD sought to mitigate fire and safety risks associated with ceiling insulation by:

- enacting a nine-month phase-in for landlords to comply (following commencement on 1 April 2023). This was to allow landlords adequate time to make the required changes to their properties and avoid a demand spike on insulation and insulation installers; and
- drafting two Notifiable Instruments under the *Residential Tenancies Regulation 1998*:
 - the *Residential Tenancies (Approved Installers) Determination 2023* (effective 1 April 2023) requiring that only certified installers or provisionally certified installers under an ACT Government recognised certification framework could install ceiling insulation; and
 - the *Residential Tenancies (Ceiling Insulation Standard Compliance Exemption) Determination 2023* (effective 1 January – 1 June 2024) exempting landlords from complying with the minimum standard if they have taken reasonable steps to obtain the services of an approved installer but cannot obtain the services by the required date.

3.26 The Notifiable Instruments were an attempt to ensure that industry providers were appropriately certified and landlords were not compelled to use providers who were not certified or undertake the installation themselves.

3.27 Under the *Residential Tenancies Act 1997*, there is no provision for ACT Government agencies (Access Canberra, EPSDD or JACS) to undertake assurance activities (such as spot check audits) to ensure that installers are certified or provisionally certified. This continues to result in a risk of potentially unsafe insulation installation and/or landlords performing a

'do it yourself' installation to save on costs. This is discussed further in paragraphs 3.15 to 3.17.

3.28 Furthermore, ACT Government agencies do not retain data on whether, or to what extent, landlords have relied on the Notifiable Instrument exemption. ACT Government agencies do not have any insight into the extent to which landlords have been unable to access a certified installer resulting in an inability to comply with the minimum standard.



3.29 EPSDD has introduced measures to mitigate risks associated with untrained and unqualified installers installing ceiling insulation. Two Notifiable Instruments were enacted to the effect that:

- only certified installers or provisionally certified installers under an ACT Government recognised certification framework are able to install ceiling insulation; and
- landlords were exempt from the minimum standard between 1 January 2024 through to 30 June 2024 if they could not source a certified installer.

Energy Efficiency Council (EEC) – Professional Certification Framework

3.30 EPSDD, along with its counterparts in other jurisdictions, supported the Energy Efficiency Council to develop a professional certification framework for ceiling insulation installers.

3.31 To reduce risks associated with poor ceiling insulation installations, EPSDD entered into a contract with the Energy Efficiency Council (EEC) on 21 January 2022 for \$43,005 (including GST) for:

The establishment of an insulation installer certification program, based on the Clean Energy Council's previous insulation installer accreditation program, and maintenance and administration of that program from 1 July 2022 to 30 June 2023.

3.32 To support the development of the Professional Certification Framework, EPSDD was a member of the EEC Insulation Certification Reference Group, which was responsible for providing advice and industry engagement for the professional certifications.

3.33 The EEC's Professional Certification Framework was launched in the ACT on 24 June 2022. It provides for a Certified Insulation Installer Certification. This was approximately ten months before the commencement of the ACT Government's minimum standard for ceiling insulation in rental properties.

Memorandum of Understanding with Canberra Institute of Technology (CIT)

3.34 To support an increase in the Territory's market of certified insulation installers, EPSDD funded EEC Insulation Installer Certification training through the Canberra Institute of Technology (CIT). A Memorandum of Understanding between EPSDD and CIT was signed on 14 August 2023 for the provision of funding of \$178,826. The funding enabled eight courses

to be delivered between September 2023 and April 2024 for up to twelve participants in each course. The funding enabled CIT to provide training to a total of 71 students.

3.35 To meet EEC insulation installer certification requirements, the course includes five nationally recognised units of competency:

- *Work safely at heights* (CPCCCM2012);
- *Apply WHS requirements, policies and procedures in the construction industry* (CPCCWHS2001);
- *Install bulk insulation and pliable membrane products* (CPCCPB3014);
- *Install ceiling insulation products* (CPCCPB3027); and
- *Carry out measurements and calculations* (CPCCOM1015).

3.36 The course also includes one non-accredited unit – *Prepare for insulation retrofitting within ceiling space* (EEC001). On completion, participants receive a Statement of Attainment.

3.37 Information on the courses that were offered are shown in Table 3-1.

Table 3-1 CIT training for EEC Insulation Installer Certification

Course dates	Number of attendees	Completion rate	Fully certified	Provisionally certified
11 – 15 September 2023	9	100%	1	2
25 – 29 September 2023	10	100%	3	0
16 – 20 October 2023	11	82%	1	1
6 – 10 November 2023	9	100%	3	0
27 November – 1 December 2023	11	100%	4	0
26 February – 1 March 2024	8	100%	2	2
18 – 22 March 2024	10	90%	3	2
8 – 12 April 2024	3	66%	0	1
Total	71		17	8

Source: ACT Audit Office, based on documentation from EPSDD and CIT.

3.38 Table 3-1 shows that only 25 of the 71 EPSDD-funded course attendees (35 percent) became fully or provisionally certified following completion of the CIT training, despite the fact that 67 of the 71 attendees actually completed the course.

3.39 The certification rate may be low because candidates must meet a range of pre-requisites, including:

- having a General Construction Induction Certificate (known as a White Card in some states);
- having a Certificate of Currency for Public Liability Insurance;
- application fees of between \$800 to \$900; and
- a formal assessment process.

3.40 Notwithstanding the limitations of the certification process, since the introduction of the standard in April 2023, there has been an increase in the number of certified installers operating in the ACT.

3.41 At the end of August 2023, EPSDD reported that there were 38 certified or provisionally certified installers and in July 2024, the Energy Efficiency Council portal identified a total of 57 fully certified insulation installers operating in the ACT. As at February 2025 the Energy Efficiency Council portal identified a total of 61 certified installers available in the Canberra market. This is likely attributable to providers other than CIT (such as the Green Building Institute, Best Option Training and Master Builders ACT) also offering training to installers to support accreditation.




3.42 EPSDD, along its with counterparts in other jurisdictions, engaged the Energy Efficiency Council (EEC) to develop a professional certification framework for ceiling insulation installers. EPSDD also funded eight training courses for installers through a Memorandum of Understanding with CIT. These arrangements sought to build knowledge and capacity in the sector and reduce risks associated with the improper installation of ceiling insulation.



3.43 As at July 2024, the Energy Efficiency Council portal identified a total of 57 fully certified insulation installers operating in the ACT. Seventeen of these installers have been certified through EPSDD-funded training provided by CIT. The balance of these installers have been certified through providers other than CIT (such as the Green Building Institute, Best Option Training and Master Builders ACT) which also offer relevant training to installers to support accreditation.

Electrical Safety Inspection Program

3.44 Section 10 of the *Residential Tenancies Regulation 1998* requires that if ceiling insulation is to be installed or upgraded in rental premises to meet the minimum ceiling insulation standard, a licensed electrician must undertake an electrical safety check before work is undertaken. Any issues identified by the licensed electrician must be resolved before the ceiling insulation can be installed or upgraded.

- 3.45 Access Canberra's Electrical Safety Inspection Program is aimed at mitigating electrical safety risks in the ACT building and construction industry. Amongst other things, it applies to electrical work associated with the installation of ceiling insulation.
- 3.46 Where electrical wiring work has been undertaken, section 6 of the *Electricity Safety Act 1971* requires an *Insulation Installation Electrical Safety Inspection Report* to be submitted to Access Canberra (electronically) within 14 days. This applies to ceiling insulation being installed or upgraded under the *Residential Tenancies Regulation 1998* or any ACT Government programs.
- 3.47 A *Certificate of Electrical Safety* (CES) is also produced by the electrician via Smart Form and submitted to Access Canberra for the purpose of certifying that the wiring system is safe and compliant. *Certificates of Electrical Safety* are retained by Access Canberra in the Territory's building and planning compliance system database, known as BRIMS. Where the installation of ceiling insulation is undertaken, the *Insulation Installation Electrical Safety Inspection Report* accompanies the *Certificate of Electrical Safety*.
- 3.48 Access Canberra's *Standard Operating Procedure – Thermal Insulation Roof Space Inspections* (March 2023), provides for Access Canberra's Electrical Inspections Team to audit 10 percent of all *Certificates of Electrical Safety* to ensure the requirements of the *Electrical Safety Act 1971* are met. This process seeks to ensure that electrical safety risks associated with the installation of ceiling insulation in properties is assessed and mitigated appropriately.
- 3.49 The Audit Office analysed *Certificates of Electrical Safety* issued for the period 1 September 2023 to 8 April 2024 (827 in total). The overall pass rate for electrical safety checks for ceiling insulation is extremely high; a review of the data indicates there is a 95.89 percent pass rate. This indicates that there are very few electrical risks detected from licensed electricians who are performing electrical checks of ceiling insulation in both rental and non-rental properties.
-  3.50 Access Canberra's Electrical Safety Inspection Program seeks to mitigate electrical safety risks in the ACT building and construction industry, including those associated with the installation of ceiling insulation. All planned installations of ceiling insulation must ensure that a licensed electrician undertakes an electrical safety check before work is undertaken. Access Canberra's *Standard Operating Procedure – Thermal Insulation Roof Space Inspections* (March 2023), provides for Access Canberra's Electrical Inspections Team to audit 10 percent of all *Certificates of Electrical Safety* to ensure the requirements of the *Electrical Safety Act 1971* are met. A review of *Certificates of Electrical Safety* issued for the period 1 September 2023 to 8 April 2024 shows that the overall pass rate for electrical safety checks for ceiling insulation is extremely high; the data analysis identified a 95.89 percent pass rate. This indicates that there are very few electrical risks detected from licensed electricians who are performing electrical checks of ceiling insulation in both rental and non-rental properties.

The R5 insulation performance requirement

- 3.51 Part 3 of the *Residential Tenancies Regulation 1998* requires rental properties with no insulation, or existing ceiling insulation below an R-value of R2, to install or upgrade the ceiling insulation to a minimum R-value of R5. This can be achieved through new ceiling insulation being installed or through topping up pre-existing insulation.
- 3.52 Part 3 of the *Residential Tenancies Regulation 1998* does not provide detail of how the insulation is to be installed, e.g. with respect to the completeness of the coverage of the insulation in the roof cavity. The regulation does not explicitly require that pre-existing insulation is of a certain quality or that it has no mould, dampness or gaps.
- 3.53 Subsection 10(3) of the *Residential Tenancies Regulation 1998* states, however, that landlords are taken to comply with the standard if insulation is installed in as many designated rooms as possible at a capped amount of \$10,000. This amount includes the cost of any electrical work and any other work to ensure that the installation is safe and effective. Subsection 10(3) does not prescribe that the insulation must be complete in coverage or of a certain quality.
- 3.54 Although there is no explicit obligation that the insulation provides complete coverage and is of a certain quality, under the *Residential Tenancies Act 1997* there is an onus on landlords to provide and maintain a rental premises that is habitable, and which is in a reasonable state of repair and reasonably safe. If pre-existing insulation or electrical wiring was not safe, the landlord would likely be under a legal obligation to make it safe as it may be deemed an urgent repair under the legislation.
- 3.55 The issue of how insulation is installed was discussed in the 2021 Regulatory Impact Statement and EPSDD's 2021 Consultation Paper:

The Energy Efficiency Council and Australian Sustainable Built Environment Council (2021) identified that the insulation needs to be correctly installed to maximise benefits and reduce risks for building occupants, including minimising unnecessary gaps in the coverage of insulation.

... 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.

- 3.56 This is in contrast to New Zealand's Healthy Home Initiative which came into effect in 2019 and imposes a minimum ceiling insulation standard on landlords in New Zealand. It states that:

All existing insulation must still be in reasonable condition to meet the requirements. This means there should be no mould, dampness, damage or gaps.

3.57 There is no mention in the ACT's regulations of Australian Standard (AS 3999-1992) *Thermal Insulation of Dwellings*, which covers the correct installation of insulation, including the need for continuous insulation (meaning no gaps, thermal bridging by framing and compression of insulation). Without specifying that the insulation be correctly installed, the effectiveness of the ACT's regulation may be limited.



3.58 There is some guarantee of the quality of installation as new installations must be undertaken by a certified or provisionally certified installer. However, for those rental properties that already comply with a minimum R-value of R2 (or more) and do not need to upgrade their insulation to comply, there are no explicit provisions in the regulations to guarantee the quality of the pre-existing insulation, such as the completeness of its coverage in the roof cavity.



3.59 The minimum standard requires rental properties with no insulation or existing ceiling insulation with an R-value below R2, to install or upgrade the ceiling insulation to a minimum R-value of R5. Landlords are taken to comply with the standard once they have reached a \$10,000 limit for installing ceiling insulation in as many designated rooms as possible. For new installations, the quality of insulation is supported because only certified or provisionally certified installers be used. However, for pre-existing insulation the regulation does not explicitly specify pre-existing insulation be safe, in reasonable condition and/or complete in its coverage.



3.60 The regulation does not refer to the Australian Standard for *Thermal Insulation of Dwellings* which covers the correct installation of ceiling insulation. This means that the performance of the insulation may be less than optimal and may hinder the ACT Government's emissions reduction targets and decrease the energy efficiency of the rental property.

4 Monitoring, evaluation and reporting

4.1 This chapter considers the effectiveness of monitoring, evaluation and reporting activities associated with the minimum standard for ceiling insulation in rental properties.

Summary



Conclusions

EPSDD engaged Common Capital to monitor and evaluate the implementation of the minimum standard. A series of monitoring and evaluation reports were produced which, inter alia, reported on landlord compliance with the requirement to install ceiling insulation and disclose the status of the ceiling insulation in rental advertisements.

The final monitoring and evaluation report (May 2024) identified a need for further data to verify landlords are complying with their obligations under the minimum standard as well as opportunities for enhanced compliance and enforcement activity to obtain such data.



Key findings

Monitoring and evaluation

Paragraph

EPSDD engaged Common Capital to monitor and evaluate the implementation of the minimum standard. Common Capital prepared an Evaluation Plan and delivered three quarterly reports on 24 October 2023, 19 December 2023 and 28 March 2024. A final monitoring and evaluation report was provided to EPSDD with findings and observations in May 2024.

4.21

The monitoring and evaluation activities found that 85 to 88 percent of rental advertisements complied with the obligation to disclose whether the rental property complied with the standard, but that 15 to 20 percent of these reported that they were non-compliant with the standard. The final monitoring and evaluation report identified that further data was required to verify: disclosure and insulation compliance for non-listed lease renewals; the veracity of self-reported compliance; and the quality of insulation upgrades undertaken. In the absence of this data, it is not clear whether the policy outcomes being sought from the implementation of the minimum standard are being met.

4.22

Common Capital's final monitoring and evaluation report identified that there was a strong case to introduce additional compliance measures for the standard. Common Capital identified eight opportunities for improvement, many of which relate to compliance arrangements. They include *inter alia*:

4.30

- the establishment of a portal or central publicly searchable register ‘to provide auditors, tenants and landlords with transparent and low-cost desktop access to compliance data’;
- a pilot program to provide insulation audits to tenants and landlords with the intention of ‘[providing] reassurance to tenants and landlords that assessments have been conducted accurately’;
- ‘a framework for ongoing access to rental listing data for compliance and enforcement purposes’; and
- ‘a regulatory amendment to require the insulation assessment to be conducted by a certified assessor. This would ensure accurate assessment and reporting of compliance with the Standard’.

As of August 2024, there is no intention by EPSDD and/or JACS to undertake compliance and assurance activity to determine whether landlords are compliant with the standard. 4.31

Reporting

Reporting on the implementation of the minimum standard for ceiling insulation in rental properties has occurred through periodic reporting to Cabinet in response to the climate change commitments made in the ACT Government’s Parliamentary and Governing Agreement for the 10th Legislative Assembly. EPSDD provided status updates to CMTEDD for the purposes of this reporting. The third status report for the Parliamentary and Governing Agreement states that the regulation has been delivered. EPSDD has also provided regular reports to the Minister for Water, Energy and Emissions Reduction on aspects of the regulation that require ministerial consideration and decision. 4.38

Monitoring and evaluation

4.2 The Australian Government’s Centre for Evaluation advises that:

Effective monitoring and evaluation provides assurance that government activities and programs are delivering outcomes as intended and that performance is tracked. It allows for corrections to occur, while informing future policy and program design.

4.3 Monitoring and evaluation activities can assist with decision-making about a program or initiative and can build a strong case for the allocation of budget or resources.

Planning for monitoring and evaluation

- 4.4 The need for monitoring and evaluation was first referenced in EPSDD's 2021 Consultation Paper, which envisaged the development of an evaluation plan:

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
- determine whether further minimum energy efficiency standards are required.

Engagement of Common Capital consultants

- 4.5 Following the commencement of the minimum standard on 1 April 2023, EPSDD engaged a supplier for monitoring and evaluation services. On 26 May 2023, EPSDD entered a twelve-month contract for \$139,333 (including GST) with Common Capital for:

The provision of monitoring and evaluation (M&E) services for assurance and auditing activities related to the introduction of ACT wide legislated minimum energy efficiency standards for rental properties.

- 4.6 The monitoring and evaluation services had two components:
- examining the effects of the minimum standard on the private rental sector focussing on compliance, disclosure and the identification of any changes in the rental market; and
 - evaluating the implementation of the minimum standard across the rental sector including strata managers and rental providers.

Monitoring and Evaluation Plan

- 4.7 On 30 June 2023 Common Capital consultants prepared a Monitoring and Evaluation Plan, which identified:
- key evaluation questions and data sources;
 - a methodology for qualitative data collection and analysis (such as advisory panel interviews, an interview-based survey and a broad-based survey); and

- a methodology for quantitative data collection, desktop analysis of real estate data and an analysis to determine any impacts and structural changes to the rental market as a result of the regulation in the ACT.

4.8 In line with the milestone requirements in the contract, Common Capital delivered three quarterly reports for monitoring and evaluation activities.

First quarterly report – October 2023

4.9 The first quarterly report was issued seven months after the standard was introduced. It included preliminary observations on the implementation of the standard and identified opportunities for improvement. Risks were also noted. Key findings were that:

- the standard did not appear to have caused any unintended impacts on ACT house or apartment rental prices or volumes;
- there was a high risk that a temporary shortage and concentration of insulation installer companies may increase the costs associated with landlord compliance with the standard and/or delay compliance; and
- there was a case for a ‘strengthened compliance and enforcement framework’ for the standard and that the absence of such a framework was a significant risk for the standard.

4.10 The first quarterly report also identified compliance with the requirement to disclose as follows:

- 86 percent of listed properties complied with the obligation to disclose whether the rental property complied with the standard; and
- 20 percent of these disclosing properties reported that they were non-compliant with the standard (based on analysis of 1,693 properties).

4.11 The findings on landlord compliance were based on self-reporting by landlords, interviews with other stakeholders, a survey of landlords, tenants and real estate agents and analysis of rental advertisement data. It was not within the scope of work for Common Capital to verify the accuracy of landlords’ self-reported compliance.

Second quarterly report – December 2023

4.12 Key findings from the second quarterly report were that:

- there was an improvement in insulation supplier capacity to respond to market demand, but there was a risk that insufficient competition may hamper price efficiency; and
- there was very strong support for ‘the establishment of an audit framework to monitor compliance’ and for the piloting of an audit program in early 2024.

4.13 The second quarterly report also identified that compliance with the requirement to disclose remained fairly static:

- 85 percent of listed properties complied with the obligation to disclose whether the rental property complied with the standard; and
- 19 percent of these disclosing properties reported that they were non-compliant with the standard (based on analysis of 2,664 properties).⁶

Third quarterly report – March 2024

4.14 The third quarterly report found that:

- the standard had not caused unintended impacts on ACT rental property prices or volumes;
- the average cost of insulation upgrades was potentially lower than previously estimated, but cost may still be a barrier to landlord compliance; and
- 35 percent of landlords surveyed had reported assessing the insulation levels in the ceiling of their properties themselves. This was identified as posing a risk of inaccurate assessments.

4.15 In relation to the last observation, the third quarterly reported noted:

Landlords are able to, and are currently, conducting insulation assessments themselves. This could have implications for the accuracy of landlords' disclosures and the actual compliance rates under the Standard. However, without a compliance and audit framework we are unable to assess how material this risk is to the program.

4.16 The third quarterly report also identified that the disclosure of compliance status in rental adverts remained steady:

- 88 percent of rental listings complied with the obligation to disclose whether the rental property complied with the standard; and
- 15 percent of these disclosing properties reported that they were non-compliant with the standard (based on analysis of 1864 properties).⁷

4.17 Issues arising from Common Capital's quarterly reports were periodically reported to the Minister's Office via the Minister's Weekly Brief, as they arose. The briefings included sufficient detail with respect to implementation challenges and issues.

⁶ The findings on landlord compliance continued to be based on self-reported disclosure by landlords. It was not within the scope of work for Common Capital to verify the accuracy of landlords self-reported compliance.

⁷ Ibid.

Final monitoring and evaluation report (May 2024)

4.18 Common Capital produced a final monitoring and evaluation report, which was dated 17 May 2024. It covered the first 12 months of implementation of the minimum standard for ceiling insulation in rental properties. Notable findings were that:

- governance arrangements provided oversight and direction in line with program scale and needs. Risks and issues were identified and managed and the design of the Standard was appropriate to the context;
- the development and implementation of the standard was on time and on budget; and
- the very high average compliance costs that were reported in the initial months appear to have reduced significantly as the number of certified insulation installers and market competition have significantly increased.

4.19 The final monitoring and evaluation report also identified that:

- across the three monitoring periods, landlord compliance with obligations to disclose a compliant/exempt/non-compliant status in advertisements remained between 85 percent and 88 percent; and
- further data beyond the scope of the study would be required to verify:
 - disclosure and insulation compliance for non-listed lease renewals;
 - the veracity of self-reported compliance; and
 - the quality of insulation upgrades undertaken.

4.20 To this end, the final monitoring and evaluation report noted:

Government, tenants and compliant landlords could benefit from an insulation audit program to address data gaps and provide assurance of the quality of assessments and upgrades that landlords have paid for.



4.21 EPSDD engaged Common Capital to monitor and evaluate the implementation of the minimum standard. Common Capital prepared an Evaluation Plan and delivered three quarterly reports on 24 October 2023, 19 December 2023 and 28 March 2024. A final monitoring and evaluation report was provided to EPSDD with findings and observations in May 2024.



4.22 The monitoring and evaluation activities found that 85 to 88 percent of rental advertisements complied with the obligation to disclose whether the rental property complied with the standard, but that 15 to 20 percent of these reported that they were non-compliant with the standard. The final monitoring and evaluation report identified that further data was required to verify: disclosure and insulation compliance for non-listed lease renewals; the veracity of self-reported compliance; and the quality of insulation upgrades undertaken. In the absence of this data, it is not clear whether the policy outcomes being sought from the implementation of the minimum standard are being met.

‘Opportunities for improvement’ identified by Common Capital

4.23 Common Capital’s final monitoring and evaluation report identified ‘opportunities for improvement’ instead of recommendations. Common Capital identified eight ‘opportunities for improvement’, many of which relate to compliance and enforcement arrangements:

Landlord compliance

Consider establishing a portal or central publicly searchable register to upload compliance status and supporting evidence to provide auditors, tenants and landlords with transparent and low-cost desktop access to compliance data.

Consider a pilot program to provide insulation audits to tenants and landlords to help with compliance and enforcement, within current statutory powers. The intent of this program would be to provide reassurance to tenants and landlords that assessments have been conducted accurately.

Rental advert compliance with disclosure requirements

Consider establishing a framework for ongoing access to rental listing data for compliance and enforcement purposes – beyond the confidential research purposes within the permitted scope for this study.

Work with All Homes and RealEstate.com to implement a standard field or dropdown of options to disclose compliance with the Standard to assist landlords, property managers and ongoing government compliance monitoring.

Regulatory amendments

Consider a regulatory amendment to add an obligation to disclose compliance to Government and enable direct Government initiation of audits, in addition to tenants’ rights and ACAT enforcement pathways.

Consider a regulatory amendment to require the insulation assessment to be conducted by a certified assessor. This would ensure accurate assessment and reporting of compliance with the Standard.

Monitoring and evaluation

Consider expanding existing, and/or establishing additional, data collection and database management processes to ensure that a comprehensive outcomes evaluation can be conducted in the future.

Work Health and Safety

Collaborate with the Insulation Council of Australia and New Zealand (ICANZ) on the next edition of the insulation handbook and/or the next edition of the Australian standard for insulation installation (AS399), to include a requirement for edge protection when the insulation installer is working at heights.

4.24 On 11 August 2024, EPSDD prepared a Ministerial Brief to the Minister for Water, Energy and Emissions Reduction on the outcomes of the monitoring and evaluation activities and sought approval to publish the report on the ACT Government’s Climate Choices website.

The Brief to the Minister also included EPSDD's response to the findings of the final monitoring and evaluation report and its advice for JACS on the options going forward.

- 4.25 The Brief to the Minister identified the merits and challenges associated with the eight 'opportunities for improvement' that were identified. For six of the eight 'opportunities for improvement', it was noted that future decision-making would be determined by JACS' consideration of the need for ongoing compliance and assurance activity, for example:

Should JACS determine the need for an ongoing compliance framework for the Standard ...

Investigation of options for compliance framework

- 4.26 EPSDD and JACS undertook preliminary scoping work in October 2023 for compliance activity for the minimum energy efficiency standard for ceiling insulation in rental properties. This involved discussions with a potential supplier on the cost of developing an 'initial compliance framework/pilot' that could be implemented with existing resources in EPSDD and Access Canberra. There was, however, no budget allocation for this project and it did not proceed.

- 4.27 EPSDD advised that priorities at the time were focused on the availability of installers:

Our desire was to be responsive to indicative findings through the delivery of M&E activities... At this time, over and above compliance feedback from stakeholders, there was a need to prioritise finding a solution to issues associated with certified installer availability and lack of market competition driving up the cost of installation, which resulted in the drafting of a Notifiable Instrument.

- 4.28 As of August 2024, there is no intention by EPSDD and/or JACS to undertake compliance and assurance activity to determine whether landlords are compliant with the standard. This is discussed in further detail in Chapter 5.

Ongoing monitoring and evaluation activity

- 4.29 While policy responsibility for the minimum standard has been transferred to JACS, EPSDD will retain a role in managing impact and outcome evaluation. EPSDD indicated that it has a budget of \$150,000 over the next two years from the Vulnerable Household Energy Support Scheme to undertake a program of impact and outcome evaluation. In the absence of robust data on compliance with the minimum standard, the ability to report on the achievement of outcomes and impacts will be difficult.



4.30 Common Capital’s final monitoring and evaluation report identified that there was a strong case to introduce additional compliance measures for the standard. Common Capital identified eight opportunities for improvement, many of which relate to compliance arrangements. They include *inter alia*:

- the establishment of a portal or central publicly searchable register ‘to provide auditors, tenants and landlords with transparent and low-cost desktop access to compliance data’;
- a pilot program to provide insulation audits to tenants and landlords with the intention of ‘[providing] reassurance to tenants and landlords that assessments have been conducted accurately’;
- ‘a framework for ongoing access to rental listing data for compliance and enforcement purposes’; and
- ‘a regulatory amendment to require the insulation assessment to be conducted by a certified assessor. This would ensure accurate assessment and reporting of compliance with the Standard’.



4.31 As of August 2024, there is no intention by EPSDD and/or JACS to undertake compliance and assurance activity to determine whether landlords are compliant with the standard.

Reporting

ACT Government’s Parliamentary and Governing Agreement

4.32 The implementation of the minimum standard for ceiling insulation in rental properties has been monitored by Cabinet as part of the ACT Government’s *Parliamentary and Governing Agreement for the 10th Legislative Assembly* (PAGA). CMTEDD provides Cabinet with status reports of all initiatives implemented through the Parliamentary Agreement, using information provided by directorates.

4.33 Between 2021 and 2024, EPSDD provided yearly status reports to CMTEDD on implementation including:

- the status of delivery – being on track or delivered;
- a progress update;
- emerging risks;
- budget status – such as whether the initiative is funded through a current budget process or seeking funding through a future budget process; and
- supporting information for the Minister, where needed.

4.34 CMTEDD has made available three Parliamentary and Governing Agreement Status Reports on the CMTEDD website. These include reference to the minimum energy efficiency standard for rental properties, which is reported in the following climate change action item:

Enact minimum energy efficiency standards regulations for rental properties in 2021 with progressive implementation over the coming years.

4.35 The second status report (2022) acknowledged the commencement of the new minimum standard for ceiling insulation in rental properties and noted the phase-in period through to November 2026, which is the conclusion of the phase-in period. The minimum standard for ceiling insulation in rental properties was reported as being 'delivered' in the third status report released in 2023 in accordance with the PAGA commitment to enact minimum energy efficiency standards regulations for rental properties in 2021. This does not recognise that full implementation is not expected to occur until 2026.

Ministerial reports

4.36 EPSDD regularly reported to the Minister for Water, Energy and Emissions Reduction on key aspects of the regulation that required Ministerial consideration and decision such as:

- the proposed R-value of the standard – 4 October 2021;
- the approach to public consultation – 4 October 2021;
- agreement to release the Consultation Paper – 1 November 2021;
- agreement to minor changes to the regulation, such as the wording and the explanatory statement – 17 August 2022; and
- the commencement date for the standard and a letter to the Chief Minister seeking approval to make minor changes to the regulation – 12 October 2022.

4.37 Information has also been collated in the EPSDD Minister's Weekly Briefing. These began in January 2023 and have included:

- updates regarding the drafting and implementation of the Notifiable Instruments;
- monitoring and evaluation activities;
- communication strategies and seminars with stakeholders; and
- the progress of the development of the professional certification framework with the Energy Efficiency Council and funding delivery through the Canberra Institute of Technology.



4.38 Reporting on the implementation of the minimum standard for ceiling insulation in rental properties has occurred through periodic reporting to Cabinet in response to the climate change commitments made in the ACT Government's Parliamentary and Governing Agreement for the 10th Legislative Assembly. EPSDD provided status updates to CMTEDD for the purposes of this reporting. The third status report for the Parliamentary and Governing Agreement states that the regulation has been delivered. EPSDD has also provided regular reports to the Minister for Water, Energy and Emissions Reduction on aspects of the regulation that require ministerial consideration and decision.

5 Compliance and enforcement

- 5.1 This chapter considers the effectiveness of the arrangements to monitor compliance with the minimum standard for ceiling insulation in rental properties. The chapter also discusses arrangements for the enforcement of the standard.

Summary



Conclusions

ACT Government agencies do not have adequate information on landlord compliance with requirements for the installation of required ceiling insulation or the requirement to adequately disclose the status of the insulation. As a result, ACT Government agencies' ability to report on implementation of the standard and its contribution to policy outcomes is compromised. Compliance and assurance activity was initially planned for, and supported by, a range of stakeholders but has not been progressed.

Enforcement of the standard relies on tenants seeking recourse through ACAT to enforce contractual rights associated with residential tenancy agreements. This places an unfair burden on tenants, who may not be equipped to undertake such an action.



Key findings

Planning for compliance

Paragraph

During the planning stage in 2021 and prior to the commencement of the standard on 1 April 2023, ACT Government agencies considered compliance and enforcement arrangements for the minimum standard. The need for compliance and enforcement was identified in a 2020 Issues Paper (*Minimum Building Energy Performance Requirements for Rental Properties*), the September 2021 Regulatory Impact Statement, the November 2021 Consultation Paper and *Minimum Standard for Energy Efficiency for Rental Properties Project Plan*. Common Capital's quarterly monitoring and evaluation reports identified risks in the implementation of the standard and gaps in data and identified opportunities for enhanced compliance and enforcement arrangements. The final monitoring and evaluation report (May 2024) identified eight 'opportunities for improvement' to the standard, many of which relate to compliance and enforcement arrangements.

5.15

Monitoring landlord compliance

The minimum standard relies on landlords maintaining records of their compliance with the requirements of the standard, and to truthfully disclose the status of their compliance. Records can include quotations, electrical reports, Certificates of

5.20

Electrical Safety and/or statutory declarations. There is no assurance process undertaken by ACT Government agencies to verify landlords have retained satisfactory evidence of compliance with the standard. Furthermore, the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998* do not explicitly provide ACT Government agencies with the right to verify landlord records. This means that a landlord's evidence is only reviewed if a tenant brings a matter before the ACT Civil and Administrative Tribunal (ACAT).

Section 11 of the *Residential Tenancies Regulation 1998* sets out the temporary and permanent exemptions to the minimum standard that are available to landlords, e.g. when a property is going to be demolished within two years, or a tenant objects to the installation of ceiling insulation. ACT Government agencies do not verify the validity of landlord exemptions, and the onus is on the landlord to retain proof that they are exempt. Without effective monitoring of landlord exemptions, there is a risk that the exemptions process may not operate as intended.

Access Canberra's Electrical Safety Inspection Program mitigates electrical, fire and safety risks by ensuring the safe and effective installation of ceiling insulation. Data is collected through *Certificates of Electrical Safety* whereby a licensed electrician certifies whether a property complies with the *Electricity Safety Act 1971* (ACT) and the *Australia/ New Zealand Wiring Rules* (AS/NZS 3000). If the property does not pass, remediation works must take place before the ceiling insulation is installed.

Through Common Capital's monitoring and evaluation activity EPSDD obtained some insights into the requirement for advertisements for rental properties to state whether: the premises comply with minimum housing standards (which include energy efficiency standards); or is otherwise exempt. This was reflected in the findings of the monitoring and evaluation reports, which showed that there was some non-compliance with the disclosure requirement and non-compliance with the standard. There was no verification of the data and disclosure could be subject to misrepresentation or inaccuracy by landlords and/or property managers.

There is no established ongoing process by which ACT Government agencies monitor disclosure obligations in rental advertisements and/or lease agreements to determine if the rental property is compliant, non-compliant or otherwise exempt from the minimum standard. Without effective ongoing monitoring and compliance oversight, there is a risk that landlords and property managers do not comply with this requirement and that the effectiveness of, and community confidence in, the regulation is jeopardised.

Enforcement of compliance

In the absence of compliance and assurance activity on the part of ACT Government agencies, enforcement of the minimum standard relies on tenants seeking recourse for landlord non-compliance. Under the *Residential Tenancies Act 1997*, tenants may seek recourse via the ACT Civil and Administrative Tribunal (ACAT). The onus is on the tenant to prepare an application and bring a matter before the Tribunal. As of October 2024, ACAT has heard no matters nor made any orders in response to a tenant challenging a landlord over non-compliance with the minimum standard.

It is a criminal offence under the *Residential Tenancies Act 1997* to: fail to disclose if a property complies with, or is exempt from, the minimum standard in a rental advertisement or new lease for the property; or make a false or misleading statement in rental advertisements about a key aspect of the property's compliance with the minimum standard. In the absence of compliance and assurance activity on the part of ACT Government agencies, however, ACT Government agencies are not in a position to identify potential non-compliance. 5.58

Unlike other jurisdictions, the ACT does not have a penalty for non-compliance with the standard itself. However, the potential penalty for making a false or misleading statement about compliance (a maximum of \$800 for an individual landlord and \$4,050 for a corporation) is less than the cost of compliance given that installing ceiling insulation can range from an estimated cost of \$5,000 to \$15,000. Other jurisdictions that have minimum rental standards, such as New Zealand and the United Kingdom, have penalties in place for non-compliance with the standard. 5.59

Planning for compliance

Need for compliance

5.2 Achieving high rates of compliance in energy efficiency programs benefits all stakeholders:

- landlords can confidently operate in a fair market that rewards their investment and likely increases the resale value of their property;
- tenants benefit from increased thermal comfort and reduced energy costs; and
- the ACT Government:
 - can deliver on its commitment to the Australian Government *Better Deal for Renters* reforms to make renting simpler and more consistent; and
 - is better positioned to evaluate and report on outcomes in relation to emissions reduction and climate change policy goals in line with the ACT *Climate Change Strategy 2019-2025*.

5.3 Well-designed compliance and assurance activity may include the following elements:

- a legal and administrative framework that is procedurally fair and has legal provisions for compliance and enforcement activity;
- a communication plan to inform stakeholders of their obligations and to communicate the results of compliance and enforcement activity; and
- processes and procedures for monitoring, verification and enforcement. Evaluation is also important so that policy makers can assess program outcomes to assist with future improvements to program design.

5.4 Non-compliance with the minimum standard for ceiling insulation in rental properties may occur in several ways, for instance:

- landlords may not provide a rental property that complies with the minimum ceiling insulation standard (unless exempt) within the required timeframes (within nine months of signing a new lease or by 30 November 2026). Between 1 January 2024 and 1 June 2024, landlords were exempt from compliance if they could not secure an approved installer but had otherwise made reasonable attempts to do so;
- landlords and real estate agents may not disclose in a rental advertisement or new lease agreement whether the rental property is compliant, non-compliant or has a valid exemption; and
- landlords may not use a certified or provisionally certified installer and/or may not use a licensed electrician to inspect the property and undertake any electrical repair work prior to the installation of insulation.

Planning for compliance activity

5.5 During the planning stage in 2021 and prior to the commencement of the minimum standard on 1 April 2023, ACT Government agencies considered compliance and enforcement arrangements. Compliance and enforcement was envisaged to be a cross-agency responsibility that included:

- EPSDD's role in planning and implementing the standard;
- JACS' responsibility for residential tenancies legislation; and
- Access Canberra's role in upholding regulatory protections and compliance in the ACT.

5.6 As noted elsewhere in this report, the need for compliance and enforcement arrangements was recognised in the planning and implementation of the minimum standard. Key references to compliance and enforcement arrangements are summarised in the following sections of the report.

Pre-Regulatory Impact Statement Issues Paper: Minimum Building Energy Performance Requirements for Rental Properties (2020)

5.7 To support the preparation of the Regulatory Impact Statement, EPSDD (in consultation with JACS) prepared an Issues Paper in 2020 titled *Minimum Building Energy Performance Requirements for Rental Properties*. Amongst other things, the Issues Paper considered the need for incentives for compliance and penalties for non-compliance.

Regulatory Impact Statement (September 2021)

- 5.8 The Regulatory Impact Statement that was produced in September 2021 referred to compliance issues associated with the implementation of the minimum standard. The Statement identified that:

The implementation of the proposed standards will be a cross-agency responsibility.

Enforcement and compliance, which may be the responsibility of Access Canberra, which already provides information, services and compliance mechanisms in related areas.

Extensive enforcement of the minimum standards on all rental properties at all times would become burdensome and not practical. A risk-based approach to compliance testing has been used in New Zealand to maximise the government's effectiveness at ensuring compliance. A small number of inspections are made each year, focused on those rental properties which are most likely to be non-compliant. Cases of non-compliance are then publicised. The ACT could adopt a similar approach, checking compliance on a targeted subset of rental properties.

EPSDD Consultation Paper (November 2021)

- 5.9 The November 2021 Consultation Paper prepared by EPSDD stated that:

[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.

- 5.10 The Consultation Paper noted that the approach to evaluation and review should measure outputs over the phase-in period, such as the number of properties upgraded, the average costs of upgrades and the level of compliance.

- 5.11 The Audit Office reviewed a selection of community submissions that were received in response to EPSDD's November 2021 Consultation Paper. Many submissions noted the benefits of, and need for, compliance and enforcement activity including:

That EPSDD establish a system to record ACT rental properties, rental providers, and their compliance with (or exemption from) the minimum standard (ACTCOSS)

That monitoring and enforcement will be critical, and the government should take a compliance-focused approach, including the option of penalties to encourage proactive compliance (Better Renting)

That for the effective implementation of the minimum standard for rental properties, strong compliance and auditing requirements are recommended. Otherwise, the scheme will become a burden for tenants, who will not be able to easily rely on rental properties meeting the standard (Conservation Council of the ACT)

Minimum Standard for Energy Efficiency for Rental Properties Project Plan

5.12 The *Minimum Standard for Energy Efficiency for Rental Properties Project Plan* also makes multiple references to compliance and enforcement activity, including the need to:

- understand the effectiveness of compliance requirements; and
- develop a *Compliance Decision-Making Policy* by September 2023.

Common Capital quarterly monitoring and evaluation reports

5.13 As discussed in paragraphs 4.9 to 4.16, Common Capital's quarterly monitoring and evaluation reports identified risks in the implementation of the standard and gaps in data and identified opportunities for enhanced compliance and enforcement arrangements. The final monitoring and evaluation report (May 2024) identified eight 'opportunities for improvement' to the standard, many of which relate to compliance and enforcement activities.

5.14 As noted in paragraph 4.23, implementation of six of the eight opportunities for improvement would be determined by JACS' consideration of the need for an 'ongoing compliance framework for the Standard'.



5.15 During the planning stage in 2021 and prior to the commencement of the standard on 1 April 2023, ACT Government agencies considered compliance and enforcement arrangements for the minimum standard. The need for compliance and enforcement was identified in a 2020 Issues Paper (*Minimum Building Energy Performance Requirements for Rental Properties*), the September 2021 Regulatory Impact Statement, the November 2021 Consultation Paper and *Minimum Standard for Energy Efficiency for Rental Properties Project Plan*. Common Capital's quarterly monitoring and evaluation reports identified risks in the implementation of the standard and gaps in data and identified opportunities for enhanced compliance and enforcement arrangements. The final monitoring and evaluation report (May 2024) identified eight 'opportunities for improvement' to the standard, many of which relate to compliance and enforcement arrangements.

Monitoring landlord compliance

Evidence of compliance with the standard

5.16 Under section 12 of the *Residential Tenancies Regulation 1998* the landlord is required to maintain records that provide evidence of compliance with the new ceiling insulation standard. The evidence may include:

- a receipt for insulation installation services that identifies the R-value of the ceiling insulation;

- an inspection report from an insulation installer;
- electrical reports and a Certificate of Electrical Safety;
- an Energy Efficiency Rating report from a building assessor;
- quotations from an approved installer / electrician if the cost of compliance exceeds \$10,000;
- if the property was built after 1997 (when R3 insulation became standard in new homes) a statutory declaration that the existing insulation has not been disturbed; or
- a statutory declaration that ceiling insulation with an R-value of R2 or more has been installed.

5.17 Tenants have the right to request and be provided with evidence that the rental property meets the minimum standard. At all other times, evidence of compliance with the minimum standard for ceiling insulation relies solely on landlords retaining appropriate records.

5.18 The *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998* do not explicitly provide ACT Government agencies with the right to verify landlord records. This means that a landlord's evidence is only reviewed if a tenant brings a matter before the ACT Civil and Administrative Tribunal (ACAT). There is therefore no assurance process undertaken by ACT Government agencies to verify landlords have retained satisfactory evidence of compliance with the standard.

5.19 Landlord records would be useful to ACT Government agencies to support an understanding of which rental properties in the ACT are in breach of the regulations and how widespread non-compliance may be. However, such data is not readily available. Information on rental properties is accessible through the ACT Revenue Office, but this is for the purposes of rental bond and land tax collection. This data is not easily accessible nor appropriate for monitoring landlord compliance with the minimum standard.



5.20 The minimum standard relies on landlords maintaining records of their compliance with the requirements of the standard, and to truthfully disclose the status of their compliance. Records can include quotations, electrical reports, Certificates of Electrical Safety and/or statutory declarations. There is no assurance process undertaken by ACT Government agencies to verify landlords have retained satisfactory evidence of compliance with the standard. Furthermore, the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998* do not explicitly provide ACT Government agencies with the right to verify landlord records. This means that a landlord's evidence is only reviewed if a tenant brings a matter before the ACT Civil and Administrative Tribunal (ACAT).

Evidence of compliance (exemptions)

5.21 Section 11 of the *Residential Tenancies Regulation 1998* describes scenarios in which landlords are exempt from compliance with the minimum standard for ceiling insulation. These include permanent and temporary exemptions.

5.22 The permanent exemptions include:

- dwellings where insulation cannot be feasibly installed due to physical constraints, such as roof design (section 11(1)(a));
- lower floor units in apartment complexes (as they are effectively insulated by the apartments above) (section 11(1)(d)(ii));
- dwellings that are heritage-listed and where installing insulation would compromise the heritage value (section 11(1)(f)); and
- dwellings where the cost of installing ceiling insulation is over \$10,000 (although if this applies, as much work as can be done for up to \$10,000 must be undertaken, focusing on rooms that tenants will spend more time in, such as lounge/living rooms and bedrooms) (section 10(3)).

5.23 The temporary exemptions include:

- top-floor units of an apartment building, where the owners corporation refuses permission, or is in the process of arranging ceiling insulation to be installed collectively (section 11(1)(e));
- properties (or a substantial part of a property) that are going to be demolished within two years of signing the lease. Tenants must be notified of this before signing the lease (section 11(1)(g));
- properties that cannot be upgraded within the timeframe due to the inability to obtain the services of a certified installer to undertake the work. This exemption applied from 1 April 2023 to 1 June 2024 only;
- tenants objecting, in writing, to work being carried out to install or upgrade ceiling insulation (section 11(1)(c)); and
- tenants being the former owner of the property and renting the property from the new owner on a temporary basis (for up to 12 months) (section 11(1)(h)).

5.24 Landlords are responsible for retaining evidence to support the exemption or maintaining a statutory declaration where the landlord asserts that the property will be demolished within two years of signing the lease.

5.25 At present, ACT Government agencies do not oversee or verify landlord compliance with temporary and permanent exemptions. Landlords are responsible for retaining proof of their exemption; however, this evidence is not readily available to, and is not checked by,

the ACT Government agencies. Without such oversight, there is a risk that the exemptions may not be exercised as intended by the regulations.



- 5.26 Section 11 of the *Residential Tenancies Regulation 1998* sets out the temporary and permanent exemptions to the minimum standard that are available to landlords, e.g. when a property is going to be demolished within two years, or a tenant objects to the installation of ceiling insulation. ACT Government agencies do not verify the validity of landlord exemptions, and the onus is on the landlord to retain proof that they are exempt. Without effective monitoring of landlord exemptions, there is a risk that the exemptions process may not operate as intended.



Recommendation 2

Access to landlord records

The ACT Government should seek amendments to section 12 of the *Residential Tenancies Regulation 1998* to provide a mechanism for ACT Government agencies to request landlord records to demonstrate compliance with the standard for the purpose of compliance and enforcement.

Evidence of compliance (electrical safety)

Insulation Installation Electrical Safety Inspection Reports

- 5.27 The Electrical Safety Inspection Program routinely collects and stores data relating to landlord compliance with electrical safety requirements. *Insulation Installation Electrical Safety Inspection Reports* are maintained in Access Canberra's building and planning compliance system database known as BRIMS. An *Insulation Installation Electrical Safety Inspection Report* must be completed for any ceiling insulation being installed or upgraded under the *Residential Tenancies Regulation 1998* or any relevant ACT Government energy efficiency program.
- 5.28 *Insulation Installation Electrical Safety Inspection Reports* include a *Certificate of Electrical Safety* (CES). The Certificate does not identify whether a property is a rental premise and is compliant with the minimum standard for ceiling insulation. However, the Certificate does provide a level of assurance relevant to the minimum standard because it indicates that a licensed electrician has undertaken an electrical safety check and remedied any outstanding issues that may present a risk if ceiling insulation is installed. For example, older style halogen downlights need to be upgraded to IC-4 rated LED lights and Residual Current Devices (RCDs) need to be installed in circuits which will be affected by the installation of ceiling insulation.
- 5.29 *Insulation Installation Electrical Safety Inspection Reports* indicate which properties comply with the *Electricity Safety Act 1971* (ACT) and the *Australia/ New Zealand Wiring Rules* (AS/NZS 3000) and allow ACT Government agencies to collect and report on such

information. This is an important risk mitigation tool to ensure ceiling insulation is installed as safely as possible and only following the provision of a *Certificate of Electrical Safety* by a licensed electrician.



5.30 Access Canberra's Electrical Safety Inspection Program mitigates electrical, fire and safety risks by ensuring the safe and effective installation of ceiling insulation. Data is collected through *Certificates of Electrical Safety* whereby a licensed electrician certifies whether a property complies with the *Electricity Safety Act 1971 (ACT)* and the *Australia/New Zealand Wiring Rules (AS/NZS 3000)*. If the property does not pass, remediation works must take place before the ceiling insulation is installed.

Rental advertisement disclosure and new lease agreements

5.31 The *Residential Tenancies Act 1997* requires:

- advertisements for rental properties to state whether the premises comply with minimum housing standards (which include energy efficiency standards) or is otherwise exempt; and
- a lessor to provide confirmation in a lease agreement if the premises complies or does not comply with the minimum housing standards.

5.32 Common Capital's analysis of rental property advertisements for the first 12 months of the standard's implementation identified that approximately 85 percent of rental advertisements disclosed whether the rental property complied with the minimum standard. Of these, approximately 20 percent did not comply with the standard. Common Capital did not verify this information and there is a risk it is subject to misrepresentation by landlords and/or property managers.

5.33 ACT Government agencies have not established a practice to monitor compliance with rental advertisement disclosure.

Handling of consumer complaints

5.34 Complaints in relation to property advertisements made by members of the public are initially dealt with by the Resolution and Support Team in the Fair Trading and Compliance Branch of Access Canberra.

5.35 The Audit Office reviewed complaints data provided by Access Canberra. Between August 2023 and February 2024, three complaints were made regarding estate agents not disclosing whether the property was compliant with the minimum standard for ceiling insulation. These complaints were resolved by Access Canberra; the resolution of one case involved a conciliation process with the real estate agent.

5.36 There is no practice for ACT Government agencies to collect or oversee new lease agreements for residential rental properties to verify whether those agreements contain a written statement about compliance or non-compliance with the minimum standard for ceiling insulation. These are typically private agreements between landlords or property managers and tenants.



5.37 Through Common Capital's monitoring and evaluation activity EPSDD obtained some insights into the requirement for advertisements for rental properties to state whether: the premises comply with minimum housing standards (which include energy efficiency standards); or is otherwise exempt. This was reflected in the findings of the monitoring and evaluation reports, which showed that there was some non-compliance with the disclosure requirement and non-compliance with the standard. There was no verification of the data and disclosure could be subject to misrepresentation or inaccuracy by landlords and/or property managers.



5.38 There is no established ongoing process by which ACT Government agencies monitor disclosure obligations in rental advertisements and/or lease agreements to determine if the rental property is compliant, non-compliant or otherwise exempt from the minimum standard. Without effective ongoing monitoring and compliance oversight, there is a risk that landlords and property managers do not comply with this requirement and that the effectiveness of, and community confidence in, the regulation is jeopardised.

Territory's compliance and enforcement approach

5.39 In response to the draft proposed report, ACT Government agencies advised:

The Government adopted a measured compliance and enforcement approach designed to balance the benefits to renters with the costs to landlords and government. The scheme imposes a minimum standard against which landlords are responsible for compliance. In this regard, the scheme and its compliance approach is similar to many other examples of Government regulation. Importantly, this is not a scheme in which the Government provides funding, engages providers or takes responsibility for the installation of insulation. Such schemes demand far different regulatory and risk management approaches.

5.40 ACT Government agencies noted that key elements of its compliance and enforcement approach involved:

Requiring landlords to maintain evidence of compliance with the standard.

Allowing renters the right to access this evidence.

Utilising existing ACAT processes and remedies for rental disputes where evidence was unavailable, inaccurate, or not genuine.

5.41 ACT Government agencies advised:

This approach was proportionate to address compliance concerns and was tested with stakeholder groups during consultation. Additional compliance measures would be considered if future evidence justified a change in approach.

5.42 In response to the draft proposed report, ACT Government agencies advised of the opportunity open to renters to enforce compliance with the standard through ACAT:

A residential tenancy agreement is a private contractual agreement between a lessor (landlord) and tenant. Although the *Residential Tenancies Act 1997* (RTA) places some framing around how these contractual agreements can operate, tenancy agreements are still, fundamentally, matters of contract. As with other civil and contractual disputes, residential tenancy law relies on party-to-party enforcement of contractual rights and obligations, without intervention by Government. Essentially, this means that, in any aspect of tenancy law, if a dispute arises between the parties to the agreement, the onus is on the impacted party to seek a remedy through the legal system. In the case of tenancy disputes, parties can make an application to the ACT Civil and Administrative Tribunal (ACAT) for resolution of the dispute. Party-to-party enforcement of contractual and statutory rights and obligations via ACAT dispute resolution processes is an example of an enforcement framework.

...

The minimum standards provisions were framed in a similar way to all other tenancy provisions and provide a legal right for tenants to seek remedies by way of ACAT order. These remedies include the ability for ACAT to order rent reductions or compensation for other losses associated with a landlord's failure to comply with the minimum standard. It also allows a tenant to seek orders to end the tenancy agreement.



Recommendation 3

Monitoring compliance with the minimum standard

The ACT Government should develop and implement risk-based compliance activity for the minimum standard, which provides assurance with respect to:

- (a) landlord compliance with the requirements to:
 - i) install ceiling insulation according to the requirements of the standard (unless there is a valid exemption); and
 - ii) accurately disclose the status of ceiling insulation in rental advertisements; and
- (b) insulation company compliance with the requirement to use certified and/or provisionally certified installers.

Enforcement of compliance

5.43 The *Residential Tenancies Act 1997* is the primary mechanism for enforcing landlord compliance with the minimum standard.

5.44 In the absence of compliance and assurance activity on the part of ACT Government agencies, enforcement of the minimum standard is predicated on tenants seeking recourse for landlord non-compliance.

5.45 EPSDD's 2021 Consultation Paper notes the importance of tenants being able to seek recourse:

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.

ACT Civil and Administrative Tribunal (ACAT)

5.46 Under section 79 of the *Residential Tenancies Act 1997*, a party to a residential tenancy agreement in the ACT may apply to the ACT Civil and Administrative Tribunal (ACAT) for the resolution of a tenancy dispute.

5.47 If a landlord fails to comply with the minimum standard for ceiling insulation a tenant may seek for ACAT to make any one of the following orders:

- ending the residential tenancy;
- applying a rent reduction for the period where the property was required to meet the minimum standard but did not; or
- applying for compensation for any loss suffered by the tenant due to the property not meeting the minimum standard.

5.48 The onus is on the tenant to seek court orders. This may prove difficult given a tenant's likely priority is on maintaining secure rental premises. The risk that tenants are unlikely to pursue action against landlords at ACAT was raised by stakeholders with the Audit Office during course of the audit:

... bringing things to ACAT is inaccessible to most renters due to the cost and inconvenience to them.

Tenants also don't want to risk not getting a lease renewed. It would be a brave tenant to bring a matter before ACAT.

5.49 In addition, there are costs associated with bringing a matter before ACAT. The 2024-25 filing fees for ACAT indicate that a residential tenancy dispute under the *Residential Tenancies Act 1997* is between \$86 and \$659 for individuals. The sliding fee is dependent on the overall amount in dispute. This may be a disincentive for many tenants, although for those on low incomes, an application may be made to ACAT to waive fees.

5.50 As of October 2024, there have been no matters heard, or orders made by ACAT, to indicate that a tenant has challenged a landlord over non-compliance with the minimum standard for ceiling insulation.



5.51 In the absence of compliance and assurance activity on the part of ACT Government agencies, enforcement of the minimum standard relies on tenants seeking recourse for landlord non-compliance. Under the *Residential Tenancies Act 1997*, tenants may seek recourse via the ACT Civil and Administrative Tribunal (ACAT). The onus is on the tenant to prepare an application and bring a matter before the Tribunal. As of October 2024, ACAT has heard no matters nor made any orders in response to a tenant challenging a landlord over non-compliance with the minimum standard.

Criminal penalties for failing to disclose

5.52 It is a criminal offence under the *Residential Tenancies Act 1997* for a person to:

- fail to disclose if their property complies with, or is exempt from, the minimum standard in a rental advertisement or new lease for the property; or
- make a false or misleading statement in rental advertisements about a key aspect of the property's compliance with the minimum standard.

5.53 To date, there have been no prosecutions for failing to disclose, or providing a misleading disclosure, with respect to the minimum standard for ceiling insulation in either a rental advert or new lease agreement. In the absence of compliance and assurance activity on the part of ACT Government agencies, however, ACT Government agencies are not in a position to identify potential non-compliance.

Penalty regime

5.54 There are penalties under the *Residential Tenancies Act 1997* for non-compliance with advertising and disclosure requirements (rather than non-compliance with the standard per se). A maximum of five penalty units (with the value of a penalty unit being \$160 for an individual and \$810 for a corporation) applies to such offences if the person does not have a reasonable excuse. Therefore, penalties of up to \$800 for individuals or \$4,050 for corporations may apply.

5.55 The potential penalty for making a false or misleading statement about compliance (a maximum of \$800 for an individual landlord and \$4050 for a corporation) is less than the cost of compliance given installing ceiling insulation can range from an estimated cost of \$5,000 to \$15,000, or in some cases even higher.

5.56 There are no penalties under the *Residential Tenancies Act 1997* for non-compliance with the standard itself. ACT Government agencies advised that in relation to penalties for non-compliance with the standard the Territory made a policy decision to enable the tenant to

seek a remedy via ACAT, rather than having the Territory impose a fine. ACT Government agencies advised that the amounts imposed by ACAT may vary but could still be significant. The amount that ACAT can order will be limited by ACAT's jurisdictional limit of \$25,000. As stated in paragraph 5.50 above, no matters have been heard or orders made by ACAT in relation to a tenant challenging a landlord over non-compliance with the minimum standard for ceiling insulation.

5.57 Other jurisdictions that have minimum rental standards illustrate the scope for penalties that may be applied for non-compliance with the standard itself:

- New Zealand's fine for non-compliance with the Healthy Homes Insulation Standard is NZD7,020 (equating to approximately AUD6,500); and
- United Kingdom penalties for non-compliance with the standard ranges between GBP1,000-4,000 (equating to approximately AUD1,950 - AUD7,800).



5.58 It is a criminal offence under the *Residential Tenancies Act 1997* to: fail to disclose if a property complies with, or is exempt from, the minimum standard in a rental advertisement or new lease for the property; or make a false or misleading statement in rental advertisements about a key aspect of the property's compliance with the minimum standard. In the absence of compliance and assurance activity on the part of ACT Government agencies, however, ACT Government agencies are not in a position to identify potential non-compliance.



5.59 Unlike other jurisdictions, the ACT does not have a penalty for non-compliance with the standard itself. However, the potential penalty for making a false or misleading statement about compliance (a maximum of \$800 for an individual landlord and \$4,050 for a corporation) is less than the cost of compliance given that installing ceiling insulation can range from an estimated cost of \$5,000 to \$15,000. Other jurisdictions that have minimum rental standards, such as New Zealand and the United Kingdom, have penalties in place for non-compliance with the standard.

Audit reports

Reports Published in 2024-25	
Report No. 01 - 2025	Management of the Growing and Renewing Public Housing Program
Report No. 14 - 2024	Facilities management and support services for ACT Courts
Report No. 13 - 2024	Invoicing and payments for Digital Health Record hosting services
Report No. 12 - 2024	2023-24 Financial Audits Financial Results and Audit Findings
Report No. 11 - 2024	Governing boards of selected ACT Government entities
Report No. 10 - 2024	Safer Families Levy
Report No. 09 - 2024	2023-24 Financial Audits - Overview
Report No. 08 - 2024	Annual Report 2023-24
Report No. 07 - 2024	Reusable Facility Services Procurement
Report No. 06 - 2024	Business Transformation Program: ICT renewal activities
Reports Published in 2023-24	
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Report No. 02 - 2024	Management of key contracts under A Step Up For Our Kids
Report No. 01 - 2024	Urban Tree Management
Report No. 11 - 2023	2022-23 Financial Audits – Financial Results and Audit Findings
Report No. 10 - 2023	Human Resources Information Management System (HRIMS) Program
Report No. 09 - 2023	2022-23 Financial Audits Overview
Report No. 08 - 2023	Supports for students with disability in ACT public schools
Report No. 07 - 2023	Annual Report 2022-23
Report No. 06 - 2023	Implementation of the ACT Aboriginal and Torres Strait Islander Agreement
Report No. 05 - 2023	Activities of the Government Procurement Board

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