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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

**Auditor-General's Report No 2 of 2025
Energy Efficiency Standard for Rental Properties
Government Response**

**Presented by
Suzanne Orr MLA
Minister for Climate Change, Environment, Energy and Water**

**Tara Cheyne MLA
Attorney General**

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The ACT Government welcomes the Auditor-General's performance audit report **Energy Efficiency standard for rental properties** (the Report), provided to the Speaker of the ACT Legislative Assembly for out of session circulation to Members on 9 May 2025.

A new minimum standard for ceiling insulation in rental properties commenced in the Territory on 1 April 2023. The standard requires owners of rental properties in the ACT with no insulation, or existing ceiling insulation below an R-value (meaning thermal resistance) of R2, to install or upgrade the ceiling insulation to a minimum of R5. The regulation has a phase-in period extending to November 2026.

The City and Environment Directorate (CED), previously the Environment, Planning and Sustainable Development Directorate (EPSDD), led the development and implementation of the standard in close consultation with the Justice and Community Safety Directorate (JACS), Access Canberra (now also CED), and the Parliamentary Counsels Office (in relation to the regulation amendments).

CED engaged Common Capital to monitor and evaluate the implementation of the minimum standard over its first 12 months. 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 CED with findings and observations in May 2024.

The audit undertaken by the Office of the Auditor-General sought to assess 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.

The audit made a series of findings in relation to administrative arrangements and monitoring, compliance and enforcement arrangements to support the implementation of the minimum standard.

The audit found that CED undertook a variety of planning activities to prepare for the implementation of the minimum standard. In particular, the audit found that electrical, fire and safety risks associated with the installation of ceiling insulation were managed and mitigated.

The Report contains eleven key findings and makes three recommendations (Recommendation 1 relating to communications and Recommendations 2 and 3 relating to compliance).

The Government has **Agreed** with Recommendation 1 and has **Not Agreed** with Recommendations 2 and 3, with reasons provided below.

Government Response – Auditor-General’s Report No. 2 of 2025 – Performance Audit Report: Energy Efficiency Standard for Rental Properties

Recommendation 1 – Communication of the 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.

Government Response: Agreed

The Government is committed to improved, effective communication with different stakeholder groups, including owners corporations. The Government will review and document the needs of different stakeholder groups and will develop targeted communication material in response to these needs.

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.

Government Response: Not Agreed

See response under Recommendation 3.

Recommendation 3 – Monitoring and 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.

Government Response: Not Agreed

The Government considers the framework surrounding the minimum standards for ceiling insulation adopts a measured and risk based compliance and enforcement approach, appropriately balancing renters’ rights with the costs to landlords and the Government. The current approach:

- Places a legal obligation on landlords to ensure the rental property complies with the minimum standard;
- Requires landlords to maintain evidence of compliance with the standard;
- Requires landlords to disclose whether the property complies with the standard both when advertising the property for lease and when entering into a tenancy agreement;
- Provides renters with the right to access the landlord’s evidence in relation to compliance;
- Provides a dispute resolution framework for tenants where they are concerned about compliance with the standard, or where evidence is unavailable, inaccurate, or not genuine; and
- Provides a range of remedies for tenants in the event of non-compliance, including the ability to seek a rent reduction, compensation for other costs they incur as a result of non-compliance. It also gives tenants the right to end the tenancy, should they wish to do so.

These provisions, and the framework as a whole, take a proportionate approach to assure compliance with the standard.

Additional background to the Government's Responses to the Recommendations:

- **Design of provisions assures compliance without a regulator:** Aspects of the framework have a deterrent effect, further assuring compliance. For example, the prospect of criminal sanction for failing to include relevant information in advertisements strengthens compliance.
- **Consultation:** The Government's approach was tested with stakeholder groups during consultation on the development of the standard.
- **Government does not generally play a regulatory role in private contractual agreements:** Residential tenancy agreements are private contractual agreements between a landlord and a tenant, and, in line with other civil and contractual disputes, rely on party-to-party enforcement of the contractual rights and obligations. Governments do not generally intervene nor take a significant regulatory role in private contractual arrangements, and it would be a disproportionate response to do so in this instance.
- **Consistency with existing residential tenancy enforcement pathways:** The ACAT has a long history of resolving disputes between landlords and tenants, and the enforcement approach provided for minimum standards is no different to that for any other tenancy dispute. It would be incongruous to provide additional enforcement pathways or mechanisms for one small aspect of tenancy law in isolation.
- **Cost:** As noted above, there is no existing regulator for residential tenancy laws. Establishing additional oversight mechanisms for minimum standards would require the establishment of a person or agency with regulatory functions. This would require significant legislative change and financial investment.

Comments in reply to select findings

Finding:

Transition of policy responsibility to JACS (paragraph 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.

Comments in reply:

In this case, there was a very low risk that roles, responsibilities and implementation actions were not clearly understood as JACS already held that knowledge due to its pre-existing policy responsibility for the legislation and its close work with CED throughout the development of the minimum standard. JACS was also aware of the proposed "opportunities for improvement" identified in the Common Capital Report in relation to the minimum standard. Once the policy work to establish and implement the minimum standard was completed by CED and the monitoring and evaluation report on the first year of the minimum standard by Common Capital was delivered, policy responsibility was transferred back to JACS.

Finding:

Risk management documentation (paragraphs 3.22 and 3.23)

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.

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.

Comments in reply:

The Government considers that risks were adequately and comprehensively identified and assessed, with appropriate mitigations put in place. This is supported by the Common Capital review, which found that CED collaborated with JACS and Access Canberra to proactively identify, assess, and mitigate risks during the pre-implementation and implementation phases of the Standard. While no formal risk register was created, legislative, regulatory, and process-based treatments were implemented to address identified risks. For example, ceiling insulation installers are required to be certified under an ACT Government-recognised framework, ensuring that only qualified professionals carry out installations. Access Canberra's Electrical Safety Inspection Program provides a layer of assurance for safe installation practices which addresses critical electrical, fire, and safety hazards. Additionally, landlords are protected under the Australian Consumer Law, which provides recourse against unethical conduct by insulation installers. In relation to fraudulent or unethical behaviour by landlords, the Government considers that the compliance and enforcement measures put in place are currently sufficient.

Finding:

Risks associated with implementation of the standard (paragraph 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.

Comments in reply:

The ACT Government believes this risk is adequately addressed by the requirement that insulation be installed by trained and certified insulation installers. To be certified installers must provide a certificate of attainment from a registered training organisation that shows they have successfully completed several units of competency, including CPCCPB3014 *Install bulk insulation and pliable membrane products* which covers the relevant Australian Standards, including *Australian Standard AS 3999:2015 Thermal insulation of dwellings – Bulk insulation – Installation requirements*.

Finding:

Enforcement of compliance (paragraphs 5.51, 5.58 and 5.59)

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.

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.

Comments in reply:

In relation to the finding in paragraph 5.59, the report confuses penalties for failing to or untruthfully reporting compliance in rental advertisements and lease documentation with penalties for actual non-compliance.

In relation to penalties for non-disclosure, or incorrect disclosure of information relating to ceiling insulation, the ACT has similar penalties to those imposed by other jurisdictions. The ACT imposes a maximum fine of \$800 for an individual and \$4050 for a corporation. This is similar to penalties for equivalent offences in New Zealand and in the UK. Penalties imposed by New Zealand include:

- NZ\$750 for a failure to disclose information about whether there is ceiling insulation when entering a tenancy agreement
- NZ\$900 for providing a false or misleading statement about ceiling insulation when entering a tenancy agreement.¹

The UK imposes a penalty of up to £1,000 for providing false or misleading information on the PRS Exemptions Register.²

In relation to non-compliance with the standard itself, in the ACT, tenants have recourse to the ACAT which can impose a range of measures where it finds in a tenant's favour, including a reduction in rent or recompense for expenses incurred by the tenant due to the lack of compliance (e.g. higher electricity or gas bills). While other jurisdictions, as the report notes, have financial penalties for non-compliance, such penalties are paid to the government. In the ACT, in cases where the ACAT adjudicates in a tenant's favour, the financial benefit accrues directly to the tenant. Under its legislation, the ACAT may order payments of up to \$25,000.

The Government considers this arrangement to be appropriate and to align with how other compliance issues are dealt with the *Residential Tenancies Act 1997* and so does not propose to introduce fines for non-compliance at this point.

See the Government response to [Recommendation 3](#) above for further information on the risk based compliance and enforcement approach in place.

¹ Residential Tenancies Act 1986 No 120 (as at 20 March 2025), Public Act Schedule 1A Amounts for unlawful acts – New Zealand Legislation

² Domestic private rented property: minimum energy efficiency standard - landlord guidance - GOV.UK