



COMMISSIONER FOR  
BETTER REGULATION

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26 April 2018

Ms Kylie White  
Deputy Secretary  
Energy, Environment and Climate Change  
Department of Environment, Land, Water and Planning  
8 Nicholson Street, Melbourne, VIC 3000

Dear Ms White

I would like to thank the staff of the Department of Environment, Land, Water and Planning (DELWP) for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed *Victorian Energy Efficiency Target Regulations 2018*. The current Regulations are scheduled to sun-set on 11 December 2018.

Under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RISs prepared in Victoria. The Commissioner's role is to advise on the adequacy or otherwise of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written, so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 24 April 2018 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

The *Victorian Energy Efficiency Target Regulations 2008* ('current Regulations') prescribe a number of matters to support the operation of the *Victorian Energy Efficiency Target Act 2007* (the Act). This legislation provides the basis for the Victorian Energy Upgrades Scheme – an incentive mechanism which aims to encourage improvements to the energy efficiency of residential homes and commercial premises. The Scheme is part of the Victorian Government's approach to reduce greenhouse gas (GHG) emissions. It is overseen by DELWP and administered by the Essential Services Commission (ESC).

The Scheme places an obligation on large energy retailers in Victoria to surrender a specified number of energy efficiency certificates every year. Each certificate represents one tonne of carbon dioxide equivalent (CO<sub>2</sub>-e) abated by specified energy saving activities. In 2017 the Scheme target was 5.9 million certificates; it is set to increase to 6.1 million in 2018; 6.3 million in 2019; and 6.5 million in 2020.

The Act requires targets for GHG reductions for the period 2021 to 2025 to be declared in regulations by 2020. The Department states in this RIS that these targets will be considered as part of a forthcoming RIS consultation process set to commence in 2019.

The current Regulations prescribe a number of elements about the operation of the Scheme, including:

- energy retailers' obligations to surrender certificates;
- a penalty rate for failing to surrender the required number of certificates;
- activities which create a certificate; and
- conditions where certificates are not created.

The Department makes it clear that some form of the current Regulations is required to make the Scheme operational. Given this, in terms of RIS requirements, options were assessed against a base case which assumes the regulations contained the minimum elements required to enable the Scheme to operate. Compared to this base case, the RIS considers the following options:

- Option 1 – continue all current 'deemed' activities
- Option 2 – prescribe 'deemed' activities for residential premises only
- Option 3 – continue all current 'deemed' activities and allow some additional energy efficient upgrades (for example, gas boiler and ventilation upgrades that are currently excluded)
- Option 4 – continue all current 'deemed' activities and adopt a more flexible and adaptable regulatory design (for example, moving technical details from the regulations to a non-regulatory 'Specifications' document that can be updated more frequently as circumstances change)

Other options identified by stakeholders but considered not to be feasible at this stage include:

- only allowing activities for commercial premises;
- requiring a certain proportion of certificates to be met by residential premises activities;
- reducing evidence requirements for the installation of products; and
- changing the shortfall penalty rate significantly.

The Department undertook a cost-benefit analysis of the feasible options.

The analysis relies on complex modelling and numerous assumptions (outlined in Appendix A of the RIS). These include assumptions required to calculate and project the number and cost of certificates, and the value of both abating GHG and other pollutants. More assumptions were required to model the National Energy Market (NEM) to estimate the Scheme's impact on reducing overall energy demand and hence, reducing energy industry costs (including avoided fuel costs, operation and maintenance costs and deferred investments in additional generation and network capacity).

The RIS notes that the modelling is affected by the high uncertainty associated with future Commonwealth energy policies and decisions about generation assets across the NEM, as well as the appropriate value per tonne to apply to GHG reductions. To deal with these uncertainties, 'best' and 'worst' case scenarios were modelled. Under all scenarios and options, the current shortfall penalty rate (with only adjustments for CPI) was assumed to continue.

The Department explains that the modelling indicates that Options 3 and 4 (which build on Option 1) would most likely yield the lowest average cost of GHG abatement (around \$19.78 per tonne, compared with \$25.28 per tonne in the base case). In these scenarios the estimated cost of the Scheme is around \$1.285 billion (present value) over the 10 year period. The Department states that these Scheme costs are offset by the benefits of reductions in GHG, other pollutants and avoided energy industry costs, which are greater than in the base case.

After taking into account these benefits, the overall estimated net benefits of these options fall within a range of around \$1.38bn to \$5.03bn over ten years. Therefore according to this modelling, the Department finds that there is an increase in the estimated net benefit of around \$460m to \$1.7bn, relative to the base case. Given this analysis, the RIS recommends a combination of Options 3 and 4.

The Department proposes a set of 'housekeeping changes' from current Regulations, which would apply under all options such as updating technical deeming methodologies (the amount of GHG reduction assumed to occur as a result of the activity) to reflect current technical knowledge; updating references to external standards; and clarifying definitions. Detailed information on the proposed changes to these technical requirements are contained in separate documents – 'Proposed Activity Changes', draft 'Specifications' and 'Guidelines' for updating the specifications. The Department is also seeking feedback on these documents, as part of this RIS consultation process.

The Department consulted with key stakeholders in the preparation of this RIS and the proposed draft Regulations.

As you know, it is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin  
**Commissioner for Better Regulation**