

# Energy Savings Scheme Notice 02/2022

3 June 2022

## Important information on the installation of Refrigerated Cabinets

Changes to the ESS Rule which took effect from 28 February 2022 have resulted in increased activity and new businesses involved in the installation of refrigerated cabinets (activity F1) using the Installation of High Efficiency Appliance for Businesses method (**IHEAB**). We are aware that issues have arisen for similar activities in Victoria where inappropriate conduct has been identified including:

- delivery of refrigerated cabinets to sites where they are not installed
- installation of refrigerated cabinets at businesses that have no pre-existing need to display or store food and drink products
- installation of multiple refrigerated cabinets at businesses without the need for that amount of display or storage capacity
- installation of refrigerated cabinets that are not fit for purpose, and
- replacement of domestic refrigerators and freezers with commercial refrigerated cabinets where a domestic refrigerator or freezer would be better suited (e.g. in breakrooms or offices).

## We are closely monitoring installation of refrigerated cabinets in NSW

We routinely audit Energy Savings Certificates both before and after registration of certificates. The activity of installing refrigerated cabinets has been assessed as higher risk and we intend to focus our audit and compliance activities at looking closely at these activities to ensure they are compliant with the legislation and to assess whether the activities are consistent with the objectives of the scheme to incentivise energy savings activities. We will consider:

- Evidence of installation including geo-tagged photos of the refrigerated cabinet installed in place at the site and other documents which show the make and model of the appliance and where the appliance was installed.
- For replacement installations, recycling evidence which demonstrates refrigerants have been being disposed of appropriately.
- Whether installations are genuinely 'new'. We consider that a 'new' installation occurs where the refrigerated cabinet is installed where either:
  - there is no existing End User Equipment (**EUE**) of the same type, function, output or service, or

- there is existing EUE of the same type, but the refrigerated cabinet is not replacing this EUE (such as where it will provide additional capacity which is genuinely required by the customer).

You should refer to the legislation, the rule, and the [IHEAB method guide](#) to understand the requirements for this activity.

## Escalated compliance action may be taken where non-compliance is detected

Where we identify wilful, serious or repeated non-compliance we will consider appropriate regulatory action which may include warnings, penalty notices, civil penalties or prosecution.

We can also impose conditions on accreditations to address any ongoing risk of activities which undermine the objective of the scheme which is to incentivise genuine energy saving activities. We can also suspend or cancel an accreditation following serious non-compliance.

## Calculation of energy savings must reasonably reflect energy savings arising from an implementation

IHEAB provides an incentive to purchase and install high efficiency appliances for business consumers who will benefit from the ongoing energy savings.

We remind ACPs that the method used to calculate the Energy Savings arising from a Recognised Energy Saving Activity must produce a result reasonably reflecting, to the satisfaction of the Scheme Administrator, the Energy Savings arising from that Implementation.

We may consider regulatory action where activities do not provide reasonable results or otherwise undermine the objectives of the scheme to reduce the consumption of energy.

## Australian Consumer Law requirements

The Australian Consumer Law makes it an offence for a person supplying goods or services to engage in conduct likely to mislead the public about the nature, manufacturing process, characteristics, suitability for purpose, or quantity of those goods or services.

## Further consideration of activity F1 by OECC

The NSW Office of Energy and Climate Change (**OECC**) is also considering stakeholder feedback on this activity and it monitoring the situation that arose in Victoria, where a notice of intent to apply a discount factor to the activity has been announced in response to concerns that the activity was not achieving energy savings.

OECC regularly assess whether activities undertaken under the ESS are achieving the overarching objective of saving energy. Where OECC considers an activity is not resulting in energy savings it will update the rule accordingly.