

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Shane Rattenbury)

Residential Tenancies (Minimum Housing Standards) Amendment Bill 2011

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Residential Tenancies (Minimum Housing Standards) Amendment Bill 2011

A Bill for

An Act to amend the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Residential Tenancies (Minimum Housing*
4 *Standards) Amendment Act 2011*.

5 **2 Commencement**

6 (1) This Act (except sections 9, 11, 12, 14 and 16) commences on
7 1 January 2013.

8 (2) Sections 9, 11, 12, 14 and 16 commence on 1 January 2014.

9 *Note* The naming and commencement provisions automatically commence on
10 the notification day (see Legislation Act, s 75 (1)).

11 **3 Legislation amended**

12 This Act amends the *Residential Tenancies Act 1997* and the
13 *Residential Tenancies Regulation 1998*.

1 Part 2 Residential Tenancies Act 1997

2 4 Energy efficiency rating—advertising 3 Section 11A (1) (b)

4 *substitute*

- 5 (b) the advertisement does not contain a statement of the current
6 energy efficiency rating of the habitable part of the premises.

7 5 Section 11A (5)

8 *substitute*

- 9 (5) Also, subsection (3) (c) does not apply if—

10 (a) the statement is not false or misleading in a material particular;
11 or

12 (b) the current energy efficiency rating of the habitable part of the
13 premises is higher than the rating stated in the advertisement as
14 the current energy efficiency rating.

15 6 Section 11A (7), new definitions

16 *insert*

17 ***current energy efficiency rating***, of the habitable part of premises,
18 means the energy efficiency rating contained in a current energy
19 efficiency statement for the premises.

20 ***current energy efficiency rating statement***, for premises, means an
21 energy efficiency rating statement that—

- 22 (a) reflects the construction and rateable building elements of the
23 habitable part of the premises at the time the statement, or
24 information in the statement, is used by the lessor; and

1 (b) was prepared not more than 10 years before that time.

2 **Examples—par (a)—rateable building elements**

3 carpet, internal window coverings, pelmets, external awnings

4 *Note* An example is part of the Act, is not exhaustive and may extend, but
5 does not limit, the meaning of the provision in which it appears (see
6 Legislation Act, s 126 and s 132).

7 **7 Section 11A (7), definition of *existing energy efficiency***
8 ***rating***

9 *omit*

10 **8 Lessor's obligations**
11 **Section 12 (3) (c)**

12 *substitute*

13 (c) a statement setting out—

14 (i) the minimum housing standards; and

15 (ii) the investigation and rectification provisions in
16 sections 35F to 35K; and

17 (iii) if the premises are exempted from complying with a
18 minimum housing standard under section 35M—a copy
19 of the exemption and any information on which the
20 exemption is based;

21 *Note* If a form is approved under s 133 for the statement, the form must
22 be used.

23 (ca) for the premises that are the subject of the proposed residential
24 tenancy agreement—a copy of a current energy efficiency
25 rating statement for the habitable part of the premises;

9 Section 12 (3) (c) (iii), new example

before the note, insert

Example—par (c) (iii)—information on which exemption is based
energy audit

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132)

10 New part 3A

insert

Part 3A Minimum housing standards**35A Definitions—pt 3A**

In this part:

minimum water efficiency standard, for premises, means—

- (a) all showers, tap equipment and toilets comply with the water efficiency requirements prescribed by regulation; and
- (b) any other requirement prescribed by regulation.

rectification notice means a notice under section 35F.

rectification work means work necessary to make premises comply with the minimum housing standards.

tap equipment means a tap or tap outlet over a basin, cleaning trough, kitchen sink or laundry tub.

1 **35B** **What are the *minimum housing standards*?**

2 In this part:

3 *minimum housing standards* means—

- 4 (a) the minimum water efficiency standard; and
5 (b) a standard determined by the Minister under section 35C.

6 **35C** **Determination of other minimum housing standards**

7 (1) The Minister—

8 (a) must determine minimum housing standards in relation to the
9 following matters:

- 10 (i) provision and maintenance of locks or other security
11 devices;
12 (ii) construction, condition and safety of premises;
13 (iii) sanitation and plumbing;
14 (iv) supply of hot and cold water;
15 (v) ventilation and protection from damp;
16 (vi) heating;

17 (vii) laundry and cooking facilities;

18 (viii) electrical safety;

19 (ix) lighting;

20 (x) hard-wired smoke detectors; and

21 (b) may determine minimum housing standards in relation to any
22 other matter.

1 (2) A determination is a disallowable instrument.

2 *Note* A disallowable instrument must be notified, and presented to the
3 Legislative Assembly, under the Legislation Act.

4 **35D Minimum housing standards—public consultation**

5 (1) Before determining a minimum housing standard under section 35C,
6 the Minister must prepare a notice (a *consultation notice*)—

7 (a) stating that copies of a draft of the minimum housing standards
8 are available for inspection during a stated period of at least
9 15 business days at stated places; and

10 (b) inviting interested people to give written comments about the
11 draft standards to the Minister at a stated address during a
12 stated period ending at least 15 business days after the end of
13 the period mentioned in paragraph (a).

14 (2) A consultation notice is a notifiable instrument.

15 *Note* A notifiable instrument must be notified under the Legislation Act.

16 (3) The Minister must also publish the consultation notice in a daily
17 newspaper.

18 **35E Premises must comply with minimum housing standards**

19 A lessor must ensure that premises the subject of a residential
20 tenancy agreement comply with the minimum housing standards.

21 **35F Minimum housing standards—tenant may give
22 rectification notice**

23 A tenant may give a lessor a written notice (a *rectification notice*)
24 requiring the lessor to ensure that the premises comply with a stated
25 minimum housing standard.

26 *Note* If a form is approved under s 133 for the notice, the form must be used.

- 1 **35G Minimum housing standards—tenant may ask**
2 **commissioner to investigate**
- 3 (1) This section applies if—
- 4 (a) a tenant gives a lessor a rectification notice; and
- 5 (b) the lessor does not comply with the notice within—
- 6 (i) 90 days after the day the notice was given; or
- 7 (ii) any later period agreed by the parties in writing.
- 8 (2) The tenant may ask the commissioner in writing to investigate
- 9 whether the lessor has failed to ensure that the premises comply
- 10 with the stated minimum housing standard.
- 11 (3) The tenant must give the commissioner—
- 12 (a) a copy of the rectification notice given to the lessor; and
- 13 (b) any material in the tenant’s possession relevant to the
- 14 rectification notice.
- 15 **Examples—par (b)**
- 16 • copy of correspondence with lessor
- 17 • photographs of premises or incomplete rectification work
- 18 *Note* An example is part of the Act, is not exhaustive and may extend,
- 19 but does not limit, the meaning of the provision in which it
- 20 appears (see Legislation Act, s 126 and s 132).
- 21 **35H Minimum housing standards—commissioner must**
22 **investigate if asked by tenant**
- 23 (1) The commissioner must investigate if asked by a tenant under
- 24 section 35G (2).
- 25 (2) The commissioner—
- 26 (a) must give a written report of the commissioner’s investigation
- 27 to the tenant and the lessor; and

- 1 (b) if the commissioner considers that the premises do not comply
2 with a minimum housing standard—
- 3 (i) may negotiate with the tenant and the lessor to reach an
4 agreement about rectification work and the timing for
5 completion of the work; or
- 6 (ii) if the tenant and the lessor cannot reach an agreement—
7 must propose rectification work, and the timing for
8 completion of the work, reasonably required to ensure the
9 premises comply with the minimum housing standard.
- 10 (3) The report—
- 11 (a) must state whether the commissioner considers that the
12 premises comply with the stated minimum housing standard;
13 and
- 14 (b) may state any other minimum housing standard that the
15 commissioner considers is not complied with; and
- 16 (c) if the commissioner considers that the premises do not comply
17 with a minimum housing standard—must state any proposed
18 rectification work and the proposed period in which the
19 rectification work must be completed; and
- 20 (d) must state that the tenant may—
- 21 (i) apply to the ACAT for an order under section 35L if the
22 tenant—
- 23 (A) disagrees with the commissioner’s report in relation
24 to whether the premises comply with the stated
25 minimum housing standard; or
- 26 (B) considers that any proposed rectification work or
27 proposed period for completion of the work is
28 unsatisfactory; or

- 1 (ii) if rectification work is proposed—ask the commissioner
2 to investigate under section 35J whether the lessor has
3 completed proposed rectification work within the
4 proposed period for completion of the work.

5 **35I Minimum housing standards—commissioner may**
6 **investigate on own initiative**

- 7 (1) The commissioner may, without being asked by a tenant, investigate
8 whether a lessor has failed to ensure that premises comply with the
9 minimum housing standards.
- 10 (2) However, the commissioner may only enter the premises with the
11 tenant’s written consent.
- 12 (3) The commissioner—
- 13 (a) must give a written report of the commissioner’s investigation
14 to the tenant and the lessor; and
- 15 (b) if the commissioner considers that the premises do not comply
16 with a minimum housing standard—
- 17 (i) may negotiate with the tenant and the lessor to reach an
18 agreement about rectification work and the timing for
19 completion of the work; or
- 20 (ii) if the tenant and the lessor cannot reach an agreement—
21 must propose rectification work, and the timing for
22 completion of the work, reasonably required to ensure the
23 premises comply with the minimum housing standard.
- 24 (4) The report—
- 25 (a) must state any minimum housing standard that the
26 commissioner considers is not complied with; and

- 1 (b) if the commissioner considers that the premises do not comply
2 with a minimum housing standard—must state any proposed
3 rectification work and the proposed period in which the
4 rectification work must be completed; and
- 5 (c) must state that the tenant may—
- 6 (i) apply to the ACAT for an order under section 35L if the
7 tenant—
- 8 (A) disagrees with the commissioner’s report in relation
9 to whether the premises comply with the stated
10 minimum housing standard; or
- 11 (B) considers that any proposed rectification work or
12 proposed period for completion of the work is
13 unsatisfactory; or
- 14 (ii) if rectification work is proposed—ask the commissioner
15 to investigate whether the lessor has completed proposed
16 rectification work within the proposed period for
17 completion of the work.

18 **35J Minimum housing standards—tenant may ask**
19 **commissioner to investigate completion of work**

- 20 (1) This section applies if—
- 21 (a) a tenant is given a report under section 35H or section 35I; and
- 22 (b) if the report proposes rectification work—the tenant considers
23 that the lessor has not completed the work within the proposed
24 period for completion of the work.
- 25 (2) The tenant may ask the commissioner in writing to investigate
26 whether the lessor has completed proposed rectification work within
27 the proposed period for completion of the work.
- 28 (3) The commissioner must investigate if asked by a tenant under
29 subsection (2).

- 1 (4) If the commissioner investigates and is satisfied that the lessor has
2 not completed proposed rectification work within the proposed
3 period for completion of the work, the commissioner must—
4 (a) apply to the ACAT for an order under section 35L; and
5 (b) consult with the tenant about the ACAT order to be applied for
6 by the commissioner.

7 **35K Minimum housing standards—tenant may apply to ACAT**
8 **if dissatisfied with report**

- 9 (1) This section applies if—
10 (a) a tenant is given a report under section 35H or section 35I; and
11 (b) the tenant—
12 (i) disagrees with the report in relation to whether the
13 premises comply with a stated minimum housing
14 standard; or
15 (ii) considers that any proposed rectification work or
16 proposed period for completion of the work is
17 unsatisfactory.
18 (2) The tenant may apply to the ACAT for an order under section 35L
19 within 60 days after the day the tenant is given the report.

20 **35L Minimum housing standards—orders by ACAT**

- 21 (1) This section applies if a tenant or the commissioner has applied for
22 an order under this part.
23 (2) The ACAT may make 1 or more of the following orders:
24 (a) an order requiring the lessor to ensure that the premises comply
25 with a stated minimum housing standard within a stated period;

- 1 (b) an order requiring payment of all or part of the rent payable
2 under the residential tenancy agreement into the ACAT until
3 the premises comply with the stated minimum housing
4 standard;
- 5 (c) an order directing payment out of any amount paid into the
6 ACAT as appropriate;
- 7 (d) an order for the reduction in the rent payable under a
8 residential tenancy agreement until the premises comply with
9 the stated minimum housing standard;
- 10 (e) an order terminating, with the tenant's consent, the residential
11 tenancy agreement.

12 **35M Minimum housing standards—Minister may exempt**
13 **premises**

- 14 (1) The Minister may exempt premises from complying with a
15 minimum housing standard if the Minister is satisfied on reasonable
16 grounds that the cost to the lessor of compliance would be
17 unreasonable.

18 *Note* Power to make a statutory instrument in relation to a matter includes
19 power to make provision in relation to a class of matter (see Legislation
20 Act, s 48 (2)).

- 21 (2) An exemption may be conditional.
22 (3) An exemption is a disallowable instrument.

23 *Note* A disallowable instrument must be notified, and presented to the
24 Legislative Assembly, under the Legislation Act.

- 25 (4) In deciding whether to exempt premises, the Minister must—
26 (a) take into account any criteria prescribed by regulation; and
27 (b) comply with any requirement prescribed by regulation.

1 **35N Review—pt 3A**

2 The Minister must review the operation of this part and present a
3 report of the review to the Legislative Assembly as soon as
4 practicable after the end of this part's 2nd year of operation.

5 *Note* A reference to an Act includes a reference to the statutory instruments
6 made or in force under the Act, including any regulation (see
7 Legislation Act, s 104).

8 **11 Definitions—pt 3A**
9 **Section 35A, new definitions of *minimum energy***
10 ***efficiency standard* and *star***

11 *insert*

12 ***minimum energy efficiency standard*** means—

13 (a) before 1 January 2016—an energy efficiency rating of—

14 (i) at least 2 stars or an equivalent rating; or

15 (ii) if a higher rating is prescribed by regulation—that rating;
16 and

17 (b) on or after 1 January 2016—an energy efficiency rating of—

18 (i) at least 3 stars or an equivalent rating; or

19 (ii) if a higher rating is prescribed by regulation—that rating.

20 ***star***, for an energy efficiency rating, means a star rating under the
21 energy efficiency rating scheme approved under a code of practice
22 or regulation made under the *Construction Occupations (Licensing)*
23 *Act 2004*, section 123AD.

1 **12** What are the *minimum housing standards*?
2 **Section 35B, definition of *minimum housing standards*,**
3 **new paragraph (aa)**

4 *before paragraph (a), insert*

5 (aa) the minimum energy efficiency standard; and

6 **13** **Dictionary, new definitions**

7 *insert*

8 *current energy efficiency rating statement*—see section 11A (7).

9 *minimum water efficiency standard*, for premises, for part 3A
10 (Minimum housing standards)—see section 35A.

11 *rectification notice*, for part 3A (Minimum housing standards)—see
12 section 35A.

13 *rectification work*, for part 3A (Minimum housing standards)—see
14 section 35A.

15 *tap equipment*, for part 3A (Minimum housing standards)—see
16 section 35A.

17 **14** **Dictionary, new definitions of *minimum energy efficiency***
18 ***standard* and *star***

19 *insert*

20 *minimum energy efficiency standard*, for part 3A (Minimum
21 housing standards)—see section 35A.

22 *star*, for an energy efficiency rating, for part 3A (Minimum housing
23 standards)—see section 35A.

1 **Part 3 Residential Tenancies**
2 **Regulation 1998**

3 **15 New section 3**

4 *insert*

5 **3 Prescribed water efficiency requirements—Act, s 35A, def**
6 ***minimum water efficiency standard***

- 7 (1) The following water efficiency requirements are prescribed:
- 8 (a) for shower heads—a maximum flow rate of 9L per minute;
- 9 (b) for internal cold water tap equipment—a maximum flow rate
10 of 9L per minute;
- 11 (c) for toilets—a dual flush toilet with—
- 12 (i) a maximum water volume of 6.5L for a full flush and
13 3.5L for a half flush; and
- 14 (ii) an average flush volume of not more than 4L.
- 15 (2) For subsection (1) (c) (ii), the ***average flush volume*** of a dual flush
16 toilet is the volume worked out as follows:

$$\frac{AV = FF + (4 \times HF)}{5}$$

17 ***AV*** means the average flush volume.

18 ***FF*** means the volume of water used for a full flush.

19 ***HF*** means the volume of water used for a half flush.

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Example

A toilet using 6L for a full flush and 3L for a half flush has an average flush volume of 3.6L.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) In this section:

maximum flow rate, for a shower head or tap, means the maximum volume of water that can flow through the shower head or tap as installed.

maximum water volume, for a full or half flush of a dual flush toilet, means the maximum volume of water used for each full or half flush.

16 New section 4

insert

4 Exemption requirement for minimum energy efficiency standard—Act, s 35M (4)

(1) The Minister may exempt premises from the minimum energy efficiency standard only if the lessor—

- (a) has obtained an energy audit of the premises; and
- (b) if any work in relation to the following matters has been recommended in the audit—has undertaken the recommended work:
 - (i) lined, blackout curtains;
 - (ii) draught and weather sealing;
 - (iii) ceiling insulation;
 - (iv) floor insulation;

- 1 (v) for double brick and brick veneer premises—wall
2 insulation;
- 3 (vi) insulation of hot water pipes and tanks.
- 4 (2) In this section:
- 5 *authorised home energy auditor* means—
- 6 (a) a building assessor; or
- 7 (b) a person authorised in writing by the Minister to undertake
8 audits of the energy efficiency of residential premises for this
9 section.
- 10 *building assessor*—see the *Construction Occupations (Licensing)*
11 *Act 2004*, section 8A.
- 12 *energy audit*, of premises, means an audit by an authorised home
13 energy auditor of the energy efficiency of the habitable part of the
14 premises.

Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2011.
- 2 **Notification**
Notified under the Legislation Act on 2011.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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