

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Residential Tenancies (Minimum Housing Standards) Amendment Bill 2011

Contents

		Page
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
Part 2	Residential Tenancies Act 1997	
4	Energy efficiency rating—advertising Section 11A (1) (b)	3
5	Section 11A (7), new definitions	3

Contents

	Page	
6	Section 11A (7), definition of <i>existing energy efficiency rating</i>	4
7	Lessor's obligations Section 12 (3) (c)	4
8	New part 3A	5
9	Dictionary, new definitions	15
Part 3	Residential Tenancies Regulation 1998	
10	New sections 3 and 4	16

EXPOSURE DRAFT

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

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:

Part 1 Preliminary

1 Name of Act

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

2 Commencement

This Act commences on 1 January 2013.

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

3 Legislation amended

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

Part 2 Residential Tenancies Act 1997

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

substitute

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

5 Section 11A (7), new definitions

insert

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

current energy efficiency rating statement, for premises, means an energy efficiency rating statement which reflects the construction and rateable building elements of the habitable part of the premises at the time the statement, or information in the statement, is used by the lessor.

Examples—rateable building elements

carpet, internal window coverings, pelmets, external awnings

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).

EXPOSURE DRAFT

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

omit

**7 Lessor's obligations
Section 12 (3) (c)**

substitute

- (c) a statement setting out—
- (i) the minimum housing standards; and
 - (ii) the investigation and rectification provisions in sections 35E to 35J; and
 - (iii) if the premises are exempted from complying with a minimum housing standard under section 35L—a copy of the exemption.

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

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

8 New part 3A*insert***Part 3A Minimum housing standards****35A Definitions—pt 3A**

In this part:

minimum energy efficiency standard means—

- (a) from the commencement of this part until 30 June 2015—an energy efficiency rating of—
 - (i) at least 2 stars or an equivalent rating; or
 - (ii) if a higher rating is prescribed by regulation—that rating; and
- (b) after 30 June 2015—an energy efficiency rating of—
 - (i) at least 3 stars or an equivalent rating; or
 - (ii) if a higher rating is prescribed by regulation—that rating.

minimum security standard means—

- (a) the provision and maintenance of—
 - (i) deadlocks on all external doors; and
 - (ii) locks or other security devices on all external opening windows necessary to ensure that the premises are secure; and
- (b) any other requirement prescribed by regulation.

EXPOSURE DRAFT

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 35E.

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

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

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

35B What are the *minimum housing standards*?

In this part:

minimum housing standards means—

- (a) the minimum energy efficiency standard; and
- (b) the minimum security standard; and
- (c) the minimum water efficiency standard; and
- (d) a standard determined by the Minister under section 35C.

EXPOSURE DRAFT

35C Determination of other minimum housing standards

- (1) The Minister—
- (a) must determine minimum housing standards in relation to the following matters:
 - (i) construction, condition and safety of premises;
 - (ii) sanitation and plumbing;
 - (iii) supply of hot and cold water;
 - (iv) ventilation and protection from damp;
 - (v) heating;
 - (vi) laundry and cooking facilities;
 - (vii) electrical safety;
 - (viii) lighting;
 - (ix) hard-wired smoke detectors; and
 - (b) may determine minimum housing standards in relation to any other matter.
- (2) A determination is a disallowable instrument.

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

35D Premises must comply with minimum housing standards

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

EXPOSURE DRAFT

35E Minimum housing standards—tenant may give rectification notice

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

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

35F Minimum housing standards—tenant may ask commissioner to investigate

- (1) This section applies if—
 - (a) a tenant gives a lessor a rectification notice; and
 - (b) the lessor does not comply with the notice within—
 - (i) 90 days after the day the notice was given; or
 - (ii) any later period agreed by the parties in writing.
- (2) The tenant may ask the commissioner in writing to investigate whether the lessor has failed to ensure that the premises comply with the stated minimum housing standard.
- (3) The tenant must give the commissioner—
 - (a) a copy of the rectification notice given to the lessor; and
 - (b) any material in the tenant's possession relevant to the rectification notice.

Examples—par (b)

- copy of correspondence with lessor
- photographs of premises or incomplete rectification work

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).

EXPOSURE DRAFT

35G Minimum housing standards—commissioner must investigate if asked by tenant

- (1) The commissioner must investigate if asked by a tenant under section 35F (2).
- (2) The commissioner—
 - (a) must give a written report of the commissioner’s investigation to the tenant and the lessor; and
 - (b) if the commissioner considers that the premises do not comply with a minimum housing standard—
 - (i) may negotiate with the tenant and the lessor to reach an agreement about rectification work and the timing for completion of the work; or
 - (ii) if the tenant and the lessor cannot reach an agreement—must propose rectification work, and the timing for completion of the work, reasonably required to ensure the premises comply with the minimum housing standard.
- (3) The report—
 - (a) must state whether the commissioner considers that the premises comply with the stated minimum housing standard; and
 - (b) may state any other minimum housing standard that the commissioner considers is not complied with; and
 - (c) if the commissioner considers that the premises do not comply with a minimum housing standard—must state any proposed rectification work and the proposed period in which the rectification work must be completed; and

EXPOSURE DRAFT

- (d) must state that the tenant may—
 - (i) apply to the ACAT for an order under section 35K if the tenant—
 - (A) disagrees with the commissioner’s report in relation to whether the premises comply with the stated minimum housing standard; or
 - (B) considers that any proposed rectification work or proposed period for completion of the work is unsatisfactory; or
 - (ii) if rectification work is proposed—ask the commissioner to investigate under section 35I whether the lessor has completed proposed rectification work within the proposed period for completion of the work.

35H Minimum housing standards—commissioner may investigate on own initiative

- (1) The commissioner may, without being asked by a tenant, investigate whether a lessor has failed to ensure that premises comply with the minimum housing standards.
- (2) However, the commissioner may only enter the premises with the tenant’s written consent.
- (3) The commissioner—
 - (a) must give a written report of the commissioner’s investigation to the tenant and the lessor; and

EXPOSURE DRAFT

- (b) if the commissioner considers that the premises do not comply with a minimum housing standard—
 - (i) may negotiate with the tenant and the lessor to reach an agreement about rectification work and the timing for completion of the work; or
 - (ii) if the tenant and the lessor cannot reach an agreement—must propose rectification work, and the timing for completion of the work, reasonably required to ensure the premises comply with the minimum housing standard.
- (4) The report—
 - (a) must state any minimum housing standard that the commissioner considers is not complied with; and
 - (b) if the commissioner considers that the premises do not comply with a minimum housing standard—must state any proposed rectification work and the proposed period in which the rectification work must be completed; and
 - (c) must state that the tenant may—
 - (i) apply to the ACAT for an order under section 35K if the tenant—
 - (A) disagrees with the commissioner’s report in relation to whether the premises comply with the stated minimum housing standard; or
 - (B) considers that any proposed rectification work or proposed period for completion of the work is unsatisfactory; or

EXPOSURE DRAFT

- (ii) if rectification work is proposed—ask the commissioner to investigate whether the lessor has completed proposed rectification work within the proposed period for completion of the work.

35I Minimum housing standards—tenant may ask commissioner to investigate completion of work

- (1) This section applies if—
 - (a) a tenant is given a report under section 35G or section 35H; and
 - (b) if the report proposes rectification work—the tenant considers that the lessor has not completed the work within the proposed period for completion of the work.
- (2) The tenant may ask the commissioner in writing to investigate whether the lessor has completed proposed rectification work within the proposed period for completion of the work.
- (3) The commissioner must investigate if asked by a tenant under subsection (2).
- (4) If the commissioner investigates and is satisfied that the lessor has not completed proposed rectification work within the proposed period for completion of the work, the commissioner must—
 - (a) apply to the ACAT for an order under section 35K; and
 - (b) consult with the tenant about the ACAT order to be applied for by the commissioner.

EXPOSURE DRAFT

35J Minimum housing standards—tenant may apply to ACAT if dissatisfied with report

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

35K Minimum housing standards—orders by ACAT

- (1) This section applies if a tenant or the commissioner has applied for an order under this part.
- (2) The ACAT may make 1 or more of the following orders:
 - (a) an order requiring the lessor to ensure that the premises comply with a stated minimum housing standard within a stated period;
 - (b) an order requiring payment of all or part of the rent payable under the residential tenancy agreement into the ACAT until the premises comply with the stated minimum housing standard;
 - (c) an order directing payment out of any amount paid into the ACAT as appropriate;

EXPOSURE DRAFT

- (d) an order for the reduction in the rent payable under a residential tenancy agreement until the premises comply with the stated minimum housing standard;
- (e) an order terminating, with the tenant's consent, the residential tenancy agreement.

35L Minimum housing standards—Minister may exempt premises

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

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

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

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

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

9 Dictionary, new definitions

insert

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

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

minimum security standard, for part 3A (Minimum housing standards)—see section 35A.

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

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

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

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

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

EXPOSURE DRAFT

Part 3 Residential Tenancies Regulation 1998

10 New sections 3 and 4

insert

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

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

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

AV means the average flush volume.

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

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

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.

4 Exemption requirement for minimum energy efficiency standard—Act, s 35L (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;

EXPOSURE DRAFT

(v) for double brick and brick veneer premises—wall insulation;

(vi) insulation of hot water pipes and tanks.

(2) In this section:

authorised home energy auditor means a person authorised in writing by the Minister to undertake audits of the energy efficiency of residential premises for this section.

energy audit, of premises, means an audit by an authorised home energy auditor of the energy efficiency of the habitable part of the 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.

EXPOSURE DRAFT