

Unit Titles (Management) Rental Certificate Determination 2025

Disallowable instrument DI2025-74

made under the

Unit Titles (Management) Act 2011, s 119 (Unit title certificates)

EXPLANATORY STATEMENT

The *Unit Titles (Management) Rental Certificate Determination 2025* (**the 2025 Determination**) revokes the *Unit Titles (Management) Rental Certificate Determination 2024* (DI2024-313) (**the 2024 Determination**) and will commence on 1 July 2025.

In response to stakeholder feedback, the 2025 Determination makes minor amendments to the 2024 Determination to improve the application of the instrument.

For information regarding the initial development and implementation of the unit title rental certificate, please refer to the explanatory statement for DI2024-313, available on the ACT Legislation Register.

Removal of phase-in arrangements relating to disclosure of information about ceiling insulation

Under the 2024 Determination, phase-in arrangements were prescribed to provide additional time for an owners corporation to obtain or take reasonable steps to obtain the necessary information about the presence and R-value of any ceiling insulation for a unit.

These phase-in arrangements under 2024 Determination were due to expire on 30 June 2025. As such, they have been removed from the 2025 Determination and will no longer be applicable. This means that from 1 July 2025, if an owners corporation does not yet hold the information they need to provide as part of a unit title rental certificate, they will have 6 weeks from the date the certificate is requested to obtain the relevant information and to provide the rental certificate.

Clarification of Class A units captured by disclosure requirements

The *Residential Tenancies Regulation 1998* (**the RTR**) places an obligation on landlords to ensure that rental properties comply with a minimum standard for ceiling insulation. However, the RTR also creates an exemption from compliance with the standard in certain circumstances, including where the unit being offered for rent has another unit above it (i.e. the unit for rent is not immediately below a roof cavity).

To support landlords to comply with this obligation, the 2024 Determination set out the requirements for an owners corporation to disclose information relating to ceiling insulation information for units within a Class A units plan. This serves to inform tenants and landlords about whether a particular unit meets the minimum standard. The 2024 Declaration required disclosure in relation to all Class A units. However, as outlined above, not all units within a Class A units plan are required to comply with the minimum energy efficiency standard for ceiling insulation for rental properties, making disclosure in relation to those properties unnecessary.

Under the 2025 Determination only units that are not below another unit within a Class A units plan (i.e., units immediately below a roof cavity) must disclose the information about the presence and R-value of ceiling insulation.

Circumstances where owners corporation is not reasonably able to obtain or provide ceiling insulation information

The 2024 Declaration set out the information that must be disclosed by the owners corporation in the event a request for a unit title rental certificate is received. However, the 2024 Declaration did not provide for circumstances where the owners corporation is not reasonably able to obtain information about the ceiling insulation in the roof cavity. Stakeholder feedback indicated that there may be circumstances where it is either physically impossible to enter the roof cavity or damage would occur when attempting to access these spaces. For example, where the only way to inspect the ceiling cavity would be to cut a hole in the unit's ceiling.

Section 119A of the *Unit Titles (Management) Act 2011* places an obligation on an owners corporation to take reasonable steps to obtain the information about the ceiling insulation and requires owners corporations to bear any costs associated with obtaining the required information.

In some circumstances, owners corporations will have building reports or energy efficiency reports which indicate whether there is ceiling insulation in the roof cavity of the units plan. Where this is the case, and the roof cavity has not been damaged or substantially altered since the report was produced, then these reports can be relied on as the source of the information the owners corporation provides in the unit title rental certificate. However, where reports are not available or can no longer be relied on (e.g. if there has been subsequent damage to the roof space) it may be necessary for a physical inspection of the roof cavity to be undertaken for the owners corporation to obtain the required information. There may be some circumstances where it is unreasonable to expect the owners corporation to do this.

The test of what is reasonable or not will depend on the circumstances for the unit to which the certificate relates. For example, the roof cavity may not be accessible due to the internal roof structure (e.g. has raked ceiling with no crawl space) to safely undertake an inspection to determine if there is insulation in the roof cavity. The roof cavity may also be inaccessible if the exterior roofing materials prevent access (e.g. fixed Colourbond roofing as opposed to tiles that can be moved). In these circumstances an owners corporation may not be able to obtain the information it is required to provide as part of the unit title rental certificate.

To help clarify this issue, new sections 4 (2) (a) and (b) have been amended to account for times when it may be unreasonable for an owners corporation to disclose information about the presence or R-value of the ceiling insulation. New section 4 (3) has been added to the 2025 Determination so that, in these circumstances, the owners

corporation must instead provide a statement that it is not reasonably able to obtain the required information and the reason why that is the case.

An example has been created to help clarify circumstances where an owners corporation is unable to obtain and provide the information about the ceiling insulation.

Section 4 (2) (c) of the 2025 Determination has been retained to account for the circumstance where a statement must be provided where the owners corporation has refused permission to install the ceiling insulation on the basis that the owners corporation intend to install the ceiling insulation but the language in this provision has been amended slightly. It previously referred to where an owners corporation “intended” to install insulation. As an owners corporation is not a natural person, the owners corporation is not able to make a statement about its intention. In acknowledgment of this, the language of this section has been changed to require the owners corporation to disclose where it has made a decision to install ceiling insulation. A statement by the owners corporation under 4 (2) (c) will not need to include evidence of a resolution to install ceiling insulation having passed, however, the owners corporation would need to retain this evidence as part of its usual record keeping requirements and could point to those records should there be a need to confirm the statement in the certificate is accurate.

Example about embedded networks within the units plan

The 2024 Determination provides for two circumstances where the owners corporation must disclose information about any embedded networks that may affect at tenant:

- For an electricity service supplied to the premises – the electricity service is a part of an embedded network; and
- For any utility service supplied to the premises – that the tenant has no or limited choice of service provider for the utility service.

While intended to relate to any utility service, the example included for Para (8) in 2024 Determination referenced a scenario in relation to electricity supply. Stakeholder feedback indicated this was confusing considering the determination had a separate requirement for an owners corporation to disclose any embedded network for electricity services. The example in the 2025 Determination has been amended to relate to a scenario where the central hot water system relies on gas supply where each unit is charged separately for their consumption.

Amendment to definition of *swimming pool disclosure statement*

The 2024 Determination includes requirements for an owners corporation to disclose information about any regulated swimming pool located on the common property. A *swimming pool disclosure statement* forms part of the information that must be disclosed, which includes disclosure of when the units plan was built. Feedback from stakeholders has indicated that this information is problematic, particularly for staged developments where there maybe multiple build dates for the units plan. In consideration of this, it has been determined that information about when a units plan, or a stage of a units plan has been completed is not required as it is not relevant safety information relating to the regulated swimming pool. As such, the requirement to provide information about when the units plan was built has been removed from the determination. Further, a clarification has been included in the Determination that the

swimming pool disclosure statement only needs to include information about alterations to the regulated swimming pool or safety barrier when those alterations were building work which required building approval. Definitions of building work and building approval have also been inserted into the 2025 Determination. In both cases, the definitions referenced are those contained in the Dictionary of the *Building Act 2004*. This would mean, for example, that if a swimming pool fence had been painted, the owners corporation would not need to disclose that information in the swimming pool disclosure statement as painting is not building work requiring building approval.

Owners corporations are now required to provide information about:

- when the regulated swimming pool was completed,
- if the regulated swimming pool has a safety barrier, when the safety barrier was completed,
- if any building work requiring building approval has occurred in relation to the regulated swimming pool or safety barrier, when those alterations were completed, and
- whether a standing exemption applies in relation to the regulated swimming pool, and, if so, the circumstances for the exemption.

This instrument does not engage any human rights.