

2011

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**RESIDENTIAL TENANCIES (MINIMUM HOUSING STANDARDS) AMENDMENT
BILL 2011**

EXPLANATORY STATEMENT

**Circulated by
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OVERVIEW

The purpose of the *Residential Tenancies (Minimum Standards) Amendment Bill 2011* is to set minimum standards for rental properties in the ACT. Two standards are specifically outlined in the Bill – energy efficiency, water efficiency, and the Bill proposes a number of other areas under which the Minister must set minimum housing standards, including security, construction and safety of premises, sanitation and plumbing, ventilation and protection from damp, and electrical safety.

Landlords are obliged to ensure that their properties meet these standards and the Bill creates a process by which a tenant in a tenancy agreement can ensure that their landlord is meeting the minimum housing standard. If the tenant has issued a rectification notice to their landlord in respect of a minimum housing standard, and if the landlord has not resolved the issue to the satisfaction of the tenant, the tenant can request that the commissioner for fair trading undertake an investigation.

If the commissioner determines that a minimum housing standard is not being met, the commissioner can negotiate with the tenant and the landlord and identify the rectification work that needs to be undertaken and in what time frame. If an agreement cannot be reached, the commissioner can propose the work required and the timeframe in which it should be completed.

If the work is not undertaken in the required timeframe, the commissioner must apply to ACT Civil and Administrative Tribunal (ACAT) for an order. The ACAT may make an order in regard to payment, rectification work, and/or termination of the tenancy agreement (should the tenant request this).

The Act would commence on 1 January 2013, except the provisions relating to the minimum energy efficiency standard, which will commence on 1 January 2014. Community feedback indicated that this would allow landlords sufficient time to ensure that their properties meet the minimum standards. Further the Minister may grant exemptions to a minimum housing standard. Exemptions may be conditional, and must take into account criteria and requirements prescribed in the regulations.

SUMMARY OF CLAUSES

Clause 1 The Name of the Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

The Act commences on 1 January 2013.

Sections 9, 11, 12, 14, and 16 commence on 1 January 2014. These are the provisions of the Bill that relate to the minimum energy efficiency standard. Commencement for these sections is 12 months after the Act commences so as to ensure landlords are given appropriate time to comply with the new obligations created by the bill.

Clause 3 Legislation Amended

This clause is a formal provision to identify that the Bill amends the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998*.

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

This clause amends the existing requirement for the publication of energy efficiency rating statements and requires that a current energy efficiency rating statement is always published when a property is advertised for lease. Existing provisions only require this if an energy efficiency rating statement already exists for the premises being leased.

Clause 5 Section 11A (5)

This clause provides that the obligation created by the new section 11A(1)(b) does not apply if the advertised statement of the energy efficiency rating is not false or misleading in a material particular or if the actual energy efficiency rating of the premises is higher than the rating stated in the advertisement.

This provision addresses the circumstance that a landlord may have an EER completed and then undertake actions to improve the energy efficiency of their premises. A tenant would still be able to seek a rectification notice should the energy efficiency rating statement indicate that a minimum standard had not been met.

Clause 6 Section 11A (7), new definitions

This clause defines the terms ‘current energy efficiency rating’ and ‘current energy efficiency rating statement’.

The definition for a current energy efficiency statement is a statement which reflects the construction and rateable elements of the habitable part of the premises at the time the statement is used by the lessor.

Energy efficiency rating statements can be affected by both changes to a building, such as windows and roof constructions, as well as fixtures and fittings, such as curtains, carpet and pelmets. The intention is that an EER statement for the purposes of advertising a property for rent should reflect both the construction and the fixtures and fittings of the premises as it exists when it is advertised for lease.

An energy efficiency rating statement is only current if it was prepared not more than 10 years before the time it is used. This is to ensure that even in the situation of minimal changes being made to a premises, a rating statement is undertaken using a rating scheme that reflects current practice.

Clause 7 Section 11A (7), definitions of existing energy efficiency rating

This clause removes the now redundant definition of an “*existing energy efficiency rating*”.

Clause 8 Lessor’s obligations Section 12 (3) (c)

This clause sets out further information that must be provided to tenants by the lessor prior to entering into a residential tenancy agreement in regard to the new minimum standards created by this Bill. Specifically it requires the lessor to provide the tenant with the required information that explains:

- the minimum housing standards;
- the processes that are open to a tenant to pursue action should the tenant believe that the house does not meet a minimum housing standard; and
- if the premises that are being leased have an exemption from any of the minimum housing standards a copy the exemption.

This clause also creates a requirement for the lessor to provide a copy of the current energy efficiency statement as defined in clause 5 of the Bill.

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

This clause gives an example of the kind of information that would be required to be provided to the tenant in the case of a premises having an exemption from the minimum housing standards.

Clause 10 New part 3A

This clause inserts a new Part 3A into the *Residential Tenancies Act 1997* which outlines the minimum housing standards that must be met by a lessor, and mechanisms by which a tenant can take action to ensure that minimum housing standards are met.

New Section 35A - Definitions – pt 3A

This section defines the key terms used for the new Part 3A, including a minimum water efficiency standard, rectification notice, rectification work and tap equipment.

Definitions for key terms related to the minimum energy efficiency standard are included in Clause 11 and commence on 1 January 2014.

Minimum water efficiency standard: sets a standard for water efficiency outlined in the regulations. The regulations for water efficiency, set out Clause 10, will be inserted into the Residential Tenancies Regulation 1998 – Part 3.

Rectification notice: is the formal notification that a tenant gives to a landlord under section 35E that informs the landlord that the tenant does not believe the premises meet the minimum housing standards and requiring the landlord to undertake rectification work so that the minimum housing standards are met.

Rectification work: means work required to comply with the minimum housing standard.

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

New Section 35B – What are the minimum housing standards

This section outlines the minimum housing standards. Paragraph (a) is the minimum water efficiency standard and paragraph (b) lists other areas for which the Minister must set minimum standards by regulation.

The energy efficiency standard, included at Clause 12, is in a different Clause due to the later commencement of this obligation.

The water efficiency standard and the energy efficiency standard have been set in the Bill and remaining standards delegated to the Minister as disallowable instruments.

New Section 35C – Determination of other minimum housing standards

These are the standards referred to in subsection 35B(d). This section outlines the areas in which the Minister must set minimum housing standards, including security, construction, condition and safety of premise, sanitation and plumbing, supply of hot and cold water, ventilation and protection from damp, heating, laundry and cooking facilities, electrical safety, hard-wired smoke alarms, lighting and any other matter that the Minister believes minimum housing standards should be set.

The detail of these obligations have been delegated to the Minister because of the detailed nature and complexity of the task and the need for further community involvement in the process (this is provided for in section 35D).

New Section 35D – Minimum Housing Standards – public consultation

This provision requires the Minister to undertake public consultation before determining a minimum housing standard. The consultation period provides 15 business days for inspection of the documents and invites comments to be submitted to the Minister at a stated address during a stated period ending at least 15 days after the end of the viewing period.

The provision requires that the Minister must publish a consultation notice in a daily newspaper.

New Section 35E – Premises must comply with minimum housing standards

This section requires lessors to meet any minimum housing standards set out under Section 35B.

New Section 35F – Minimum Housing Standards - tenant may give rectification notice

This section provides for tenants to give written notice to a lessor that requires the lessor to ensure that the premises comply with a stated minimum housing standard. The intention of this provision is to commence the formal process whereby a tenant can seek to address concerns that minimum standards are not being met. It requires the tenant to communicate directly with the lessor in order to give the lessor an opportunity to address the tenant's concerns prior to the involvement of the commissioner or the ACT Civil and Administrative Tribunal (ACAT).

The rectification notice would also be provided to the commissioner should the tenant request the commissioner to undertake an investigation under 35G.

New Section 35G – Minimum Housing Standards – tenant may ask commissioner to investigate

This section provides that if the tenant has given the landlord a rectification notice, and if the lessor has not complied with that rectification notice the tenant may ask the commissioner to investigate their complaint in regard to the premises not meeting the minimum housing standards.

If there is a disagreement between the tenant and the lessor in regard to whether or not the house meets the minimum housing standards, and the lessor does not take action when issued with a rectification notice Section 35G provides for the tenant to seek third party involvement in the dispute.

The lessor is provided with 90 days to meet the rectification notice in recognition of the time it takes to arrange for rectification work to be undertaken.

If the tenant wishes to make a written request for the commissioner to investigate whether or not the lessor has failed to ensure that the premises comply with the standard minimum housing standard, they must provide the commissioner with a copy of the rectification notice, and any other material in their possession that will assist the commissioner in their investigation.

New Section 35H Minimum housing standards – commissioner must investigate if asked by the tenant

This section outlines the process to be followed by the commissioner in regards to investigating whether or not a premises has failed to comply with minimum housing standards when requested by the tenant.

The commissioner must provide both the tenant and the lessor with a copy of their report into their investigation.

The report must include a statement of whether any minimum housing standards are not being met. The report must address the housing standard that the tenant has raised in their rectification notice and any rectification work that the commissioner proposes.

This section provides for the commissioner to either negotiate a solution that is acceptable to both the tenant and the lessor in regards to rectification work, or, if no agreement between the tenant and the lessor can be reached, to propose rectification work and the proposed period in which rectification work must be completed.

The section also outlines the process that the tenant may then pursue should they disagree with the commissioner's assessment of whether or not the standards comply, or the proposed rectification work.

The tenant may also ask the commissioner to investigate whether the lessor has completed the proposed work within the timeframe that has been proposed by the commissioner.

New Section 35I Minimum housing standards – the commissioner may investigate on own initiative

This section allows for the commissioner to investigate whether a lessor has failed to ensure that premises comply with the minimum housing standards, independently of a tenant initiated request to investigate. The commissioner may choose to investigate housing standards without a tenant request, for example, in the case of investigating standards in public housing premises or when a third party (such as a housing advocate) alerts the commissioner that premises do not meet housing standards.

It is important to note that the commissioner cannot enter premises to undertake an investigation without written permission from the tenants. This ensures that the tenant's right to privacy is respected and guarantees that the commissioner may only impinge upon a person's privacy with their express written consent. The question may be asked as to whether any investigation into a private home limits a person's right to privacy even if that investigation does not involve entry into the premises. It is worth noting that even if it were the case that a limitation of the right to privacy could be said to occur the potential correction of the often significant power imbalance between lessor and tenant and public interest in ensuring that the minimum housing standards are enforced justifies this very mild potential for limitation.

The processes put in place after the commissioner has completed an investigation are the same as in 35H.

New Section 35J Minimum housing standards – tenant may ask the commissioner to investigate the completion of work

This provision allows the tenant to ask the commissioner in writing to investigate whether the landlord has completed the commissioner's proposed rectification work.

If the commissioner does complete an investigation as to whether the work has been completed and the finds that the work has not been completed, the commissioner must then consult with the tenant about the appropriate ACAT order to be sought and apply to ACAT for an order under section 35L. The intention is to keep the tenant fully informed but for the commissioner to be the party who takes the matter to ACAT.

New Section 35K Minimum housing standards – tenant may apply to ACAT if dissatisfied with report

This Section allows for the tenant to apply to ACAT for an order under section 35L within 60 days if they do not agree with the commissioner's report on either

- whether the premises meets the standard; or
- the proposed rectification work or proposed period for completion.

The tenant has 60 days in which to apply to ACAT.

New Section 35L Minimum housing standards – orders by ACAT

This provision outlines the range of orders that are available to the ACAT should either the tenant or the commissioner apply for an order. ACAT are able to make one or more of the following orders:

- an order that the landlord ensure the standards are met within a specified time period;
- an order that rent should be paid into the ACAT until the premises comply with the stated minimum standard;
- an order directing payment out of any amount paid into ACAT as appropriate;
- an order for the rent payable to be reduced until the stated minimum standard is met; and
- an order to terminate the residential tenancy agreement, but only with the tenant's consent.

New Section 35M Minimum housing standards – Minister may exempt premises

The exemption clause allows the Minister to exempt premises, or classes or premises, from complying with the minimum housing standards.

The exemption clause will give the capacity for the Minister to exempt specific classes of premises from specific standards, this ensures flexibility and reasonableness in the law where it would simply not be practical or proportionate to require compliance, some examples where this may, but would not necessarily be appropriate are:

- The Minister may exempt monocrete constructed houses from the energy efficiency standard;
- The Minister may exempt class A unit titles from energy efficiency standard;
- The Minister may exempt premises with concrete ceilings from the installation of hard wired smoke detectors; or
- The Minister may exempt rural properties from a requirement to provide hot water.

The Minister may set conditions on any exemption that is given. For example the Minister may exempt premises with concrete ceilings from the installation of hard wired smoke detectors on condition that battery operated smoke detectors are installed.

In making a decision as to whether to exempt a premises from a minimum housing standard, the Minister must take into account any criteria prescribed by regulation and comply with requirements set by regulation.

New section 35N Review - pt 3A

This provision requires that the Minister reviews the operation of this part and report to the Legislative Assembly as soon as practicable after the end of the second year of operation.

Clause 11 Definitions – pt 3A Section 35A, new definitions of *minimum energy efficiency standard* and *star*

This section defines key terms used for the new Part 3A related to the minimum energy efficiency standard which commence on 1 January 2014.

Minimum energy efficiency standard: A minimum energy efficiency standard of at least 2 stars is set from the commencement date of this provision, 1 January 2014 and at least 3 stars from 1st January 2016. The provisions allow for the Minister to set a higher rate than this, but not to set a lower rating. It is the intention of the Bill to set minimum standards and therefore there is no power for the Minister to set an energy efficiency standard below that which is in the Bill.

Star: for an energy efficiency rating means the 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 123D.

Clause 12 what are the minimum housing standards? Section 35B, definition of minimum housing standards, new paragraph (aa)

This section adds the obligation of the minimum energy efficiency standards to the list of minimum housing standards. This is clause consequential as a result of the delayed commencement of the minimum energy efficiency standard (see clause 2 which provides for commencement on 1 January 2014).

Clause 13 Dictionary, new definitions

Clause 13 lists all the new definitions in the Bill, and refers back to part 3A (Minimum housing standards) section 35A.

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

This section defines the key terms used for the new Part 3A, including a 'minimum energy efficiency standard' and 'star'.

Residential Tenancies Regulation 1998

Clause 10 New sections 3 and 4

New Section 3 Prescribed water efficiency requirements – Act, s 35A, def minimum water efficiency standard

The regulations prescribe minimum water efficiency standards as the following:

- Shower heads – a maximum flow rate of 9L per minute – a standard shower head uses about 15-25 litres of water per minute. This standard could be met

by installing a 3 star shower head. Using gas hot water, an efficiency shower head can result in a 47 percent reduction on hot water costs.

- Internal cold taps water equipment – a maximum flow of 9L per minute – typical taps discharge 15-18 litres of water per minute. Low flow and aerating models can use as little as 2 litres per minute.
- A dual flush toilet with maximum water volume of 6.5L for a full flush and 3.5L for a half flush, and an average of not more than 4L – an older single flush toilet can use up to 12L per flush.

Further information about water efficient products and the Water Efficiency labelling Scheme (WELS) can be found at <http://www.waterrating.gov.au/products/index.html>

New Section 4 Exemption requirement for minimum energy efficiency standard – Act, s 35L(4)

This creates the requirements for any exemption to the minimum energy efficiency standard to be granted by the Minister. To be exempt a lessor must obtain an energy audit of the premises (these are currently subsidised by the ACT government – see www.actsmart.gov.au)

The section allows for energy audits to be undertaken by building assessors authorised under the *Construction Occupations (Licensing) Act 2004*, or a person authorised in writing by the Minister to undertake energy audits of the energy efficiency of residential premises for this section.

Further the section provides that where defined work, such as the installation of suitable curtains and insulation, is recommended in the audit an exemption may only be granted where that work has been completed.