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ACT Greens MLA

Fair Go Rentals
The Residential Tenancies
(Minimum Housing Standards)
Amendment Bill 2011

April 2011

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The Residential Tenancies (Minimum Housing Standards) Amendment Bill 2011

The ***Residential Tenancies (Minimum Housing Standards) Amendment Bill 2011*** seeks to set minimum standards for properties that are made available for rent in the ACT, including public housing where the government is the landlord.

The legislation will set specific minimum standards for security, energy and water efficiency, and allow the Minister to set a number of standards in relation to a range of other areas, such as ventilation and damp, construction and condition, supply of hot and cold water, heating, laundry and cooking facilities, lighting and electrical safety.

According to the 2006 Census, 28.6% (or 35,139) of households in the ACT are living in tenanted properties. 72% of these are private rentals and 26.5% are rented by the ACT Government.

The current standard in the ACT Residential Tenancies Act state that a tenant is entitled to live in a premises that is “in a reasonable state of repair” and “reasonably clean” but does not elaborate on what the standard of the premises should be.

While a large number of properties rented out are of good quality, and if they are recently constructed, will have a high energy efficiency rating, many older houses are sub-standard. Unfortunately it is these houses that end up being rented by those who are on the lowest incomes – ironically they can also be the people who end up with the highest running costs.

CONSULTATION

We would welcome comments from organisations, businesses and individuals on the Bill. Comments may be of a general nature, or may raise particular issues that you think need to be addressed in the legislation. Throughout this discussion paper, we have also highlighted specific areas where we would value further debate, and on which we will hope to consult with other Members of the Legislative Assembly. We would also be pleased to meet in person with representatives of organisations.

The Exposure Draft and the Explanatory Statement are available at:

www.legislation.act.gov.au/ed/db_41272/default.asp

Please send written submissions by email or post to:

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You can also leave a comment at our Facebook page: www.facebook.com/FairGoRentals

We will be taking submissions on the Bill until **Friday 3rd June 2011**.

PUBLIC FORUM

We will be holding a public forum at the Legislative Assembly to discuss the Rental Standards Bill in more detail:

When: 5.30-7pm Tuesday 17th May 2011

Where: Reception Room, ACT Legislative Assembly, Civic Square, Canberra

Please RSVP by **Monday 16th May** on 62050005 or Rattenbury@parliament.act.gov.au

WHAT WILL THE MINIMUM STANDARDS BE ?

The Bill sets very specific standards for energy efficiency, water efficiency and security, as well as areas in which the Minister must set other standards.

- Energy efficiency standard – EER 2 star by January 2013, and EER 3 star by January 2015. New houses are required to be six star rated, whereas the standard is targeted at older houses that weren't built to such a high standard originally. Changing a house from an EER of 0 to 3 can halve a household electricity bill;
- Water efficiency standards could be met by fitting low flow shower heads and taps, and installing a dual flush toilet;
- Security standards – the provision of deadlocks on external doors as well as locks on other external openings.

The legislation also allows the Minister to set of standards in relation to a range of other areas, such as ventilation and damp, construction and condition, supply of hot and cold water, heating, laundry and cooking facilities, lighting and electrical safety. This would be done by the Minister setting regulations once the legislation has passed. The Minister would do this based on advice from his or her Department, and should be based on public and stakeholder consultation.

The Bill also includes the capacity for the Minister to give exemptions should a landlord not be able to meet any one of the minimum standards without an unreasonable cost. Exemptions could be granted for individual premises or a class of premises.

QUESTION:

- *Do you agree with the proposed standards?*
- *Would you suggest any amendments to the list of issues covered or the standards proposed?*

WHY SET MINIMUM STANDARDS?

There are currently no minimum rental standards

The current provisions in the Residential Tenancies Act place minimal requirements on landlords in regard to the status of a property. Current legislation requires that properties need to be “reasonably clean”, “in a reasonable state of repair” and “reasonably secure”.

This doesn't require houses to be warm in winter, cool in summer, be well ventilated, have fly screens or deadlocks. Indeed, a “reasonable state of repair” effectively implies that whatever facilities the property offers, it is in good condition. It fails to specify what specific facilities should be included.

Raising the standard of housing across Canberra

Setting specific standards for energy and water efficiency in the rental property market will ensure that Canberra's rental housing stock is brought up to a standard where energy and water use is reduced, both providing cheaper properties to run as well as contributing to the community's savings in these areas. This will have the effect of reducing long term cost of living pressures on those who are renting their homes.

The split incentive problem

Landlords often don't make improvements to rental properties because of the split incentive problem - landlords are responsible for the capital costs, while tenants are the primary beneficiaries due to better living standards and reduced energy bills. Thus the incentive for the landlords is limited even though basic improvements, such as ceiling insulation, might significantly improve the quality of life for tenants.

Landlords don't eat carrots without encouragement

While the ACT Government has put in place some incentives to improve the water and energy efficiency of houses in the ACT, the nature of rebates is such that they are not accessed widely across the community. Nor are they particularly well accessed by landlords.

This was clearly demonstrated when the Federal Government began their Energy Efficiency Homes Package in early 2009. The \$4 billion program sought to provide rebates for the installation of home insulation. As part of the rollout, the Low Emissions Assistance Plan for Renters provided up to \$1000 to assist landlords with the cost of ceiling insulation. The Federal government was aiming to insulate 2.2 million owner-occupied homes and 500,000 rented properties. However, while the home owner part of the scheme was well subscribed,

We lived in a place where due to dampness the walls became mouldy in the winter.

Unfortunately there was nothing we could do about it - we just had to spend lots of time trying to remove the mould so we didn't get sick.

SC, Turner

by June 30th 2009 only 3,526 rental properties had been insulated. Demand was only 16% of what was anticipated, and in September 2009, the rental scheme was rolled into the Home Insulation Program.¹ For every one rental property accessing this scheme, 14 accessed the owner occupiers' scheme.

The Tenants Union of Victoria supports the view that landlords and tenants do not access such rebate programs. A survey of people who receive insulation rebates in Victoria in 2008 showed only 12 per cent were tenant households. So while incentives are part of the policy response, landlords aren't finding the carrots tasty enough!

Climate change costs and impacts

It has been estimated that at least a third of ACT houses lack adequate insulation and energy efficient lights, and less than 10% of houses have solar hot water systems (Blakers, 2005). The makeup of residential energy use indicates that a large proportion of consumption is from heating and cooling (42%), hot water (24%) lighting (6%) and cooking (4%). These are all components that tenants would, aside from usage patterns, be unable to influence as they are to do with the construction and insulation of the house itself, and the fixed appliances provided with the tenancy.

Canberra's residential housing stock accounts for around 40% of the ACT's greenhouse emissions. The rental market makes up about 30% of those residencies, so clearly offers an opportunity to make greenhouse savings.

WHO'S TALKING ABOUT MINIMUM STANDARDS?

Setting minimum standards for rental properties has been suggested by a range of community organisations across Australia, including ACTCOSS in the ACT², the brotherhood of St Laurence³, the Consumer Utilities Advocacy Centre⁴ and the Victorian Council of Social Services through their Decent not Dodgy campaign.

The 'Decent not dodgy' campaign calls for reforms to the Victorian Residential Tenancies Act (1997) to include basic standards for rental properties to ensure that all renters are guaranteed a home that is healthy, safe and affordable to run.⁵

At a recent conference in Tasmania, called *Renting in Tasmania 2010-2020 - The next Decade*, there was agreement from those who attended, including real estate agents, tenant and community organisations and government, that minimum standards for rental housing should be introduced in Tasmania.

¹ <http://www.climatechange.gov.au/~media/publications/energy-efficiency/Home-Insulation-Hawke-Report.pdf>

² http://www.actcoss.org.au/publications/Publications_2008/0508CMT.pdf at page 7

³ Brotherhood of St Laurence submission to the prime Minister's energy efficiency Task force <http://www.climatechange.gov.au/en/government/submissions/pm-task-group/~media/submissions/pm-taskforce/papers/146-brotherhood-of-st-laurence.ashx>

⁴ <http://www.climatechange.gov.au/en/government/submissions/pm-task-group/~media/submissions/pm-taskforce/papers/162-consumer-utilities-advocacy-centre.ashx> at page 4

⁵ <http://www.vcross.org.au/what-we-do/housing/dnd.htm>

WHY NOT JUST MANDATE ENERGY EFFICIENCY RATING DISCLOSURE?

The National Strategy for Energy Efficiency commits state and territory governments through COAG to phase in mandatory disclosure of residential building energy, greenhouse and water performance at the time of sale or lease, commencing with energy efficiency by May 2011.⁶

It could be argued that we should just mandate disclosure of energy efficiency standards for rental properties. However, many including VCOSS, the Brotherhood of St Laurence and Tenant's Union Victoria, have argued that mandatory disclosure should be accompanied by minimum standards.

The Brotherhood of St Laurence says that while mandatory disclosure will do much to provide more information about the status of housing stock, it could lead to a situation where we see rent increase for houses that have improved energy efficiency, leaving low income tenants priced out of the market, pushing them into the lowest quality, least energy efficiency housing. The Victorian Council of Social Services agree that "people on low incomes, who have least capacity to pay for high energy bills, are likely to be left to rent the most inefficient properties." They recommend the introduction of public and private rental standards alongside mandatory disclosure, saying:

"mandatory disclosure of efficiency at sale or lease has some potential to drive efficiency at the household level as evidenced by experiences in the ACT. However, the implementation of mandatory disclosure in the rental market, in the absence of minimum standards, risks more efficient properties being in higher demand. The introduction of mandatory disclosure creates both a financial incentive and a potential mechanism for enforcement to introduce the 'floor' of minimum rental standards."⁷

⁶ Item 3.3.2 in the National Strategy for Energy Efficiency, http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/Energy_efficiency_measures_table.pdf at page 25.

⁷ <http://www.climatechange.gov.au/en/government/submissions/pm-task-group/~media/submissions/pm-taskforce/papers/152-victorian-council-of-social-service.ashx>

BENEFITS AND COSTS

Benefits for Tenants

The ACT, while rated as having good housing affordability for those on average and above incomes, has in real terms the highest rents in Australia bar the Northern Territory.⁸ This means that for those who are not on high incomes, the costs of renting can be significant, and the smaller market means that there is less choice for renters. Vacancy rates in March 2011 were estimated at 0.6%⁹

Families already experiencing cost of living pressures will only find it harder if they are renting properties that are energy hungry. It has been predicted that even without the introduction of a carbon price, the cost of electricity and gas is set to rise significantly over the next 5 years, due to increases in distribution charges and commodity prices.¹⁰

"It was hard to find a house to rent in Canberra in August 2009, perhaps because we were a young family. We eventually found a place that was in poor condition and had been on the market for 3 months already. We are still living in this house, despite it having no energy efficiency rating, no ventilation in the toilet and bathroom, and very poor heating. We also get leaks when the rain is heavy. Requests to fix the heating have been ignored by the real estate agent. We aren't looking forward to spending another winter in this house as it affects the children's health, but I'm not sure we have much choice."

WA, Higgins, ACT.

Most people in Canberra have either experienced themselves or know stories of renters experiencing discomfort due to poor heating and cooling. Many older houses in the ACT have a low standard of insulation. Many have not had their energy ratings completed at all, but for those that have, it is not uncommon to see Energy Efficiency Rating (EER) of between 0-1.5 for older houses. At any one point, a review of real estate web sites indicates that there are many houses that would be expensive to run. Interestingly, many have had cosmetic upgrades made making them easier to rent out, but still have very low EERs.

⁸ REIA Housing Affordability Report, Joint Quarterly Survey no 103 September Quarter 2010.

⁹ SQM Research

http://www.sqmresearch.com.au/graph_vacancy.php?region=act%3A%3ACanberra&type=c&t=1#terms

¹⁰ Michael Fraser, CEO and Managing Director of AGL, at the Australian Financial Review Energy Conference, September 2010

It is common sense that less efficient houses use more energy. EER information supplied by the Home Energy Audit Team (HEAT) in 2005 ¹¹ provides an indication of how the running costs of a home decrease as the EER increases. It indicates that even raising the EER of a property from zero to 2 can make a sizeable difference in the running cost of a property.



This table was generated in 2005, and the cost of electricity has risen considerably since then and it is now much more expensive to live in a home that has an EER of zero. ACT Government figures¹² indicate that the average household energy bill has increased by 46% in the period between 05-06 and 09-10. This would put the average electricity bill for a zero rated house at around \$2791. Increasing the EER up to 3 stars on that same house, would, according to the HEAT figures, bring the cost down to around \$1300.

Won't rents just go up?

Some may argue that placing extra costs on landlords in terms of capital expenditures will just put up the price of renting in a city where renting is already difficult and expensive.

However, the key determinant of rental price is the market - vacancy rates and availability are the drivers, not the landlord's costs. The rental market is extremely tight in Canberra and rents are generally set as a factor of what the market will deliver. In the last few months we have heard numerous anecdotes of tenants having their rent increased by \$30-50 per week, irrespective of the quality of the house or any improvement to the house.

¹¹ <http://www.heat.net.au/pdfs/factsheets/EER%20Ratings%20Explained.pdf>

¹² <http://www.hansard.act.gov.au/hansard/2011/pdfs/20110217.pdf> at page 422

If minimum standards are not set, then renters will keep paying high prices anyway, while some landlords get away with not ensuring that premises meet the basics standards to ensure a warm, secure home that is ventilated in summer and without damp and mould. Even if some rents do rise slightly as a result of the landlords expenses, then it is very likely that the tenants will still make savings over the longer term on the running costs of the premises.

As it currently stands, landlords are passing the costs of inefficient buildings onto their tenants, and some tenants are being forced to accept sub-standard rentals because the vacancy rate is so low and the rental market is so competitive. We don't think that this is a fair outcome for tenants.

Responsible landlords for respectable rentals

Obviously not all landlords will be keen to invest the capital required to bring properties up to minimum standards. But that capital investment will, in general, only improve the value of the property. Nonetheless it is not uncommon for long-term landlords to be unconcerned about the standard of properties, as they understand that it is the capital gain which will reap the larger reward when they sell. While this may be a "smart investment tactic", it does not address the broader social goal of having decent rental homes for tenants to live in.

Benefits for landlords

Spending money making a property look good can deliver good tenants and increase the resale value of a house. However, there are also financial benefits for owners to be realised by improving the energy efficiency of a property. A 2008 report undertaken for the Federal Department of the Environment, Water, Heritage and the Arts and prepared by the ABS indicated that EER was positively associated with house price.¹³ This research was undertaken on the ACT housing market as a jurisdiction that had implemented mandatory disclosure of EERs for the sale of property some years earlier.

The study looked at over 5000 homes sold in 2005 and 2006, not including houses that were built after 1995 which were already required to meet a 4 or 5 star rating. Holding all other variables constant, the association between price and EER on average was:

- 1.23 percent gain for each 0.5 EER star in 2005
- 1.91 percent gain for each 0.5 EER star in 2006

¹³ Energy Efficiency Rating and House Price in the ACT, Department of the Environment, Water, Heritage and the Arts, 2008.

What will it cost landlords?

It is very difficult to predict what the cost of meeting minimum standards will be for individual premises, as each will be starting from a different base – some properties may be well below minimum standards, others may need far less work to meet the standards. Most properties, of course, will already meet most of the standards.

It is also difficult to calculate exactly how much it would cost to increase a specific house to an EER of 2 or 3, as each house is different; they will have different measures already in place, be oriented differently, and constructed differently. However, it is possible to give some indication of costs of specific improvements and measures.

Most houses could be increased up to an EER of 2 stars with relative ease by putting in high grade ceiling and wall insulation. This applies to many common house construction types - brick veneer, double brick, and weatherboard. However, some housing constructions may prove more difficult to insulate – for example monocrete or besser brick houses. While these houses may be able to add ceiling insulation (depending on roof construction) they may require full external cladding which, for an average sized house, can cost up to \$15,000-\$20,000 for the materials alone. These houses will be likely to require exemptions from the minimum standards. (See Exemptions Clause)

This table from the Commissioner of the Environment and Sustainability¹⁴ outlines average costs and savings from simple household retrofitting:

PRIORITY	IMPROVEMENTS	PAYBACK TIME (YEARS)	ANNUAL CO ² E REDUCTION (KG)	COST TO INSTALL	ANNUAL SAVINGS
1	AAA shower head	0.4	1010	\$120(DIY)	\$300
2	Weather Stripping	0.6	72	\$14 (DIY)	\$25
3	Compact fluorescent lights	1.6	345	\$100	\$60
4	Ceiling Insulation	3.4	1287	\$1,200	\$380
5	Solar hot water	3.3 – 5.8	2498	\$2,600 – \$4,600 (Inc. rebates)	\$780
	All	3.3 years	5212 kg	\$5,000	\$1,545

¹ Figures are based on an average of 3.6 people in a household, GHG emissions factors of .89kg per kWh, an average daily use of 2.2 hours per lightbulb (as used by the DCCEE Greenloans program), an average of 177Kl/year of water use per Canberra household (National Water Commission).

Costs for other items

There are many individual items that could be included as part of the Minimum Standards. Below is a sample of some of the costs. As discussed above, the total cost for any one landlord will vary greatly.

- Hard wired smoke alarms - \$220 purchased and installed (cost about \$30). Hard wired smoke alarms can be done easily when ceiling access is available.
- For an average size house (120 m²) - R5 rated ceiling insulation costs around \$1300. (If insulation already exists, then a top up would be less than \$1000).
- Low flow taps –taps can now be purchased with a WELS rating of 6 star. The Bill sets a WELS rating of 3 star. The price of taps would depend on the model of taps chosen, but some of the cheapest taps available would easily meet the standard.
- The cheapest type of deadlocks to secure premises with a key start at around \$22 and go up \$55.
- Window locks start at around \$15-\$20 each.

Tax deductibility

The tax deductibility of expenses incurred by landlords under this proposal depends on the nature of the expense, and landlords will need to seek detailed tax advice, or visit www.ato.gov.au

Generally, costs of repairs and maintenance relating directly to wear and tear or other damage that has occurred due to renting a property can be counted as a deduction in the year they are paid. Other expenses may be claimed as a capital works deduction or a deduction for decline in value of depreciable assets, and can be claimed over a longer period.

'Repairs' generally means work to make good or remedy defects in, damage to or deterioration of the property, whilst 'maintenance' means work to prevent deterioration or fix existing deterioration. The ATO draws a distinction between 'repairs and maintenance' and 'improvements', the latter of which a landlord cannot claim a deduction for the total cost in the year they were incurred.

Items to be addressed under this legislation will have different status for tax purposes, depending on the existing state of the property and detailed consideration of ATO advice and rulings.

Rebates

If landlords undertake a HEAT (Home Energy Advice Team) audit for a cost of \$30, then they are entitled to a \$500 rebate once they've spent more than \$2000 on improvement identified in the audit.¹⁵

QUESTION:

The Greens will recommend that the Government review the rebates available to landlords. Increasing the HEAT rebate may be one way to do this. The Government could also consider establishing a rolling fund for low interest, low documentation loans. Alternatively, support for landlords could be delivered through the Government's proposed white certificate trading legislation.

Please comment on what you think would be the most effective mechanism to assist landlords.

¹⁵ http://www.actsmart.act.gov.au/your_household/heat_energy_audit

THE PROVISIONS OF THE BILL

The purpose of the ***Residential Tenancies (Minimum Standards) Amendment Bill 2011*** is to set minimum standards for rental properties in the ACT. Three standards are specifically outlined in the Bill – energy efficiency, water efficiency and security, and the Bill proposes a number of other areas under which the Minister must set minimum housing standards, including 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. 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, they can negotiate with the tenant and the landlord to 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. ACAT can make an order in regard to payment, rectification work, and/or termination of the tenancy agreement (should the tenant request this).

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.

The Bill does not apply to people classed as “occupiers” under the current Act. It does apply to both the private rental market and public housing.

Commencement

The Bill would come into force in January 2013, on an expectation of it passing into law in mid-late 2011. This would allow 12-16 months for landlords to become familiar with the requirements under the legislation.

Energy efficiency rating – advertising

The current legislation is amended to require a current energy efficiency rating statement included in the advertisement of a property for lease. Current law only requires this if an EER has been conducted in the past.

This requirement underpins the need for landlords to meet the minimum energy efficiency standard, but would also implement the COAG commitment in the National Energy Efficiency Strategy to introduce mandatory disclosure for rental properties by May 2011, as mentioned earlier.

The minimum standards

Energy efficiency rating statements

The definition for a current energy efficiency rating (EER) 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 landlord.

EER 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. A certificate would remain current if there have been no changes to the premises in these regards. It is not the intention that landlords would require a new EER each time the property was advertised for lease.

Minimum energy efficiency standards

The minimum energy efficiency standard set in the Bill is that premises must reach an EER2 by January 2013 and EER3 by January 2015. Most properties are easily able to reach an EER2 unless they fall into a specific category of construction, such as monocrete.

Setting the start date for the EER3 standard in January 2015 gives landlords time to make a decision about whether to aim for an EER3 or to upgrade their investment by selling and purchasing a higher quality property. It also signals to new investors that any properties that they purchase will need to meet the standard, thereby encouraging potential landlords to invest in appropriate properties for the rental market. Having the EER3 standard in the Bill also gives clear direction to property owners about future policy settings; some landlords may wish to upgrade immediately to EER3, rather than stepping to EER2, and undertake any required works in one go, potentially saving money by doing so.

Minimum water efficiency standards

The regulations prescribe minimum water efficiency standards that are consistent with a 3 star rating under the Water Efficiency Labelling Schemes (WELS)¹⁶

- Shower heads – a maximum flow rate of 9L per minute.

A standard shower head uses about 15-25 litres of water per minute. The minimum standard can be met by installing a 3 star shower head. For someone using gas hot water, an efficient shower head can result in a 47 percent reduction on hot water costs.

- Internal cold taps – 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. The minimum standard is within this broad range.

- 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.

¹⁶ <http://www.waterrating.gov.au/products/index.html>

Minimum security standard

The minimum security standard requires that deadlocks are provided on external doors, and other external openings such as windows or sliding doors. It contrasts to the current requirements that premises are “reasonably secure” (see Section 71E of the Residential Tenancies Act).

Having deadlocks can not only assist with the security of a property but may also reduce insurance premiums for premises.

Other minimum housing standards

The Bill outlines a range of other areas for which the Minister must set minimum housing standards, including:

- 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 for which the Minister believes minimum housing standards should be set.

The Minister must prescribe minimum housing standards by regulation in all of these areas. Defining the areas in which the Minister must set standards, rather than the standards themselves, will allow further investigation to be undertaken as to specific details. As such, if the Bill is brought into force in 2011, there will be at least 12 months for the Minister to determine what the standards should be, in consultation with his department and with other departments as appropriate.

It is envisaged that standards might include such items as:

- The provision of hot and cold water
- The provision of hard wired smoke alarms (with an exemption for particular types of premises.)
- Fly screens on all windows

QUESTION

- *What other standards might need to be set in this section by the Minister?*
- *Have we included all of the relevant areas that the Minister must consider?*

The path to achieving minimum standards

There will be a legal obligation on the landlord of any property to meet the minimum standards set out in this Act. The process to achieving minimum standards is initiated by the tenant raising their concerns with the landlord in regard to one or more of the standards not being met.

Obligations on landlord prior to leasing

Prior to properties being advertised, the landlord must have a current energy efficiency rating (ERR) statement for the premises. This is the same EER as is required for properties when they are advertised for sale, however the definition of “current” means that landlords aren’t required to obtain a new EER unless there have been changes made to the rateable part of the premises since the previous EER was obtained.

On the lease of a property, the landlord is required to provide the tenant with information about what the minimum standards are, and whether or not the premises has an exemption from any of the standards.

Action by the tenant

If the tenant believes that the premises does not meet with one of the minimum standards after the tenancy has begun, and they wish the landlord to undertake work to fix that, they must issue the landlord with a rectification notice that identifies the standard not being met.

The intention is that the formal process is commenced with direct communication from the tenant to the landlord in order to give the landlord an opportunity to address the tenant’s concerns prior to the involvement of the Commissioner of Fair Trading or the ACT Civil and Administrative Tribunal (ACAT).

The landlord is allowed 90 days to meet the rectification notice. This times period is in recognition of the time it takes to arrange for work to be undertaken. If the tenant believes that the landlord has not complied with the rectification notice, they can then ask the Commissioner for Fair Trading to investigate their complaint in regard to the premises not meeting the minimum housing standards. They must supply the Commissioner with a copy of the rectification notice they gave to the landlord and any further evidence, such as photos or letters, which could be useful to the Commissioner in their investigation.

The Commissioner investigates at request of tenant

The Commissioner, when asked to investigate a failure to meet minimum standards, must provide a report to both the tenant and the landlord that includes:

- a statement of whether any minimum housing standards are not being met, and
- any rectification work that the Commissioner proposes.

The Commissioner is able to either negotiate a solution that is acceptable to both the tenant and the landlord in regards to rectification work, or, if no agreement between the tenant and the landlord can be reached, to propose the rectification work and the period in which it must be completed.

The tenant may also ask the Commissioner to investigate whether or not the landlord has completed the proposed work within the stipulated timeframe.

If the tenant disagrees with the Commissioner's report, they may take the matter to ACAT.

The Commissioner may investigate on own initiative

This provision in the Bill was included in response to circumstances when a tenant is not able to initiate the work rectification process, and potentially a third party identifies that a house does not meet a minimum housing standard.

Some tenants express concern about initiating proceedings in regard to their tenancy for fear of retribution by the landlord, for example, rent increases and non-renewal of leases. Without this provision in the Bill, the only way a premises may be rectified would be at the initiation of the tenant. Given tenant's circumstances can be very different, it is prudent to include a mechanism that can be triggered in another way.

It's important to note that the Commissioner cannot enter a premises without the tenant's written permission however, ensuring the tenant's right to privacy. It could be suggested that an 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 if a person's right to privacy under these circumstances was being limited, the potential correction of the often significant power imbalance between landlord and tenant, and the public interest in ensuring that the minimum housing standards are enforced, justifies this mild potential for limitation.

The Commissioner takes the matter to ACAT

The tenant is able to ask the Commissioner in writing to investigate whether the landlord has completed any work that was proposed in the Commissioner's report, and if the work has been found not to have 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. The intention is to keep the tenant fully informed but for the Commissioner to be the party who takes the matter to ACAT.

Tenants retain the right to take matters to ACAT in their own name should they wish.

What can ACAT do?

Once a matter had been heard in ACAT, there would be the capacity for ACAT 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.

QUESTIONS

- *Do you think these processes are the most efficient that can be used to rectify a premises that does not meet the minimum housing standards?*
- *Do you have any comments about the right to privacy of tenants should the commissioner begin an independent investigation?*

Exemptions

It is clear that not all houses will be able to meet the minimum standards without incurring unreasonable costs to the landlord. For example, we know that the construction of some houses, such as monocrete houses, makes it difficult for them to meet energy efficiency standards without full internal or external cladding, which could easily cost up to \$25,000 fully installed.

The exemption clause allows the Minister to exempt premises, or classes or premises, from complying with a minimum housing standard. Exemptions would apply to specific standards, and will ensure flexibility and reasonableness in the law where it simply would not be practical or proportionate to require compliance.

Some examples of exemptions might include:

- Exemption from the energy efficiency standard for monocrete constructed houses
- Exemptions from energy efficiency standard for class A unit titles as compliance could require action by the owner's corporation which may not be forthcoming;
- Exemptions for premises with concrete ceilings from the installation of hard wired smoke detectors, due to the difficulty installing.

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 instead.

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.

QUESTION

- *What do you think of the exemption process?*
- *Are there other specific circumstances for which you can see exemptions might be required for any of the standards?*
- *What conditions could be required for any exemptions ?*

Regulations

Minimum Water Standards

As outlined above.

Requirements for minimum energy efficiency exemptions

This regulation sets a requirement that premises that wish to claim an exemption for the energy efficiency standard must have a home energy audit of the premises and implement any recommendations made in relation to floor and ceiling insulation, draught and weather sealing and curtains.

The rationale for this requirement is such that houses that have exemptions do implement the best low cost measures that can be implemented to improve the energy efficiency on the house. Some actions, such as draught sealing, which do not improve the EER outcome can still deliver significant energy efficiency improvements, and thus should be undertaken.

Currently the Home Energy Advice Team (HEAT) undertake audits which are subsidised by the ACT Government. This regulation may require an expansion of this service or new services being added to those that ACT residents could undertake.

Currently audits are subsidised for ACT residents, but a number of issues would need to be addressed for this mechanism to work well for landlords;

Firstly, Class A unit titles are not eligible for the \$30 audits due to the complexity of improving energy efficiency without the participation of the entire building. Given that Class A unit titles might be one of the largest groups of premises that would be eligible for an exemption, then addressing the services available to unit titles and Body corporate would be important.

Secondly, for audits to be undertaken the HEAT team require energy bill information for 12 months retrospectively and to collecting data for 24 months post this audit. This may not be something that a tenant agrees to hand over to a landlord due to privacy concerns.

QUESTION

- *Do you think that houses should have a home energy audit to qualify for an exemption?*
- *If not, do you have other proposals to encourage exempt landlords to improve the energy efficiency of their premises?*