

Australian Capital Territory

# **Residential Tenancies Amendment Regulation 2018 (No 1)**

**Subordinate law SL2018–5**

made under the

**Residential Tenancies Amendment Act 1997**

## **EXPLANATORY STATEMENT**

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## **OUTLINE**

Residential tenancies in the ACT are regulated by the *Residential Tenancies Act 1997* (RTA). It is not mandatory for an ACT residential landlord (lessor) to receive a bond when entering into a residential tenancy. If a bond is received, it must be lodged with the Territory at the Office of Rental Bonds.

The RTA allows a lessor to accept a commercial guarantee or indemnity as an alternative to a bond. The commercial guarantee or indemnity is a promise to pay the lessor for damages that occur during a tenancy. The guarantee or indemnity is only enforceable to the maximum amount a bond would have been. A commercial guarantee or indemnity is not an insurance product in this context.

The *Residential Tenancies Amendment Act 2017* amended the RTA to provide consumer protections for tenants and lessors who enter into a commercial guarantee or indemnity contract.

The Amendment Act prevented these guarantees from being accepted as an alternative to a bond prior to the development of this Regulation.

The Amendment Act allowed a lessor to accept a commercial guarantee as an alternative to a bond if the related standard guarantee contract is registered. It also established the process for a provider of a commercial guarantee contract to apply to the Commissioner for Fair Trading (the Commissioner) for registration.

If a standard guarantee contract is not registered, a commercial guarantee contract is not enforceable.

## **Regulation Impact Statement**

A statement on regulatory impacts was provided with the explanatory statement to the Residential Tenancies Amendment Bill 2017.

## **Human rights implications**

Nil comment.

## CLAUSE NOTES

### **Clause 1      Name of regulation**

This clause provides for the name of the regulation.

### **Clause 2      Commencement**

This clause allows for the Regulation to commence on the commencement of the *Residential Tenancies Amendment Act 2017*, schedule 2. Under section 79 of the *Legislation Act 2001*, the schedule is to commence on 7 May 2018.

### **Clause 3      Legislation amendment**

This Regulation amended the *Residential Tenancies Regulation 1998*.

### **Clause 4      New section 1AA**

This clause defines the operation of notes within the Regulation.

### **Clause 5      New sections 6 and 7**

This clause inserts new sections 6 and 7.

### **Clause 6      Refusing registration of standard guarantee contract—Act, s 136 (2) (c) (i)**

This clause sets out items, any of which, if found in the standard guarantee contract, are a basis for the Commissioner for Fair Trading to mandatorily refuse to register the standard guarantee contract. The items bring any approved standard guarantee contract – and therefore associated individual contracts – in line with requirements of the Residential Tenancies Act and residential tenancy agreements in terms of protections for parties.

### **Clause 7      Commercial guarantee exclude matters—Act, s 136 (2) (c) (ii)**

This clause requires that the standard guarantee contract not contain terms that allow any of the items in section 6 (1) to occur.