

Australian Capital Territory

# Residential Tenancies Amendment Regulation 2024 (No 1)

Subordinate law SL2024–35

made under the

*Residential Tenancies Act 1997*

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Residential Tenancies Amendment Regulation 2024 (No 1)* (**the Regulation**) as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the Regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the Regulation. It is not, and is not meant to be, a comprehensive description of the Regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### OVERVIEW

The Regulation amends the *Residential Tenancies Regulation 1998* (the **RTR**) to:

- Prescribe a list of professionals capable of making a competent person declaration under section 46I (4) of the *Residential Tenancies Act 1997* (**the RTA**),
- Prescribe the information which must be included in a competent person declaration under section 46I (3) of the RTA, and
- Prescribe additional information that a landlord must disclose to a prospective tenant when advertising a property for rent and when entering into a residential tenancy agreement under section 11A (4) (f).

### *New protections for victim-survivors of domestic or family violence*

In June 2024, reforms to the RTA introduced new protections for tenants who have experienced domestic or family violence were passed. The changes mean a person who has experienced domestic or family violence will be able

to end their tenancy early by giving their landlord a family violence termination notice (**FVTN**). The FVTN must be accompanied by supporting evidence. This supporting evidence may be:

- A family violence order, protecting the tenant or their dependent child under the *Family Violence Act 2016*;
- An injunction under section 68B or 114 of the *Family Law Act 1975* (Cth); or
- A declaration by a competent person.

The declaration by a competent person is a new form of evidence, providing an alternative to a family law order or injunction. Many victim-survivors may be unwilling or unable to go through court processes to obtain the order or injunction. This evidence is designed to overcome these barriers, and ensure the overarching objective of the reforms, to support people experiencing domestic or family violence to end their tenancy immediately and without needing to pay a break lease fee.

The RTA provides that Regulation may prescribe a person, or a class of people, to be a competent person. Additionally, a competent person must only make a competent person declaration if they have previously consulted the tenant, or their dependent child, in the course of their professional practice.

This Regulation prescribes the list of professionals, who, given their expertise and experience, are capable of making a declaration. These professionals are authorised to make a declaration that, in their opinion, the tenant or their dependent child has experienced domestic or family violence.

This Regulation also requires that a competent person declaration include the following information:

- The capacity in which the person is authorised to make a competent person declaration;
- Either the person's name or their employer's name (if their employer is an organisation capable of making a competent person declaration);
- A statement that the person has consulted the tenant or their dependent child, and that they have experienced family violence; and
- The date the declaration was made.

*Additional information to be provided when advertising a rental property or entering into a residential tenancy agreement*

Section 11A of the RTA provides that the Government can prescribe, by regulation, information that a landlord must disclose when advertising a rental premises. Similarly, section 12 provides that the Government can prescribe by

regulation information that a landlord must disclose to a tenant at the point of entering into a lease.

These provisions aim to address the information asymmetry that may exist between tenants and landlords, when entering into a lease for a rental property. During recent consultations, tenants have expressed a strong desire for information about premises they are considering applying to rent, however, they must often rely on the information provided to them by landlords.

This Regulation requires landlords to disclose:

- Information on whether the rental property is a part of an electricity embedded network, both at the point of advertisement and at the point of entering a lease,
- Information about whether the tenant will have no or limited choice of service providers for a utility service, and, if so the kind of service, both at the point of advertisement and at the point of entering a lease, and
- If the rental property has a swimming pool, information on whether the swimming pool complies with the relevant safety standards at the point of entering a lease only.

Knowing these key pieces of information about the rental property may be an important factor for a tenant when deciding whether to apply to the property.

## **HUMAN RIGHTS IMPLICATIONS**

This Regulation will support people who have experienced domestic or family violence to leave a tenancy early, without penalty, by providing supporting documentation from an appropriate professional. This promotes several rights including:

- Right to recognition and equality before the law (section 8): Certain groups (including women, members of the Aboriginal and Torres Strait Islander community, people living with a disability, LGBTQIA+ people, people from culturally and linguistically diverse backgrounds and women on temporary visas) are disproportionately more likely to experience domestic violence. These groups are also more likely to rent, and may feel less comfortable engaging with formal court processes. These amendments will support the right to equality by supporting these groups to escape domestic or family violence quickly.
- Right to life (section 9): In Australia, on average, one woman is killed every nine days by a current or former partner. This Regulation therefore directly promotes and supports the right to life of victim-

survivors and their families by making it easier for them to leave situations of violence quickly and without penalty.

- Right to protection from cruel, inhuman or degrading treatment (section 10): According to the International Committee on the Elimination of Discrimination against Women, 'gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices.'<sup>[17]</sup> This Regulation promotes the right to freedom from cruel, inhuman or degrading treatment, by supporting victim-survivors to escape violence.
- Right to protection of the family and children (section 11): This Regulation promotes the protection of children by allowing a tenant to escape violence by leaving a tenancy where they or their dependent child are experiencing domestic or family violence, thereby removing both the tenant and their child from the violent situation.
- Right to liberty and security of person (section 18): A victim-survivor's right to liberty and security of person is breached when they experience domestic or family violence. By making it easier for victim-survivors to leave these situations, the Regulation promotes their agency, liberty and security of person.

## REGULATORY IMPACT STATEMENT

A regulatory impact statement is not required as the Regulation does not impose any appreciable costs on the community, or part of a community under section 34 (1) of the *Legislation Act 2001*.

## CLAUSE NOTES

### Clause 1 Name of regulation

Clause 1 provides that the name of the Regulation is the *Residential Tenancies Amendment Regulation 2024 (No 1)*.

### Clause 2 Commencement

This clause indicates that the commencement date for the Regulation is as follows:

- For the Regulation, other than sections 4 to 8, the day after it's notification day;
- For sections 4 and 8, the later of the commencement of the *Housing and Consumer Affairs Legislation Amendment Act 2024 (HICALAA)*, section 44, and the day after the Regulation's notification day; and

- For sections 5 to 7, the commencement of the HCALAA, section 67, and the day after this Regulation's notification day.

Sections 4 to 8 of the Regulation rely on provisions that the HCALAA inserts into the *Residential Tenancies Act 1997* (the **RTA**). Accordingly, sections 4 to 8 of the Regulation cannot commence before the commencement of the corresponding sections of the HCALAA.

### **Clause 3      Legislation amended**

This clause provides that the regulation amends the *Residential Tenancies Regulation 1998* (the **RTR**).

### **Clause 4      New section 1AAA and 1AAB**

This clause inserts two new sections into the RTR. These new sections require landlords to provide additional information to tenants when advertising a property for rent (1AAA) or prior to entering a tenancy agreement (1AAB).

*Embedded network arrangements and other utilities with limited choice— new section 1AAA*

New section 1AAA requires landlords to disclose when advertising that the rental property is a part of an embedded network, or that the tenant's choice of utility providers will otherwise be constrained.

Subsection (1) provides that the section only applies if the premises are a unit, and either or both of the following apply:

- For an electricity service supplied to the premises – the electricity service is a part of an embedded network (as defined in the *National Electricity Rules*, administered by, and hosted on the website of the *Australian Energy Market Commission*); and
- For any utility service supplied to the premises – that the tenant has no or limited choice of service provider for the utility service.

Additionally, the section will only apply where the tenant will be directly responsible for the costs of the utility service in question. Utility services are defined with reference to the existing definition in the *Unit Titles Act 2001* to include:

- the collection and passage of stormwater; and
- the supply of water (for drinking or any other use); and
- sewerage and drainage services; and
- garbage collection services; and
- gas, electricity and air services (including air conditioning and heating); and
- communication services (including telephone, radio, television and internet).

If the section applies, the landlord must let the tenant know:

- If electricity is supplied through an embedded network, that fact, and

- If the tenant has no or limited choice of service provider for a utility service supplied to the premise, the kind of utility service(s) for which the tenant will have limited or no choice.

This section is intended to make prospective tenants aware, before they enter into a residential tenancy agreement, that they will not be able to shop around for the provider of one or more utilities. This is important information as it may impact the cost or quality of the service.

It is becoming increasingly common in units plans that services are provided through an embedded network-style arrangement, where there is a 'parent' meter for the units plan, and individual 'child' meters for each individual unit. Arrangements between units plans can vary, but in general, mean that a tenant is not able to access the competitive market for that service.

Most commonly, this will be where the unit is a part of an electricity embedded network. The section applies the definition of an electricity embedded network contained in the *National Electricity Rules*, that is, a distribution system, connected at a parent connection point to either a distribution system or transmission system that forms part of the national grid, and which is owned, controlled or operated by a person who is not a Network Service Provider.

However, the Government has heard that these style of arrangements are increasingly being used for other services, such as hot water and telecommunications (internet). The provision of these services is predominantly regulated by industry-specific regulation. This section will, however, ensure tenants are aware of these arrangements, and the potential cost implications, before they enter into a residential tenancy agreement.

The section is not intended to apply to services that the tenant does not pay for directly (for example, communal waste disposal services, paid for through the landlord's owners corporation fees). This section is also not intended to apply where the tenant's choice of service provider is not constrained in any way.

#### *Swimming pool safety information – new section 1AAB*

New section 1AAB requires a landlord to provide to their tenant swimming pool safety information when entering into a residential tenancy agreement.

A new home swimming pool safety scheme commenced on 1 May 2024, to protect the community by making sure that home swimming pools and spas in the ACT are fenced in accordance with current safety standards. This Regulation ensures that tenants have important safety information about the swimming pool on the property they intend to rent, before they start living there.

Subsection (1) provides that section 1AAB only applied to premises with a regulated swimming pool, and subsection (2) clarifies that section 1AAB does not apply if there is a swimming pool on the common property. If there is a regulated swimming pool on the common property of a units plan, then the tenant will be given safety information about that pool via separate means – through the provision of a unit title rental certificate.

The information that a landlord is required to provide to a tenant under the Regulation depends on when the swimming pool was built.

If the swimming pool was built before 1 May 2023, the landlord must provide:

- A copy of the guidance material notified under the *Building Act 2004*, section 83H (Guidance about obligations on owners);
- If the pool has been granted a Ministerial exemption, a copy of the exemption certificate, and if the exemption is only for a part of the pool, a compliance certificate for the pool that is not exempt; or
- If the pool has not been granted a Ministerial exemption, any of the following:
  - A swimming pool disclosure statement,
  - A compliance certificate, and
  - A certificate of occupancy for the pool and safety barrier.

If the pool was built (or substantially renovated) on or after 1 May 2023, any 1 of the following:

- A swimming pool disclosure statement,
- A compliance certificate, or
- A certificate of occupancy for the pool and safety barrier.

In all circumstances, the certificate of occupancy must not be more than 5 years old.

The home swimming pool safety reforms were progressed predominantly through amendments to the *Building Act 2004*, and so the clause also cross-references several definitions contained in the *Building Act 2004*. It also includes cross references to definitions related to units under the *Unit Titles Act 2001*

## **Clause 5      New part 4**

Clause 5 inserts a new part, Part 4 – Termination of residential tenancy agreements – initiated by tenant for family violence.

*New section 15 – Competent person declaration – required information – Act, s 46I (3)*

This new section outlines the information that must be included in a competent person declaration. When making a competent person declaration, the competent person must include:

- The capacity in which they are authorised to make a competent person declaration;
- Either –

- If the person is employed by an entity capable of making a competent person declaration, the name of the entity, or
- In any other case, the person's name;
- A statement that –
  - The person has consulted has, in the capacity in which they are authorised to make the competent person declaration, consulted the tenant or a dependent child of the tenant, and
  - The tenant, or a dependent child of the tenant, has experienced family violence; and
- The date the declaration is made.

*New section 16 – Competent person – eligible people – Act, s 46I (4)*

This new section outlines the classes of persons capable of making a competent person declaration. These people include:

- anyone employed or otherwise engaged by a not-for-profit entity that receives funding from the Territory to provide a service in relation to any of the following:
  - family violence;
  - sexual assault;
  - a refuge or other emergency accommodation for people in crisis;
  - children or young people, including their families;
- a health practitioner who practises in any of the following health professions:
  - Aboriginal and Torres Strait Islander health practice;
  - medical;
  - midwifery;
  - nursing;
  - psychology;
- an employee of the Territory providing a service in relation to child welfare;
- a person with a social work qualification that provides eligibility for membership of the Australian Association of Social Workers;
- a member of the human rights commission;
- the Aboriginal and Torres Strait Islander children and young people commissioner;
- for a declaration made in relation to a tenant with a dependent child or in relation to the dependent child—a person who is a mandated reporter.



In this section, a competent person may be an individual, or an entity. For example, an organisation that is funded to provide a service in relation to family violence would be able to make a competent person declaration. This reflects common practices for organisations in this sector not to give out the personal information of their staff members, and is intended to protect staff members' privacy.

Additionally, where the competent person is a member of the human rights commission, or the Aboriginal and Torres Strait Islander children and young people commissioner, this would also include a delegate of the member. This is because section 239 (2) of the *Legislation Act 2001*, providing that all territory laws apply to the delegate in the exercise of the delegation as if the delegate were the appointer, will apply.

Subsection (2) defines the following terms:

- *Aboriginal and Torres Strait Islander children and young peoples commissioner* as the person appointed to that role under the *Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022*, section 10.
- *Health profession*, cross-defined by reference to section 5 of the *Health Practitioner Regulation National Law (ACT)*.
- *Mandated reporter*, cross-defined by reference to section 356 (3) of the *Children and Young People Act 2008*.

This list is designed to provide a person who has experienced domestic or family violence with a broad range of professional from whom they could seek a competent person declaration, thereby reducing barriers to obtaining the supporting documentation they will need to end their tenancy.

## **Clause 6 Dictionary, note 1, new dot points**

This clause makes minor and technical consequential amendments to the RTR's Dictionary. Note 1 includes a bullet point list of terms used in the RTR, which are defined in the *Legislation Act 2001*. This clause adds the following terms to that list:

- Entity
- health practitioner
- human rights commission
- the Territory

## **Clause 7 Dictionary, note 2, new dot point**

This clause makes minor and technical consequential amendments to the RTR's Dictionary. Note 2 notes that terms used in the RTR have the same meaning as they have in the RTA, and then includes a bullet point list of terms

used in the RTR which are defined in the RTA. This clause adds 'family violence' to that bullet point list.

**Clause 8 Dictionary, new definition of *unit***

This clause inserts a new definition of unit into the Dictionary of the RTR. 'Unit' is defined by cross-reference to the definition of a 'unit' contained in section 9 of the *Unit Titles Act 2001*.