

# Unit Titles (Management) Rental Certificate Determination 2024

## Disallowable instrument DI2024-313

made under the

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

## EXPLANATORY STATEMENT

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The *Housing and Consumer Affairs Legislation Amendment Act 2024* (the **HCALAA**) amended the *Residential Tenancies Act 1997* to introduce a new ability for the Government to prescribe by regulation information that a lessor who is renting out a unit in a units plan must disclose to their tenant when entering into a residential tenancy agreement.

To support unit owners who wish to rent out their unit to disclose information relating to unit or the common property of the units plan that is held by the owners corporation, the HCALAA also amended provisions relating to unit title certificates issued under section 119 of the *Unit Titles (Management) Act 2011* (the **Act**). The amendments introduce a new type of certificate, a ‘*unit title rental certificate*’ which the owners corporation must provide to a unit owner on request (following payment of any required fee). The unit title rental certificate will be required to contain the information that a unit owner who wishes to rent out their unit must disclose to their tenant when entering a residential tenancy agreement.

Given the introduction of a new type of unit title certificate, the existing ‘unit title certificates’ have been renamed to ‘*unit title sale certificate*’ and ‘*unit title sale update certificate*.’ The new names, unit title rental certificate, unit title sale certificate and unit title sale update certificate, now reflect the purpose of the certificates, which are required under section 12 (3) (k) of the *Residential Tenancies Act 1997* and section 9 of the *Civil Law (Sale of Residential Property) Act 2003* (the **CLSRP Act**) when a unit is being rented or sold respectively. Matters relating to unit title sale certificates and unit title sale update certificates are dealt with under a separate determination.

This new *Unit Titles (Management) Rental Certificate Determination 2024* prescribes the information that must be prepared by the owners corporation upon request and provided in the unit title certificates issued under section 119 (1) of the Act. The information that must be included in a unit title rental certificate is discussed further below.

### Information about owners corporation rules

The unit title rental certificate will require the owners corporation to disclose the rules of the owners corporation. As owners corporation rules apply to unit occupiers (including tenants), these disclosure requirements mean that prospective tenants will be aware of the current rules of the owners corporation that will apply to them if they rent the property.

The rules of the owners corporation means the default rules for owners corporations as amended by the alternative rules, if any, registered under the *Land Titles (Unit Titles) Act 1970*, section 27 or section 27A (See Part 6 of the Act for more information about owners corporation rules, and section 108 of the Act for how owners corporations may make alternate rules to the default rules).

### Information about ceiling information located above Class A units

In addition, the certificate must include information about whether the unit of the person requesting the unit title rental has ceiling insulation and, if so, what the R-value of the ceiling insulation is. Under residential tenancy law lessors have an obligation to ensure a rental premises meets the minimum standard for ceiling insulation (unless exempt). Where the rental premises is in a Class A units plan, the ceiling cavity where insulation is located may be common property. In these circumstances, a lessor may not be aware of whether the rental premises complies with the ceiling insulation standard or not. This aspect of the unit title rental certificate is intended to provide information to unit owners who wish to rent out their unit (and prospective tenants) about whether there is ceiling insulation above the relevant unit.

It will remain the obligation of a lessor to ensure the rental premises complies with the ceiling insulation standard (unless an exemption applies). Owners corporations are not required to install ceiling insulation, they are simply required to provide information about whether ceiling insulation is present. Where the owners corporation does not already hold this information, they will be required to take reasonable steps to obtain this information as well as bear the cost of obtaining the information. It is anticipated that some owners corporations will need to undertake an initial inspection to identify the presence and type of ceiling insulation.

In recognising that an owners corporation may not know what, if any, ceiling insulation is present within the unit, the determination sets out a phase-in period to assist those owners corporation who will need to make enquires to obtain the required information. This phase-in period will provide additional time for an owners corporation to obtain or take reasonable steps to obtain the necessary information.

As such, if a certificate is requested prior to 1 July 2025, the owners corporation will need to provide either:

- If the owners corporation is already aware whether the unit has ceiling insulation – a statement about whether there is ceiling insulation and, if so, information about the R-value of the insulation, or
- If the owners corporation is not aware of whether there is ceiling insulation - a statement that they are not yet aware of whether there is ceiling insulation and the steps they will take to obtain the information.

From 1 July 2025, the owners corporation will simply be required to provide a statement about whether or not there is ceiling insulation above the unit. If the owners

corporation does not have this information when a certificate is requested after 1 July 2025, they will have 6 weeks from when the certificate is requested to obtain the information and provide it to the unit owner.

In addition to the above, both before and after 1 July 2025, the unit title rental certificate must indicate:

- If the owners corporation intends to install ceiling insulation in the parts of the building to which the unit title certificate relates – a statement about that fact; and
- If the owners corporation has refused permission for the unit owner to install ceiling insulation above the unit to which the unit title rental certificate relates, as statement to that effect.

This information is relevant because, under tenancy laws, exemptions from complying with the minimum standard for ceiling insulation apply in both the above circumstances. Providing this information will assist lessors and tenants in confirming whether an exemption applies.

Once the information about the ceiling insulation has been obtained, the owners corporation can rely on this information unless there is a change, such as the installation of ceiling insulation or any damage or repairs to the ceiling or roof that may impact in any existing insulation.

For more information about the ceiling insulation standard refer to <https://www.act.gov.au/housing-planning-and-property/renting/minimum-housing-standard-for-ceiling-insulation-in-rental-properties>

or see the fact sheet Minimum energy efficiency minimum standards for rental homes: Information for Strata Managers, Owners Corporations and Apartment Owners: [https://www.act.gov.au/\\_data/assets/pdf\\_file/0009/2602926/Strata-managers-and-owners-corporations-factsheet-minimum-energy-efficiency-standards-for-rental-properties.pdf](https://www.act.gov.au/_data/assets/pdf_file/0009/2602926/Strata-managers-and-owners-corporations-factsheet-minimum-energy-efficiency-standards-for-rental-properties.pdf)

#### Information about regulated swimming pools

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. The *Building (Swimming Pool Safety) Legislation Amendment Act 2023* sets out new safety standards for certain regulated swimming pools. Where the units plan has a regulated swimming pool located on common property, the owners corporation will be responsible for providing the information in relation to regulated swimming pools. The nature of the information required differs depending on when the pool was built or substantially modified.

Where a regulated swimming pool is located within a unit boundary (such as a spa located on a balcony), the unit owner will be responsible for the compliance and disclosure of information.

Further information about the swimming pool safety reforms is available at: <https://www.planning.act.gov.au/projects-priorities/building-regulatory-system/home-swimming-pool-safety-reforms>

#### Information about embedded networks within the units plan

An embedded electricity network is a private utility network that may operate within a units plan. These utility networks are managed by private companies who on-sell the utility to the unit owners within the embedded network. The existence of an embedded network within a units plan may restrict the ability for a tenant to choose their utility service provider.

So that prospective tenants are aware of any embedded network within the units plan, the determination requires the owners corporation to disclose whether the units plan is covered by an embedded network if one or both of the following apply:

- 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.

If there is an embedded network for electricity services supplied to the unit or any other utility service where the tenant is responsible for paying their usage costs, the owners corporation is required to disclose the required information in the certificate.

#### Timeframes for providing a unit title rental certificate

An owners corporation will have 14 days to provide the unit title rental certificate once they receive a request for one to be provided. However, if the owners corporation does not have the information and needs to conduct enquiries to obtain further details, a maximum of 6 weeks is allowed to produce the certificate. This gives the owners corporation additional time to obtain any information it does not already hold. It is likely that an owners corporation will only need to obtain further details on a single occasion upon the initial request for the certificate. This is because once the information is obtained it will be held by the owners corporation to use for future requests.

#### Validity of unit title rental certificates

A unit title rental certificates will be valid for a period of five years from date of issue. The owners corporation is required to provide updated information to unit title rental certificate holders, free of charge, should any of the details in the unit title rental certificate change within that time (e.g., if there is a change in the owners corporation rules). However, this will only apply if the landlord is the same person the to whom the initial certificate was given to, and they remain a member of the owners corporation. It is likely that the owners corporation will need to keep a register of unit title rental certificates they have issued so that in the event that an update is required, they can identify which current owners will need to be issued with a new certificate.

It is not anticipated that the information provided in the unit title rental certificate will change substantially during a 5-year period, and if it does, the owners corporation would be aware as they are involved in all aspects of these matters.

Section 119 (6) of the Act provides that the Minister's determination is a disallowable instrument.

This instrument does not engage any human rights.