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22/070

Mr Peter Cain MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
Scrutiny@parliament.act.gov.au

Dear Mr Cain

I write in response to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) Scrutiny Report 25, which was released on 31 January 2023. This letter addresses comments made about the explanatory statement for the *Residential Tenancies Amendment Regulation 2022 (No 1)* [SL2022-16] (the regulation) as well as the accompanying regulatory impact statement.

I confirm the statement about the disapplication of section 47 (5) and (6) of the *Legislation Act 2001* in the explanatory statement is correct. Supplementing this explanation, I can advise that as the Australian Standards are protected by copyright, they are not able to be published as a notifiable instrument on the ACT Legislation Register.


Copyright in Australian Standards is owned by Standards Australia, a private organisation. The ACT Government cannot notify these documents on the Legislation Register without breaching Standards Australia's copyright. As such, there is no real alternative other than to disapply section 47 (5) and (6) in this instance. Australian Standards are available for viewing at the National Library of Australia.

In disapplying section 47 (5) and (6), I note the organisations that will be engaged to undertake inspections and upgrades to ensure compliance with the minimum standards in the regulation are already required to comply with Australian Standards. As such, they already have a good working knowledge of these documents to provide a report or any document to the lessor (and subsequently, any prospective tenant).


Finally, I note the Committee's comments about the regulatory impact statement for the regulation. Section 136 of the *Residential Tenancies Act 1997* (the Act) provides the power for a regulation to be


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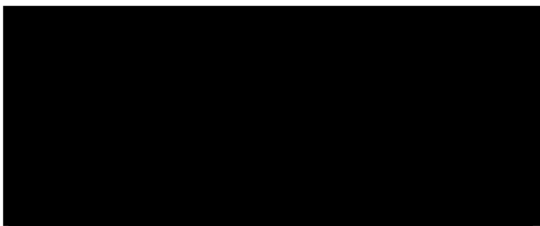
made to require minimum standards for residential rental properties. The regulation provides a minimum energy efficiency standard for ceiling insulation (the standard) in residential rental properties in the ACT. I note paragraph 10(c) and 10(d) of the Committee's Resolution of Appointment and provide a discussion of the requirements of section 35 (h) of the *Legislation Act 2001*.

- i. The regulation is consistent with the general objects of the Act under which it is made.
- ii. The regulation does not unduly trespass on rights previously established by law however as an additional transparency measure, the regulation has been analysed for compatibility with the *Human Rights Act 2004*. The regulation will marginally limit the right to privacy for lessors in relation to their rental properties and may also limit the rights of tenants to privacy if upgrades are required at their rental premises to meet the standard during a period of tenant occupation.

The requirement for a lessor to maintain and disclose documents pertaining to the property to their tenants on request is intended to ensure lessors comply with the standard and give tenants confidence that the property meets the standard. In relation to tenant rights with respect to home and privacy, under the regulation, tenants have the right to refuse to have the insulation of their rental premises upgraded. The standard tenancy agreement terms protect the rights of tenants to private enjoyment of the property and apply to lessors making upgrades, meaning that lessors must give notice to tenants before undertaking maintenance. These protections for tenants' rights balance the limitation on a tenant's right to privacy and home, ensuring proportionality.

- iii. The regulation does not contain any non-reviewable decisions.
- iv. The regulation does not contain any matters which should more properly be dealt with in an Act of the Assembly. The Residential Tenancies Legislation Amendment Bill 2022 (the Bill) proposes changes to the minimum housing standards provisions in the Act. The provisions relating to the standard that are not appropriate for inclusion in subordinate legislation have been introduced to the Legislative Assembly in the Bill and will be the subject of debate, including (among other provisions) mandatory disclosure of compliance with the standard, and the right of a tenant to request records in relation to compliance with the standard.

I trust this information is of assistance.



21/3/23