

RESIDENTIAL TENANCY ACT: OCCUPANCY LAW CHANGES



FACTSHEET

Changes to Occupancy Law: Education provider occupancy agreements

BACKGROUND

Some occupancy laws in the ACT are changing on 3 March 2021, however these **changes will not apply to education provider occupancy agreements until 30 January 2022** (or an earlier date if provided for by regulation). **Education provider occupancy agreements will be subject to transitional arrangements until 30 January 2022** (see further below).

This Fact Sheet is designed to help you understand the changes. The information in this Fact Sheet is not legal advice. You should seek legal advice if in doubt about your individual circumstances.

The rights and obligations of the grantor and occupant depend on the *Residential Tenancies Act 1997* (the RTA) and on the individual occupancy agreement. You should always check your agreement as a starting point.

WHAT ARE THE MAJOR CHANGES TO OCCUPANCY LAW?

As noted above, there are changes to occupancy law that will apply to all occupancy agreements, apart from education provider occupancy agreements, from 3 March 2021. Amongst other things, the changes create a new definition for occupancy agreements which sets out the circumstances where occupancy agreements may be used. They also set out mandatory occupancy principles (minimum terms) for occupancy agreements.

For education provider occupancy agreements, these changes will be introduced later, alongside some specific changes that apply just to education provider occupancy agreements. This Fact Sheet explains the changes relating to education provider occupancy agreements and when they will commence.

For more information about other changes to occupancy laws, see the Fact Sheet *Changes to Occupancy Laws: Overview*.

WHAT IS AN EDUCATION PROVIDER OCCUPANCY AGREEMENT?

One of the circumstances where occupancy agreements will be able to be used in future will be for student accommodation associated with an education provider (education provider occupancy agreements).

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An education provider occupancy agreement is defined as an agreement to reside in a residential facility associated with, on the campus of, or provided under an arrangement with an education provider (usually a university).

Essentially, this definition will cover student accommodation that is provided by a university or by a private operator that is contracted by, or otherwise associated with, the university. It will **not** cover private operators that are not formally connected with a university.

WHAT WILL THE CHANGES IN RELATION TO EDUCATION PROVIDER OCCUPANCY AGREEMENTS BE?

There are some changes that will be made to all occupancy agreements. These changes will:

- more clearly define what an occupancy agreement is and the circumstances in which they may be used
- create mandatory minimum principles for occupancy agreements
- introduce enforceable conciliation of occupancy disputes through the ACT Human Rights Commission, and
- require smoke alarms to be installed in all premises covered by occupancy agreements.

See the Fact Sheet *Changes to Occupancy Laws: Overview* for more information.

However, in acknowledgement of the unique circumstances in which education provider occupancy agreements operate, as well as the way these agreements interact with university statutes, there are some changes which will apply specifically to education provider occupancy agreements. These specific changes are:

- an exemption from the requirement to lodge a security deposit with the ACT Revenue Office (Rental Bonds) (this requirement applies to all other occupancy agreements)
- some exemptions from, or alterations to, the operation of some mandatory occupancy principles, including:
 - termination clauses specific to a university context, such as a student leaving the university, being expelled, or being suspended, etc
 - clarification that the currently existing university disciplinary requirements and medical leave rules established under statute will not be displaced by the occupancy principles in the event of any inconsistency between the disciplinary requirements or medical leave rules and the occupancy principles
 - a requirement that occupants attempt to resolve any dispute with their grantor via the university's dispute resolution procedures (so long this can be done within a reasonable timeframe) before being able to take occupancy disputes to the ACT Civil and Administrative Tribunal (ACAT).

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WHEN WILL THE CHANGES RELATING TO EDUCATION PROVIDER OCCUPANCY AGREEMENTS COMMENCE?

The changes relating to education provider occupancy agreements will commence on **30 January 2022**. This will allow time for the universities and their contracted providers to undertake necessary implementation work. It also ensures the provisions commence in alignment with the start of the academic year.

However, the new laws also create a regulation-making power which gives flexibility for the Minister to bring forward any of the provisions applying to education provider occupancy agreements if it is necessary or desirable to do so.

WHAT LAW WILL APPLY TO EDUCATION PROVIDER OCCUPANCY AGREEMENTS UNTIL 30 JANUARY 2022?

Education provider occupancy agreements will be subject to transitional provisions until 30 January 2022. This means **that occupancy laws in force before 3 March 2021 will continue to apply to these agreements until 30 January 2022** (unless the changes are commenced earlier by regulation).

MORE INFORMATION AND ASSISTANCE

Tenancy Advice Service (Division of Legal Aid ACT)

Phone: 1300 402 512 **Email:** TAS@legalaidact.org.au **Website:** www.legalaidact.org.au/tasact

Legal advice from this service is free and confidential. It is not means-tested (the service is available to all occupants regardless of income).

Legal Advice Bureau (Open between 12:30pm and 2pm on weekdays)

Phone: 6274 0300

Website: www.actlawsociety.asn.au/for-the-public/legal-help/legal-advice-bureau

The Legal Advice Bureau at the Law Society is a free and confidential service and can provide advice in 15-minute consultation sessions to both occupants and grantors.

Conflict Resolution Service

Phone: (02) 61890590 **Website:** <https://crs.org.au/>

Conflict Resolution Service (CRS) is a nationally accredited mediation service that resolves conflict professionally, competently and compassionately. CRS have experience working with neighbours, landlords and residential tenants to provide a safe, structured, and confidential environment for discussion between parties.

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ACT Civil and Administrative Tribunal (ACAT)

Phone: 6207 1740

Email: tribunal@act.gov.au

Website: www.acat.act.gov.au/

Please note that the Tribunal can assist with questions about its procedures, but it cannot give legal advice on individual situations.

Legislation

You can access the *Residential Tenancies Act 1997* and other ACT legislation on the ACT Legislation Register at www.legislation.act.gov.au.