

FACT SHEET

Residential Tenancy (Rent Control) Amendment Bill 2021

The *Residential Tenancy (Rent Control) Amendment Bill 2021* (the Bill) amends the *Residential Tenancy Act 1997* (the Principal Act) in order to implement the model for rent increases used in the Australian Capital Territory *Residential Tenancy Act 1997* (the Australian Capital Territory Act).

The recent *Muddyman v Nest Property* decision of the Magistrates Court of Tasmania makes it clear that under the Principal Act the burden is on a tenant to establish that an increase in rent is unreasonable.

The Australian Capital Territory Act establishes a presumption in favour of the tenant (that is a presumption that the rent increase is unreasonable) if the increase exceeds CPI + 10%, and a presumption in favour of the owner if the increase does not exceed this limit.

This model effectively establishes a benchmark for rent increases of CPI + 10%, and allows for consideration of a broad range of factors in consideration of whether or not derogation from this benchmark is reasonable.

The Bill applies the model for regulating rent increases in the Australian Capital Territory Act to the Principal Act.

The *Muddyman v Nest Property* decision also makes it clear that the question of reasonableness applies to the rent increase only, and not whether the resulting rent is unreasonable.

Proposed new section 24I(4)(a), consistent with provisions in the Australian Capital Territory Act, allows for consideration of the amount of rent payable before the proposed rent increase. This will in effect allow the question of the reasonableness of the rent after the propose rent increase to be considered.

The Bill repeals sections 20 and 23 of the Principal Act, which currently provide for regulation of rent increases, and replace them with a new Division 2A in Part 2, modelled on Part 5 (rental rate increases) of the Australian Capital Territory Act.

The Bill replaces references in Section 8 (General functions and powers of Commissioner) of the Principal Act to sections 20 and 23 with references to the new Division 2A in Part 2.

The below table outlines the differences between the existing provisions of the Principal Act and the Bill.

Current provisions	The Bill's provisions
<p>Provided the rent increase is not unreasonable (if appealed), a rent increase is allowed if a residential tenancy agreement allows for it, or if there is no written agreement.</p>	<p>Provided the rent increase is not unreasonable (if appealed), a rent increase is allowed:</p> <ol style="list-style-type: none"> 1. In the case of a fixed-term lease, if the lease allows for it. 2. In the case of a lease without a fixed-term, if the increase is not above CPI + 10%, or the increase is above CPI +10% but – <ol style="list-style-type: none"> a. The agreement allows for the increase; or b. the tenant agrees to the increase in writing; or c. If the landlord applies to the Commissioner and an order allowing the increase is issued. 3. In the case of no written agreement, if the increase is not above CPI + 10%, or the increase is above CPI +10% but – <ol style="list-style-type: none"> a. the tenant agrees to the increase in writing; or b. If the landlord applies to the Commissioner and an order allowing the increase is issued.
<p>No formal benchmark for rent increases, largely reliant on rents in comparable residential premises in the locality or similar locality.</p>	<p>Rent increase limit benchmark of Housing CPI + 10% since last increase. CPI increased by 1.33% between December 2019 and 2020. This would be a 1.46% increase - \$4.38 on a \$300 property.</p>
<p>Onus on tenant to demonstrate a rent increase is unreasonable.</p>	<p>Onus on tenant to demonstrate a rent increase below CPI + 10% is unreasonable, onus on landlord to demonstrate a rent increase above CPI + 10% is not unreasonable.</p>
<p>Tenant may apply to the Commissioner to reject an unreasonable rent increase.</p>	<p>Tenant may apply to the Commissioner to reject an unreasonable rent increase.</p>

<p>Tenant may not apply to the Commissioner for an order to reduce rent.</p>	<p>Tenant may apply to the Commissioner for an order to reduce rent if tenant's use or enjoyment of the premises has diminished significantly as a result of a range of factors.</p>
<p>Rents are not frozen while the Commissioner assesses whether or not a proposed rent increase is unreasonable.</p>	<p>Rents are frozen while the Commissioner assesses whether or not a proposed rent increase is unreasonable.</p>
<p>In considering whether a rent increase is unreasonable, the Commissioner may consider:</p> <ul style="list-style-type: none"> (a) the general level of rents for comparable residential premises in the locality or a similar locality; and (b) any other relevant matter. 	<p>In considering whether a rent increase is unreasonable, the Commissioner may consider:</p> <ul style="list-style-type: none"> (a) the amount of rent payable before the proposed rent increase; (b) if the owner previously issued a rent increase while the relevant tenant was tenant – <ul style="list-style-type: none"> (i) the amount of the last rent increase before the proposed rent increase; and (ii) the period since that rent increase; (c) outgoings or costs of the owner in relation to the premises; (d) services provided by the owner to the tenant; (e) the value of fixtures and goods supplied by the owner as part of the tenancy; (f) the state of repair of the premises; (g) rental rates for comparable premises; (h) the value of any work performed or improvements carried out by the tenant with the owner's consent; (i) any other matter the Commissioner considers relevant.

<p>A tenant or owner may request a fresh decision from the Court in relation to a proposed rent increase.</p>	<p>A tenant or owner may request a fresh decision from the Court in relation to a proposed rent increase, or proposed reduction in rent.</p>
<p>Application for the Commissioner to declare a rent increase is unreasonable is to be accompanied by a prescribed fee. However, as no fee has been prescribed, there is no cost.</p>	<p>Applications to the Commissioner in relation to a proposed rent increase or for a rent reduction have no cost.</p>