

EXPOSURE DRAFT

Attorney-General

(Prepared by Parliamentary Counsel's Office)

Residential Tenancies Amendment Bill 2019 (No 2)

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Residential Tenancies Amendment Bill 2019 (No 2)

A Bill for

An Act to amend the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Residential Tenancies Amendment Act 2019 (No 2)*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Legislation amended

This Act amends the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998*.

Note This Act also amends other legislation (see sch 1).

Part 2 Residential Tenancies Act 1997

4 New section 4A

in part 1, insert

4A Objects of Act

In recognition of the importance of stable and secure housing for people in the ACT community, the main objects of this Act are to—

- (a) define the rights and obligations of tenants and lessors under residential tenancy agreements; and
- (b) set out minimum contractual requirements for occupancy agreements; and
- (c) enable prospective tenants and occupants to make informed choices; and
- (d) ensure that parties to residential tenancy agreements and occupancy agreements can easily access suitable, low cost, informal and timely ways to enforce their rights under those agreements; and
- (e) protect parties to residential tenancy agreements and occupancy agreements from unfair practices; and
- (f) facilitate the availability of stable and secure housing in the ACT.

5 New section 6AA

after section 6, insert

6AA Who is a *co-tenant*?

A person is a *co-tenant* under a residential tenancy agreement if the person is 1 of 2 or more tenants under the agreement.

Note Section 35C sets out how a person can become a new co-tenant under an existing residential tenancy agreement.

**6 What is a *residential tenancy agreement*?
Section 6A (1)**

substitute

- (1) An agreement is a *residential tenancy agreement* if—
- (a) under the agreement—
 - (i) a person gives someone else (the *tenant*) a right to occupy stated premises; and
 - (ii) the premises are for the tenant to use as a home (whether or not together with other people); and
 - (iii) the right is given for value; and
 - (b) the agreement is not an occupancy agreement under section 71C.

7 Section 6A (4), third dot point

omit

**8 Certain people given right of occupation not tenants
Section 6E (1) (b)**

omit

**9 Certain kinds of premises mean no residential tenancy agreement
Section 6F**

omit

**10 Rent or a bond only
New section 15 (2) (aa) and (ab)**

insert

- (aa) consenting to a co-tenant leaving a residential tenancy agreement under section 35A; or
- (ab) consenting to a person becoming a co-tenant under section 35B; or

11 New section 34F

insert

34F Bond release application—discrepancy in named co-tenants

- (1) This section applies if—
 - (a) a lessor or tenant makes a bond release application to the Territory in relation to a residential tenancy agreement; and
 - (b) the names of the tenants in the bond application do not match the names of the tenants that have been notified to the Territory under the following:
 - (i) section 23 (3) (b) (Deposit of bond by lessor);
 - (ii) section 24 (1) (b) (Deposit of bond by tenant);
 - (iii) section 35B (2) (b) (Repayment of bond to leaving co-tenant);

- (iv) section 35D (2) (b) (Payment of bond by new co-tenant).
- (2) The Territory may refer the bond release application to the ACAT.
- (3) If a bond release application is referred to the ACAT, the ACAT must—
 - (a) decide who is entitled to receive the released bond; and
 - (b) make an order directing the Territory to release the bond in accordance with the decision.

12 New part 3A

insert

Part 3A Co-tenancies

35A Co-tenant may leave residential tenancy agreement

- (1) A co-tenant (the *leaving co-tenant*) may stop being a party to a residential tenancy agreement only—
 - (a) with the consent of the lessor and each remaining co-tenant under the agreement; or
 - (b) by order of the ACAT under section 35E (1) (a) or (e).
- (2) For subsection (1) (a), the leaving co-tenant must seek the consent of the lessor and each remaining co-tenant—
 - (a) by notice in writing (the *consent application*); and
 - (b) at least 21 days before the day the leaving co-tenant intends to stop occupying the premises (the *proposed leaving day*).

- (3) The lessor and each remaining co-tenant—
 - (a) if the proposed leaving day is during the term of a fixed term agreement—may refuse consent for the leaving co-tenant to leave the premises whether or not it is reasonable to do so; but
 - (b) in any other case—must not unreasonably refuse consent.
- (4) For subsection (1) (a), the lessor and each remaining co-tenant is taken to consent if the lessor or the remaining co-tenant, as the case requires—
 - (a) does not respond to the leaving co-tenant within 21 days of receiving the consent application; and
 - (b) does not apply to the ACAT, within 21 days of receiving the consent application, for an order under section 35E (1) (b) to refuse consent.
- (5) If a leaving co-tenant stops being a party to a residential tenancy agreement under this section—
 - (a) the agreement continues between the lessor and the remaining co-tenants; and
 - (b) the leaving co-tenant's rights and obligations under the agreement end.
- (6) For subsection (5), a co-tenant stops being a party to a residential tenancy agreement on—
 - (a) the proposed leaving date or any other day agreed between the parties; or
 - (b) if the ACAT makes an order mentioned in subsection (1) (b)—the day stated in the order.

35B Repayment of bond to leaving co-tenant

- (1) This section applies if—
- (a) a co-tenant (the *leaving co-tenant*) leaves a residential tenancy agreement—
 - (i) under section 35A; or
 - (ii) because of an ACAT order under section 35E (1) (a) or (e); and
 - (b) a bond is held in relation to the agreement; and
 - (c) 1 or more of the remaining co-tenants continue to occupy the premises under the agreement.
- (2) The remaining co-tenants must, not more than 14 days after the day the leaving co-tenant stops being a party to the residential tenancy agreement—
- (a) pay to the leaving co-tenant an amount equal to the bond paid by the leaving co-tenant under the agreement; and
 - (b) notify the Territory that the leaving co-tenant has been paid under paragraph (a).
- (3) The remaining co-tenants may deduct from that amount—
- (a) any portion of rent unpaid by the leaving co-tenant; and
 - (b) having regard to the condition report for the premises—other reasonable costs in relation to the premises.

Example—reasonable costs

for damage caused to the premises by the leaving co-tenant

- (4) If a protection order is in force prohibiting the leaving co-tenant from having access to the premises under the residential tenancy agreement, the remaining co-tenants are not required to pay the amount mentioned in subsection (2) within the period required under that subsection.
- (5) A leaving co-tenant is not entitled to payment of any other amount of the bond under the residential tenancy agreement.
- (6) Subsection (2) does not apply if the liabilities of the leaving co-tenant under the residential tenancy agreement are more than the amount of the bond paid by the leaving co-tenant.
- (7) In this section:
protection order—see section 85 (1).

35C Becoming a co-tenant under an existing residential tenancy agreement

- (1) This section applies if—
 - (a) 1 or more tenants (an *existing tenant*) occupy premises under a residential tenancy agreement; and
 - (b) an existing tenant wants to allow another person (a *new person*) to occupy the premises as a tenant (other than as a sub-tenant) with them.
- (2) To remove any doubt, this section does not apply to a sub-tenancy or a bare licence to occupy the premises.

Example—bare licence

Ollie is a tenant in a house under a residential agreement. Ollie's brother, Loki, is going overseas and needs a place to stay for 2 weeks. Ollie has said that Loki could stay in the spare room until he goes.

- (3) The existing tenant may only allow the new person to occupy the premises as a home with them—
 - (a) with the consent of the lessor and any other existing tenant; or
 - (b) by order of the ACAT under section 35E (1) (c).
- (4) For subsection (3) (a), the existing tenant must seek the consent of the lessor and any other existing tenant—
 - (a) by notice in writing (the *consent application*); and
 - (b) at least 14 days before the day the existing tenant wants to allow the new person to occupy the premises (the *proposed joining date*).
- (5) The lessor and any other existing tenant must not unreasonably refuse consent.
- (6) However, the lessor may refuse consent—
 - (a) if the lessor reasonably considers that allowing the new person to occupy the premises would cause the premises to become overcrowded; or
 - (b) if the new person is included on a residential tenancy database; or
 - (c) if the new person does not meet a requirement of, or is unsuitable having regard to the purpose of, the residential tenancy agreement; or
 - (d) if the premises are used for social housing or crisis accommodation and the person is not eligible to live at the premises; or

- (e) if the existing tenant is occupying the premises under an agreement mentioned in section 6C—the new person will not be occupying the premises under the terms and conditions of the person’s employment; or
 - (f) for another reason—only by order of the ACAT under section 35E (1) (d).
- (7) For subsection (4) (a), the lessor and any other existing tenant is taken to consent if they—
 - (a) do not respond within 14 days of receiving the consent application; and
 - (b) do not apply to the ACAT, within 14 days of receiving the consent application, for an order under section 35E (1) (d) to refuse consent.
- (8) If a new person is allowed to occupy premises under an existing residential agreement under this section—
 - (a) the agreement continues with the new person becoming a co-tenant with the existing tenants; and
 - (b) the existing tenants must give the new person a copy of the condition report for the premises not later than the day after they start occupying the premises.
- (9) For subsection (8), the new person becomes a co-tenant on—
 - (a) the proposed joining date or any other day agreed between the parties; or
 - (b) if the ACAT makes an order mentioned in subsection (3) (b)—the day stated in the order.

35D Payment of bond by new co-tenant

- (1) This section applies if—
 - (a) a person (the *new co-tenant*) becomes a new co-tenant under a residential tenancy agreement under section 35C; and
 - (b) a bond is held in relation to the agreement; and
 - (c) 1 or more of the other co-tenants (the *other co-tenants*) continue to occupy the premises under the agreement.
- (2) The new co-tenant must, not more than 14 days after the day they become a co-tenant under the residential tenancy agreement—
 - (a) pay to the other co-tenants the new co-tenant's share of the bond under the agreement; and
 - (b) notify the Territory that the new co-tenant has paid their share of the bond.

35E ACAT orders—co-tenancy matters

- (1) On application by a co-tenant under a residential tenancy agreement, the ACAT may—
 - (a) if consent required under section 35A (1) (a) is refused—order that a co-tenant may leave the agreement under section 35A; or
 - (b) order that the co-tenant may refuse consent for a co-tenant to leave the agreement under section 35A; or
 - (c) if consent required under section 35C (3) (a) is refused—order that a person may become a co-tenant under the agreement under section 35C; or
 - (d) order that the co-tenant may refuse consent for a person to become a co-tenant under the agreement under section 35C; or

(e) order that—

- (i) a co-tenant must leave the premises under the agreement within a stated period (being a period not less than 3 weeks after the day the order is made); and
- (ii) the agreement continues between the lessor and the remaining co-tenants; and
- (iii) the co-tenant's rights and obligations under the agreement end; or

(f) make any other order in relation to an order mentioned in paragraphs (a) to (e) that the ACAT considers appropriate.

Examples—par (f)

- 1 order for a co-tenant's share of utility costs
- 2 order for payment of reasonable costs for damage caused to premises by a co-tenant

(2) On application by a lessor under a residential tenancy agreement, the ACAT may order that the lessor may refuse consent—

- (a) for a co-tenant to leave the agreement under section 35A (4) (b); or
- (b) for a person to join the agreement under section 35C (6) (f).

13 Section 54 heading

substitute

54 Purported co-tenancy, assignment or subletting

14 Section 54 (1) (a)

substitute

- (a) the tenant purported, in contravention of the standard residential tenancy terms, to—
- (i) allow a person to become a co-tenant; or
 - (ii) assign or sublet the premises; and

15 Section 54 (1) (b) and (c)

before

assignment

insert

co-tenancy,

16 Section 54 (2)

before

assignee

insert

co-tenant,

**17 What is an *occupancy agreement*?
Section 71C (1)**

substitute

- (1) An agreement is an ***occupancy agreement*** if—
- (a) under the agreement—
 - (i) a person (the ***grantor***) gives someone else (the ***occupant***) a right to occupy stated premises; and
 - (ii) the premises are for the occupant to use as a home (whether or not with other people); and
 - (iii) the right is given for value; and
 - (b) the agreement is 1 of the following:
 - (i) except if section 6B applies, an agreement to occupy premises in the grantor's principal place of residence;
 - (ii) except if section 6B applies, an agreement to occupy premises in a residential college associated with, or on the campus of, an educational institution;
 - (iii) an agreement—
 - (A) to exclusively occupy a sleeping space in a building with other sleeping spaces with related access to shared facilities or provision of domestic services; and
 - (B) that states it is an occupancy agreement;

- (iv) an agreement—
 - (A) for emergency accommodation for people in crisis; and
 - (B) that states it is an occupancy agreement for emergency accommodation for people in crisis;
- (v) an agreement—
 - (A) to occupy premises provided under a housing support program; and
 - (B) that states it is an occupancy agreement for a housing support program;
- (vi) an agreement—
 - (A) to occupy premises because of membership in a club or other entity; and
 - (B) that states it is an occupancy agreement;
- (vii) except if section 6B applies, an agreement to—
 - (A) occupy premises provided by the grantor in a residential park; or
 - (B) occupy a site in a residential park, for the purpose of the occupant placing a manufactured home or a mobile home on the site;
- (viii) an agreement prescribed by regulation.

Examples—par (b) (iii) (A)

a bedroom in a boarding house, a bed in a dormitory-style room

Note This Act does not apply to nursing homes, hostels for aged or disabled people or other prescribed premises (see s 4).

18 Section 71C (4) and note

substitute

- (4) In this section:

housing support program means a program funded by the Territory under which accommodation is provided for people who—

- (a) are homeless or at risk of homelessness; or
- (b) will receive welfare or health support or services when using the accommodation.

Examples—par (b)

alcohol and drug addiction services

shared facilities, in relation to premises, means areas related to the premises, provided for shared use by people occupying those and other premises.

Examples

shared bathroom and toilet, laundry, kitchen

sleeping space, in a building, means—

- (a) a bedroom; or
- (b) a bed in a room with other beds.

19 New sections 71CA and 71CB*insert***71CA Certain types of agreements not occupancy agreements**

An occupancy agreement does not include an agreement—

- (a) arising under a mortgage entered into honestly in relation to the premises; or
- (b) arising under a scheme if—
 - (i) a group of adjacent premises is owned by a company; and
 - (ii) the people who have rights to occupy the adjacent premises jointly have a controlling interest in the company; or
- (c) entered into honestly to provide a right to occupy the premises for a holiday; or
- (d) prescribed by regulation.

71CB Occupancy agreement—smoke alarms

- (1) A grantor must not enter into an occupancy agreement (other than a site-only residential park occupancy agreement) with an occupant in relation to premises unless—
 - (a) smoke alarms are installed for the premises; and
 - (b) the smoke alarms, and the installation of the smoke alarms, comply with the requirements under section 11B (1) (b).

Note Other requirements may apply in relation to the installation of smoke alarms, for example, requirements under the [Building Act 2004](#).

- (2) For a site-only residential park occupancy agreement, the occupant must comply with the requirements in subsection (1) (a) and (b).

- (3) In this section:

site-only residential park occupancy agreement means an occupancy agreement mentioned in section 71C (1) (b) (vii) (B).

20 Section 71E

substitute

71E Application of occupancy principles

- (1) An occupancy agreement for premises—
- (a) is taken to contain the occupancy principles; and
 - (b) may contain—
 - (i) rules about occupying the premises (the *occupancy rules*); and
 - (ii) additional terms.
- (2) An occupancy rule or additional term in an occupancy agreement is void if it is inconsistent with the occupancy principles, this Act or another territory law.

71EA Occupancy principles

- (1) The following principles (the *occupancy principles*) apply to an occupancy agreement in relation to premises:
- (a) a grantor must provide premises that are—
 - (i) reasonably clean; and
 - (ii) in a reasonable state of repair; and
 - (iii) reasonably secure;

- (b) a grantor must ensure that the occupancy agreement is in writing if the agreement is for a term longer than 6 weeks;
- (c) a grantor may require an occupant to pay a security deposit only in accordance with section 71EC;

Note A security deposit payable under an occupancy agreement must be treated as if it were a rental bond lodged with the Territory (see s 71ED).

- (d) a grantor must give an occupant a written receipt for payments made under the occupancy agreement in accordance with section 71EF;
- (e) a grantor may only impose an occupancy rule, fee, charge or penalty on an occupant if the requirements in section 71EG are met;
- (f) an occupancy rule must be reasonable and proportionate to the outcome sought by the imposition of the rule;
- (g) any penalty or consequence for breaching an occupancy rule—
 - (i) must be reasonable and proportionate to the seriousness of the breach of the rule; and
 - (ii) must not impose unreasonable hardship on the occupant;
- (h) a grantor must provide the occupant with quiet enjoyment of the premises including access to the premises as set out in section 71EH;
- (i) a grantor must give the occupant the information mentioned in section 71EI about the dispute resolution processes that apply to the occupancy agreement;
- (j) a grantor may enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes;

- (k) an occupant must not behave in a way that detracts from the rights of others (including another occupant) to live and work in the premises in a safe environment, free from harassment or intimidation;
- (l) a party to the occupancy agreement must not terminate the agreement otherwise than in accordance with section 71EJ;
- (m) an occupant must, at the end of the occupancy agreement, vacate the premises;
- (n) an occupant must, at the end of the occupancy agreement, ensure the premises are—
 - (i) reasonably clean; and
 - (ii) in a reasonable state of repair (allowing for fair wear and tear); and
 - (iii) reasonably secure.
- (2) If an occupancy agreement is for a term of 6 weeks or less and the agreement is not in writing, the grantor may comply with any requirement in subsection (1) to include information in the agreement by giving the occupant the information, in writing, in any other appropriate way before the agreement begins.
- (3) For a site-only residential park occupancy agreement—
 - (a) ***premises*** means the land and any fixtures in the residential park provided by the grantor for the purpose of the occupant placing a manufactured home or a mobile home on the land; and
 - (b) the grantor is entitled to enter the occupant's manufactured home or a mobile home only with reasonable notice, at reasonable times, on reasonable grounds and for reasonable purposes.

- (4) In this section:

site-only residential park occupancy agreement means an occupancy agreement mentioned in section 71C (1) (b) (vii) (B).

71EB Condition report

- (1) A grantor must, not later than the day after the occupancy agreement starts, give the occupant a report about the state of repair or general condition of the premises of the following on the day the occupant is given the report:
- (a) the premises;
 - (b) any facilities, furniture or goods provided with the premises.
- (2) The grantor must sign the report and give the occupant a reasonable opportunity to check the content of the condition report.
- (3) If the grantor does not give the occupant a condition report for the premises, unless there is evidence to the contrary, the state of repair or general condition of the premises is taken to be the same at the end of the occupancy agreement as they were at the start of the agreement.

71EC Payment of security deposit

- (1) A grantor must not require an occupant under an occupancy agreement for premises to pay a security deposit unless—
- (a) the agreement is for a term of more than 14 days; and
 - (b) the grantor complies with section 71EB in relation to a condition report.
- (2) The maximum amount of a security deposit is—
- (a) for an occupancy agreement with a term of more than 14 days but less than 6 months—an amount of no more than the first 2 weeks of any occupancy fee payable under the agreement; or

- (b) for an occupancy agreement with a term of 6 months or longer—
an amount of no more than the first 4 weeks of any occupancy
fee payable under the agreement.
- (3) The amount of the security deposit must be stated in the occupancy
agreement.
- (4) A grantor must not require or accept—
 - (a) more than 1 security deposit in relation to an occupancy
agreement; or
 - (b) a security deposit from an occupant under an occupancy
agreement for premises (the *current agreement*) if—
 - (i) the occupant occupied the premises under an earlier
occupancy agreement (the *prior agreement*); and
 - (ii) a security deposit is held in relation to the prior agreement;
and
 - (iii) an application for the release of the deposit has not yet
been made.

Note An application may be made under div 3.4 (as applied by
s 71ED (4)).

71ED Security deposit must be lodged with Territory

- (1) A security deposit payable under an occupancy agreement must be
deposited with the Territory.
- (2) The deposit must be accompanied by a written notice that states—
 - (a) the names of, and addresses for service on, the occupant and the
grantor; and
 - (b) the amount of security deposit being deposited.

- (3) If the Territory accepts the amount of the security deposit, the Territory must—
 - (a) give the occupant a receipt for the amount; and
 - (b) give the occupant and grantor a copy of the notice under subsection (2).
- (4) If the Territory accepts the security deposit, the applied provisions apply in relation to the occupancy agreement as if—
 - (a) the amount had been received by the Territory under part 3 (Bonds); and
 - (b) the occupancy agreement were a residential tenancy agreement; and
 - (c) the occupant were the tenant under the agreement; and
 - (d) the grantor were the lessor under the agreement; and
 - (e) any dispute between the occupant and the grantor about the security deposit were a tenancy dispute; and
 - (f) any other necessary changes, and any changes prescribed by regulation, were made.
- (5) In this section:
applied provisions means the following provisions:
 - (a) section 27 (Payment of bond money into trust account);
 - (b) section 28 (Interest on amounts in trust account);
 - (c) division 3.4 (Release of bond money).

71EE Deductions from security deposit

A grantor may deduct from a security deposit paid under an occupancy agreement—

- (a) the reasonable cost of repairs to, or the restoration of, the premises or any facilities, furniture or goods provided with the premises as a result of damage (other than fair wear and tear) caused by the occupant; and
- (b) the reasonable cost of securing the premises if the occupant fails to return the keys for the premises to the grantor at the end of the agreement; and
- (c) any occupancy fee or other amount owing and payable under the occupancy agreement at the time the agreement ends.

71EF Receipts for certain payments

- (1) If an occupant pays to a grantor an amount under an occupancy agreement for premises of—
 - (a) \$75 or more—the grantor must give the occupant a written receipt for the payment; or
 - (b) less than \$75—the grantor must give the occupant a written receipt for the payment if asked by the occupant.
- (2) The grantor must—
 - (a) keep a written record of all payments received from the occupant under the occupancy agreement; and
 - (b) if asked by an occupant—give the occupant a copy of the record.

71EG Occupancy rules, fees, charges and penalties

- (1) The grantor must include the following information in an occupancy agreement for premises:
- (a) any occupancy rule that applies to the premises;
 - (b) any penalty that may apply for a breach of an occupancy rule;
 - (c) any penalty, fee or charge that may apply if the occupant terminates the agreement before the end of the term of the agreement;
 - (d) any other fee or charge payable under the agreement including—
 - (i) the frequency of the fee or charge; and
 - (ii) if relevant, how the fee or charge is worked out.

Examples—par (d) (i)

weekly occupancy fee, monthly electricity charge, quarterly water use fee, monthly wi-fi access fee

Example—par (d) (ii)

a stated share of a utilities bill

- (2) The grantor must give the occupant—
- (a) at least 8 weeks prior written notice before—
 - (i) changing an occupancy rule included in the occupancy agreement; or
 - (ii) increasing a fee, charge or penalty payable under the occupancy agreement; or
 - (iii) introducing a new fee, charge, occupancy rule or penalty payable under the occupancy agreement; and

- (b) reasonable notice about imposing a penalty for breach of an occupancy rule included in the occupancy agreement.

71EH Access to occupancy premises

- (1) As far as reasonably practicable, the grantor must give the occupant—
 - (a) 24-hour access to the occupant's part of the premises and a toilet and bathroom; and
 - (b) access at reasonable hours to shared facilities.

- (2) In this section:

occupant's part, of premises the subject of an occupancy agreement, means the part of the premises that is provided under the agreement for the occupant's primary use.

shared facilities, in relation to premises the subject of an occupancy agreement, means an area related to the premises that is provided for shared use by occupants.

Examples

shared laundry, kitchen, games room, outdoor BBQ area

71EI Information about dispute resolution processes

The grantor must include the following information in an occupancy agreement for premises:

- (a) any internal dispute resolution process that applies to the agreement;
- (b) the contact details for at least 1 community dispute resolution service provider;
- (c) the contact details for the human rights commission;
- (d) the contact details for the ACAT.

71EJ Termination of occupancy agreement

- (1) The grantor must ensure an occupancy agreement states—
 - (a) under what circumstances the occupancy may be terminated; and
 - (b) a reasonable period of notice that must be given by a party before the agreement is terminated.
- (2) A party may only terminate an occupancy agreement if—
 - (a) the agreement allows the party to do so; and
 - (b) the party has given reasonable notice in writing.
- (3) A grantor must not terminate an occupancy agreement, or evict an occupant, only because the occupant—
 - (a) applied to the ACAT for an order in relation to an occupancy agreement; or
 - (b) complained to a government entity in relation to an occupancy agreement; or
 - (c) took reasonable action to secure and enforce an occupancy agreement.

71EK Warrant for eviction—vacant possession order

- (1) On application by a grantor, the registrar must issue a warrant for the eviction of an occupant from premises if—
 - (a) the ACAT has ordered the occupant under section 83 (i) to vacate the premises; and
 - (b) the occupant fails to vacate the premises in accordance with the order.

- (2) A warrant under this section must comply with section 40 (Content of warrant).

71EL Occupancy agreement—abandonment of premises

- (1) This section applies if—
- (a) the occupant under an occupancy agreement for premises has not paid the occupancy fee under the agreement for at least 3 consecutive periods; and
 - (b) the grantor has taken all reasonable steps to contact the occupier of the premises; and
 - (c) the grantor reasonably believes that the occupier has abandoned the premises.
- (2) The grantor may, without the occupier's consent, and without notice, enter the premises during the occupancy agreement to confirm whether the premises have been abandoned.
- (3) However, the grantor must not enter the premises under subsection (2)—
- (a) on a Sunday; or
 - (b) on a public holiday; or
 - (c) before 8am or after 6pm.

Note 1 A grantor may seek an order that premises are abandoned under s 83 (j).

Note 2 A grantor may dispose of any abandoned goods found on the premises under the [Uncollected Goods Act 1996](#).

**21 Occupant may deposit bond with Territory
Section 71GA***omit***22 New part 5B***insert***Part 5B Residential parks****Division 5B.1 Definitions—pt 5B****71H Definitions—pt 5B**

In this part:

operator, of a residential park, means the person who manages, controls or otherwise operates the residential park, including by granting rights of occupancy under a residential park agreement, whether or not the person is the owner of the residential park.

residential park agreement means a residential tenancy agreement or an occupancy agreement in relation to a manufactured home or a mobile home that is located in a residential park and includes a site agreement.

site agreement means an agreement under which an operator grants another person, for value, a right to occupy a site in the operator's residential park, for the purpose of placing a manufactured home or a mobile home on the site for use as a home.

Division 5B.2 Shared park facilities

71I Access to shared park facilities

- (1) As far as reasonably practicable, an operator must give a tenant or occupant under a residential park agreement access at reasonable hours to shared park facilities.
- (2) In this section:

shared park facilities, in relation to a residential park, means areas in the park provided for shared use by tenants and occupants in the park.

Examples

showers, toilets, laundry, camp kitchen, pool, BBQ area

Division 5B.3 Assignment of interests

71J Definitions—div 5B.3

In this division:

assignee, in relation to a residential park agreement—see section 71K (1).

assignor, in relation to a residential park agreement—see section 71K (1).

71K Assignment in residential park permitted with consent

- (1) A tenant or occupant (the *assignor*) may assign the assignor's interest in a residential park agreement to someone else (the *assignee*) only if the operator of the residential park—
 - (a) consents, in writing, to the assignment; or
 - (b) is taken under section 71L to have consented to the assignment.

- (2) In requesting the operator's consent for subsection (1), the assignor must give the operator the following information:
 - (a) the name of the assignee;
 - (b) the same information in relation to the assignee that the assignee was requested to give to the operator in relation to the assignee's application to enter into the residential park agreement.

71L Consent to assignment

- (1) Within 7 days of receiving the assignor's request for consent under section 71K (2), the operator may, in writing—
 - (a) consent to the assignment; or
 - (b) refuse to consent to the assignment.
- (2) The operator is taken to consent to the assignment if the assignor makes a request under section 71K (2) and the operator does not take action under subsection (1) within 7 days of the request.

71M Effect of assignment

- (1) This section applies if an assignor assigns their interest under a residential park agreement to an assignee.
- (2) The assignor's interest in any security deposit paid under the agreement is also assigned to the assignee.
- (3) From the day of the assignment—
 - (a) the assignee is taken to be substituted for the assignor under the residential park agreement, including for the purposes of any security deposit; and
 - (b) the assignor remains liable for any liabilities incurred under the agreement before the day of the assignment.

Division 5B.4 Sale of manufactured homes and mobile homes

71N Sale of home located on residential park site

- (1) This section applies if—
 - (a) a person owns a manufactured home or mobile home (the *occupant's premises*) that is located in a residential park under a site agreement; and
 - (b) the person intends to offer the premises for sale.
- (2) The person must not display a sign about the sale in or on the premises or in the residential park unless—
 - (a) the person has told the operator about their intention to sell the premises; and
 - (b) the sign is no larger than the maximum size prescribed by regulation.
- (3) The operator of a residential park must not take any action to hinder the person's sale of the premises in the park if the person has complied with subsection (2).
- (4) Without limiting subsection (3), an operator of a residential park hinders a person's sale of premises in the park if the operator—
 - (a) unreasonably stops potential buyers from inspecting the premises; or
 - (b) makes false or misleading statements about the park that affect or may affect the sale; or
 - (c) prevents the person from displaying a sign about the sale.

- (5) An operator of a residential park is not taken to hinder a person's sale of their premises only because the operator—
 - (a) imposes conditions relating to potential buyers entering or remaining in the park that are reasonable in the circumstances; or
 - (b) has reasonably refused to consent to a proposed assignment of the person's interest in the site agreement.

71O Home to be removed from park if no site agreement once sold

- (1) This section applies if—
 - (a) a person (the *seller*) owns a manufactured home or mobile home in a residential park under a site agreement; and
 - (b) the seller sells the manufactured home or mobile home to another person (the *buyer*).
- (2) The buyer must remove the manufactured home or mobile home from the residential park within 5 days after the day the sale is completed or within a longer period of time agreed by the operator unless—
 - (a) the seller has assigned the site agreement to the buyer; or
 - (b) the buyer has entered into a new site agreement with the operator.
- (3) If asked by the buyer, the operator of the residential park must not unreasonably refuse to enter into a site agreement with the buyer for an appropriate site in the park for the manufactured home or mobile home.

**23 Meaning of *tenancy dispute*
Section 72 (1) (a)**

after

parties

insert

(including between co-tenants)

24 Section 74

substitute

74 Other options for dispute resolution

Nothing in this part requires an occupant to attempt to resolve an occupancy dispute under this Act before making a complaint under the [Human Rights Commission Act 2005](#).

**25 Jurisdiction of ACAT under this Act etc
Section 76 (1) (c), except note**

substitute

(c) the occupancy principles or the standard occupancy terms.

**26 Extended jurisdiction of ACAT with agreement of parties
Section 78 (1) (a) (iii), except note**

substitute

(iii) the occupancy principles or the standard occupancy terms;
and

**27 Orders by ACAT
Section 83 (j)***substitute*

- (j) an order—
- (i) declaring the premises abandoned; and
 - (ii) if the abandoned premises are a manufactured home or mobile home in a residential park and the ACAT considers that the premises are not fit for human habitation—directing the operator of the park how the premises may be disposed of;

Note An operator of a residential park in which a manufactured home or mobile home is abandoned can only dispose of the home under the [Uncollected Goods Act 1996](#), s 24A if the ACAT has made an order under par (j).

28 Section 127*substitute***127 Death of co-tenant**

If 1 of 2 or more co-tenants under a residential tenancy agreement dies, the agreement continues to operate—

- (a) with the remaining co-tenant as the sole tenant; or
- (b) if there are 2 or more remaining co-tenants—with the remaining co-tenants.

29 Section 128*substitute***128 Purported co-tenancy, assignment or subletting**

- (1) This section applies if, in contravention of the standard residential tenancy terms, a tenant under a residential tenancy agreement for premises purports to—
 - (a) allow a person to become a co-tenant under the agreement; or
 - (b) assign the tenant's interest under the agreement; or
 - (c) sublet the premises.
- (2) The purported co-tenancy, assignment or subletting is unenforceable and the person living in premises under the purported co-tenancy, assignment or subletting, does so as a licensee only.
- (3) Subsection (2) does not apply to a co-tenancy, assignment or subletting of premises in accordance with a term of the residential tenancy agreement endorsed by the ACAT.

**30 Standard residential tenancy terms
Schedule 1, new clause 24 (aa)***insert*

- (aa) consenting to a person becoming a co-tenant or a co-tenant leaving the tenancy;

31 Schedule 1, new clauses 72A and 72B*insert***Co-tenant may leave tenancy agreement**

- 72A (1) A co-tenant may leave the tenancy agreement—
- (a) with the consent of the lessor and each remaining co-tenant under the agreement; or
 - (b) by order of the tribunal under the Residential Tenancies Act, section 35E (1) (a) or (e).
- (2) The co-tenant must seek the consent of the lessor and each remaining co-tenant—
- (a) by notice in writing; and
 - (b) at least 21 days before the day the co-tenant intends to stop occupying the premises (time limits for the lessor or each remaining co-tenant to refuse consent are set out in the Residential Tenancies Act).
- (3) If a tenant leaves a tenancy agreement under this clause—
- (a) the agreement continues between the lessor and the remaining co-tenants; and
 - (b) the tenant's rights and obligations under the agreement end.

Becoming a new co-tenant to existing tenancy agreement

- 72B (1) A tenant may allow another person to become a co-tenant under the tenancy agreement—
- (a) with the consent of the lessor and any other co-tenant; or

- (b) by order of the tribunal under the Residential Tenancies Act, section 35E (1) (c).
- (2) The tenant must seek the consent of the lessor and any other co-tenant—
 - (a) by notice in writing; and
 - (b) at least 14 days before the day the tenant wants to allow the person to become a co-tenant (time limits for the lessor or any other co-tenant to refuse consent are set out in the Residential Tenancies Act).
- (3) If a person is allowed to become a co-tenant under this clause—
 - (a) the agreement continues with the person becoming a co-tenant with the existing tenants; and
 - (b) the existing co-tenants must give the person a copy of the condition report for the premises not later than the day after they start occupying the premises.

32 Dictionary, note 2

insert

- human rights commission

33 Dictionary, new definitions

insert

assignee, in relation to a residential park agreement, for division 5B.3 (Assignment of interests)—see section 71K (1).

assignor, in relation to a residential park agreement, for division 5B.3 (Assignment of interests)—see section 71K (1).

co-tenant—see section 6AA.

manufactured home means a structure, other than a caravan or tent, that—

- (a) has the character of residential premises; and
- (b) is designed, built or manufactured to be transported from 1 place to another for use as a home; and
- (c) is not permanently attached to land.

34 Dictionary, definition of *mobile home*

substitute

mobile home means a motor vehicle, caravan or other trailer, or other registrable vehicle under the [Road Transport \(Vehicle Registration\) Act 1999](#) that is used as a home.

35 Dictionary, definition of *occupancy principles*

substitute

occupancy principles—see section 71EA.

36 Dictionary, new definitions

insert

operator, of a residential park, for part 5B (Residential parks)—see section 71H.

residential park—

- (a) means land that includes—
 - (i) sites for accommodating manufactured homes or mobile homes; and
 - (ii) common areas and facilities for the use of people occupying the manufactured homes or mobile homes; and

(b) includes a caravan park or camping ground.

residential park agreement, for part 5B (Residential parks)—see section 71H.

site agreement, for part 5B (Residential parks)—see section 71H.

Part 3 Residential Tenancies Regulation 1998

37 Section 1B

substitute

1B **Smoke alarms and installation of smoke alarms— Act, s 11B and s 71CB**

- (1) A smoke alarm installed in, or for, premises subject to a residential tenancy or an occupancy agreement—
 - (a) must—
 - (i) comply with AS 3786; and
 - (ii) be functional; and
 - (iii) be installed on or near the ceiling; and
 - (b) may be—
 - (i) battery-operated; or
 - (ii) hard-wired.
- Note* AS 3786 requires a hard-wired smoke alarm to also have a secondary power source.
- (2) A smoke alarm must be installed in, or for, premises subject to a residential tenancy agreement or an occupancy agreement—
 - (a) in each storey of the premises containing a bedroom—
 - (i) in every corridor or hallway associated with a bedroom; and

- (ii) if there is no corridor or hallway—between each part of the premises containing a bedroom and the remainder of the premises; and

- (b) in each storey of the premises not containing a bedroom.

Note Other requirements may apply in relation to the installation of smoke alarms, for example, requirements under the [Building Act 2004](#).

- (3) If premises under an occupancy agreement is a bedroom or part of a bedroom, for subsection (2) (a) and (b), a reference to ***premises*** means the building in which the premises are located.
- (4) In this section:

AS 3786 means Australian Standard AS3786 (Smoke alarms using scattered light, transmitted light or ionization) as in force from time to time.

Schedule 1 Other amendments

(see s 3)

Part 1.1 Human Rights Commission Act 2005

[1.1] New section 41A

insert

41A When may someone complain about an occupancy dispute?

A person may complain to the commission about an occupancy dispute.

[1.2] New section 42 (1) (g)

before the notes, insert

- (g) a complaint about an occupancy dispute (an *occupancy dispute complaint*).

[1.3] New section 43 (1) (h)

before the note, insert

- (h) if the complaint is an occupancy dispute complaint—an occupant under the occupancy agreement.

[1.4] New section 45 (2) (ea)

insert

- (ea) if the complaint is an occupancy dispute complaint and the commission decides not to refer the complaint for conciliation—tell the complainant, in writing, that the complaint will not be referred for conciliation and include an occupancy dispute referral statement; and

[1.5] New division 4.2C

insert

**Division 4.2C Certain occupancy dispute
complaints to ACAT**

53P Definitions—div 4.2C

- (1) In this division:

occupancy dispute complaint—see section 42 (1) (g).

person complained about means the grantor under an occupancy agreement under the [Residential Tenancies Act 1997](#).

- (2) In this section:

grantor—see the [Residential Tenancies Act 1997](#), section 71A.

53Q Application—div 4.2C

This division applies to an occupancy dispute complaint.

53R Occupancy dispute complaints—referral

- (1) This section applies if—
 - (a) either—
 - (i) a complainant is given an occupancy dispute referral statement under section 45 (2) (ea) (Commission’s obligation to be prompt and efficient); or
 - (ii) a statement under section 82B (1) (Closing occupancy dispute complaints) is included in a final report in relation to a complaint; and
 - (b) within 60 days after the day the statement is given, the complainant requires the commission to refer the complaint to the ACAT.
- (2) The commission must—
 - (a) refer the complaint to the ACAT; and
 - (b) tell the complainant and the person complained about, in writing, about the referral.

Note The commission must also close the complaint (see s 78 (2) (d)).

53S Occupancy dispute complaints—late application in exceptional circumstances

- (1) This section applies if—
 - (a) a complainant has been given a statement under section 45 (2) (ea) (Commission’s obligation to be prompt and efficient) or section 82B (1) (Closing occupancy dispute complaints); and

- (b) the complainant has not required the commission to refer the complaint to the ACAT within 60 days after the day the statement is given to the complainant.
- (2) The complainant may apply to the ACAT for the complaint to be heard by the ACAT.
- (3) The ACAT may grant the application only if satisfied on reasonable grounds that exceptional circumstances prevented the complainant from requiring the complaint to be referred to the ACAT within the 60-day period.
- (4) If the ACAT grants the application, the complaint is, for this Act, taken to have been referred to the ACAT.

53T Occupancy dispute complaints—parties to ACAT proceeding

The following are parties to a complaint referred to the ACAT under this division:

- (a) the complainant;
- (b) the person complained about;
- (c) if, on application by the commission, the ACAT joins the commission as a party to the complaint—the commission.

53U Occupancy dispute complaints—ACAT jurisdiction

The ACAT has the same jurisdiction in relation to an occupancy dispute complaint referred to the ACAT under this division as that provided for in the *Residential Tenancies Act 1997*, section 76 (Jurisdiction of ACAT under this Act etc).

53V Occupancy dispute complaints—commission to give information etc to ACAT

The commission must give the ACAT (if asked by it) any information or copies of documents in relation to a complaint referred to the ACAT under this division, other than—

- (a) a communication or document to which section 66 (Admissibility of evidence) applies; or
- (b) information, a document or something else relevant to a consideration in relation to a complaint given to the commission under section 73 (Power to ask for information, documents and other things); or
- (c) information given to the commission under section 74 (Requiring attendance etc).

53W Occupancy dispute complaints—ACAT orders

If the commission refers a complaint to the ACAT under this division, the ACAT may make 1 or more of the orders mentioned in the [Residential Tenancies Act 1997](#), section 83 (Orders by ACAT).

53X Occupancy dispute complaints—monetary limit on jurisdiction of ACAT

The ACAT is, in exercising the jurisdiction conferred on it by this division, limited in the amount of money that it may order to be paid by the [Residential Tenancies Act 1997](#), section 76 (Jurisdiction of ACAT under this Act etc).

**53Y Occupancy dispute complaints—other options for
dispute resolution**

Nothing in this division requires a complainant to attempt to resolve a complaint under the *Residential Tenancies Act 1997* before making a complaint under this Act.

[1.6] Section 62 (3) (b)

after

discrimination complaint

insert

, occupancy dispute complaint

[1.7] Section 78 (2) (d)

after

discrimination complaint

insert

, occupancy dispute complaint

[1.8] New section 82B

insert

82B Closing occupancy dispute complaints

- (1) The final report in relation to an occupancy dispute complaint must include an occupancy dispute referral statement.

Note Occupancy dispute referral statement—see s 88B.

- (2) However, subsection (1) does not apply if—
 - (a) the parties to the complaint have made a conciliation agreement in relation to the complaint; or
 - (b) the complainant has withdrawn the complaint.
- (3) This section is additional to the other requirements of this Act for a final report.

[1.9] New section 88B

in part 4, insert

88B Occupancy dispute referral statements

An *occupancy dispute referral statement* is a statement in a notice in relation to an occupancy dispute complaint to the effect that—

- (a) the commission has closed the complaint; and
- (b) the complainant may ask the commission to refer the complaint to the ACAT within 60 days after the day the notice is given to the complainant; and
- (c) after the 60-day period, the complainant may apply to the ACAT under section 53S (Occupancy dispute complaints—late application in exceptional circumstances) for the complaint to be heard.

Note The commission must refer the complaint to the ACAT if the complainant asks it to refer the complaint within the 60-day period (see s 53R).

[1.10] Dictionary, new definitions

insert

occupancy agreement—see the *Residential Tenancies Act 1997*, section 71C.

occupancy dispute—see the *Residential Tenancies Act 1997*, section 73.

occupancy dispute complaint—see section 42 (1) (g).

occupancy dispute referral statement—see section 88B.

[1.11] Dictionary, definition of *person complained about*

substitute

person complained about—

- (a) for division 4.2B (Certain older people service complaints to ACAT)—see section 53F; and
- (b) for division 4.2C (Certain occupancy dispute complaints to ACAT)—see section 53P.

Part 1.2 Uncollected Goods Act 1996

[1.12] Section 22 (a)

substitute

- (a) for a vehicle that is abandoned (other than a mobile home abandoned in a residential park)—immediately; or

[1.13] Section 23 (a)

substitute

- (a) for a vehicle that is abandoned (other than a mobile home abandoned in a residential park)—immediately; or

[1.14] Section 24 (a)

substitute

- (a) for a vehicle that is abandoned (other than a mobile home abandoned in a residential park)—after 14 days; or

[1.15] New section 24A

in division 3.1, insert

24A Manufactured homes and mobile homes abandoned in residential parks

- (1) This section applies if the ACAT—
- (a) has declared that a manufactured home or mobile home in a residential park is abandoned under the *Residential Tenancies Act 1997*, section 83 (j) (i); and
- (b) has not made an order under that *Act*, section 83 (j) (ii).

Note Under the *Residential Tenancies Act 1997*, s 83 (j) (ii) the ACAT may order that an abandoned manufactured home or mobile home in a residential park that is not fit for human habitation may be disposed of other than by sale.

- (2) The manufactured home or mobile home may be disposed of by public auction after 14 days from the date of the ACAT order.

(3) In this section:

manufactured home—see the [Residential Tenancies Act 1997](#), dictionary.

mobile home—see the [Residential Tenancies Act 1997](#), dictionary.

residential park—see the [Residential Tenancies Act 1997](#), dictionary.

[1.16] Dictionary, new definition of *mobile home*

insert

mobile home—see the [Residential Tenancies Act 1997](#), dictionary.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2019.

2 Notification

Notified under the [Legislation Act](#) on 2019.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
