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Attorney-General

Minister for Consumer Affairs

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Minister for Gaming

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Dear Canberra community and stakeholders

### Public Exposure Draft of the Residential Tenancies Legislation Amendment Bill 2022

I write to provide an update on the progress the ACT Government has been making on its commitment to remove 'without cause' tenancy terminations and to progress other residential tenancy reforms related to rent bidding, minimum housing standards and supporting tenants to grow food and to compost in their rental home.

In 2021, the ACT Government released a [Discussion Paper](#) and a short form survey seeking the community's views on a proposed policy approach to these reforms. The community engaged with these proposals and 29 submissions and 256 survey responses were received. A [Listening Report](#) setting out what we heard from the community in response to that consultation is available on the [YourSay website](#).

Today, the ACT Government released a Public Exposure Draft of the Residential Tenancies Legislation Amendment Bill 2022 and accompanying Explanatory Statement to guide the community's consideration of these issues. The Public Exposure Draft Bill was informed by community comments received during the 2021 consultation process. Feedback received in response to this Public Exposure Draft Bill will help refine the ACT Government's proposed approach to the complex legal and policy questions that lie at the heart of this important reform.

#### Ending no cause evictions

Under the current Residential Tenancies Act 1997 (RTA), a landlord can terminate a tenancy agreement for no reason, by giving the tenant 26 weeks' notice. This "without cause" termination undermines tenants' security of tenure as it means a tenant can be evicted from their home arbitrarily without having breached their tenancy agreement such as by failing to pay rent or damaging the property, or where the landlord has another "cause" for the termination such as wanting to sell, renovate or move into the property. A full list of existing termination provisions is attached to this letter.

There were a range of views on the matter of without cause evictions as part of the public consultation process in 2021. Some stakeholders and community members, particularly landlords, were not supportive of ending without cause evictions, stating that this measure would not allow landlords to manage their properties as they see fit including their ability to remove "problematic" tenants where the nature of the

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tenants' actions do not rise to the level of a breach which would justify termination under a tenancy breach provision or where the landlord has difficulty in providing evidence the breach has occurred.

On the other hand, a large proportion of community members and stakeholders were supportive of ending without cause evictions and stated that if a landlord is unable to prove that a tenant should be evicted under the existing or proposed new termination provisions, they should not be able to evict a tenant.

The ACT Government remains of the view that ending without cause evictions, combined with existing and new termination clauses, will improve tenants' rights and security of housing, whilst enabling landlords to manage their properties.

### **Supporting landlords to manage their properties in the absence of the no cause termination provision**

As stated above, during the 2021 consultation process, some landlords expressed a concern that the removal of the 'without cause' termination provision could inhibit their ability to manage their property effectively. The removal of the 'without cause' termination provision from residential tenancy agreements will mean that any legitimate circumstances for tenancy termination needs to be recognised as standalone grounds for termination under the RTA. Accordingly, the Bill proposals several new termination provisions to complement the existing termination clauses to ensure that all legitimate circumstances for tenancy termination are provided for by the RTA once no cause terminations are removed.

To assist in the community's consideration of the proposed reforms, a comprehensive list of all the current and proposed new grounds for tenancy termination are attached to this letter. I trust that this comprehensive list gives stakeholders confidence that consideration has been given to the circumstances in which a landlord may need to terminate a tenancy, however feedback on this issue, as well as any other aspects of the reforms, is welcome.

### **Outline of the approach to tenancy termination provisions specific to tenants of the Commissioner for Social Housing**

For those community members and stakeholders interested in tenancy termination provisions specific to tenancies with the Commissioner for Social Housing (the Commissioner), I wanted to take this opportunity to draw your attention to a particular aspect of the proposed policy approach.

The removal of without cause terminations requires the introduction of new tenancy termination provisions to allow the Commissioner to continue to operate the public housing program in accordance with the objects of the *Housing Assistance Act 2007 (HAA)*. Accordingly, it is proposed that the Commissioner be given the power to terminate a tenancy where the Commissioner decides under the HAA or its subordinate legislation (**Housing Assistance subordinate legislation**) to withdraw housing assistance following a review of eligibility, require a transfer, or offer a period of temporary assistance following a breakdown of tenancy. This approach will mean that the Commissioner's ability to terminate a tenancy will be narrowly circumscribed to the Commissioner's powers to provide housing assistance under Housing Assistance legislation. Tying public housing termination provisions to Housing Assistance legislation is an important human rights safeguard as it ensures the criteria and processes for termination are clearly articulated and closely linked to the goal of operating effective housing assistance services.

It is noted, however, that this will mean that the Commissioner will need to amend the current [Housing Assistance Public Rental Housing Assistance Program 2013 \(No 1\)](#) (the Housing Assistance Program) to clarify that the housing assistance provided following a breakdown of tenancy situation may be temporary housing assistance only. An amendment to the HAA has been included in the Bill which introduces a linked definition

of temporary housing assistance into both the Residential Tenancies Act 1997 and the HAA will facilitate that amendment.

It is also noted that if, in future, the Commissioner decides to amend the Housing Assistance Program to expand the circumstances in which the Commissioner can withdraw assistance following a review of eligibility, require a transfer or provide temporary housing assistance, then the Commissioner will be able to expand the circumstances in which they can terminate a tenancy. To ensure there is appropriate consideration of human rights issues associated with any proposed changes to Housing Assistance Program, amendments to the HAA are proposed to increase the level of scrutiny associated with decisions of this nature. Specifically, the Bill proposes to amend sections 20 and section 21 of the HAA to require that any determination or operational guideline made under a Housing Assistance Program that are associated with a decision to terminate a tenancy are required to be disallowable instruments rather than notifiable instruments.

The purpose of requiring these instruments to be disallowable rather than notifiable is to increase the level of scrutiny provided to the instruments when they are made. Disallowable instruments must be tabled in the Assembly, be accompanied by an explanatory statement and may be disallowed by the Assembly, providing an extra layer of scrutiny to these instruments. This means that there will be an additional explanation of the intended policy approach adopted in the instrument, including an analysis and justification of any of the human rights issues arising when the instrument is made.

It is also noted that the Housing Commissioner is a Public Authority for the purposes of HRA and must give proper consideration to human rights issues when making decisions, including decisions to make a housing assistance program or a determination or operational guideline under a housing assistance program. This Public Authority obligation to give proper consideration to human rights issues acts as an additional safeguard to ensure human rights issues are addressed in the making of any subordinate legislation.

Further detail in relation to the termination provisions specific to tenancies with the Commissioner is contained in the human rights analysis and clause notes sections of the Explanatory Statement released with the Public Exposure Draft Bill. Feedback on this issue, as well as any other aspects of the reforms, is welcome.

### **Outline of the approach to termination of a supported accommodation tenancy on the grounds the tenant is no longer eligible to live in the premises**

For those community members and stakeholders interested in tenancy termination provisions specific to supported accommodation (such as community social housing or affordable housing properties), I wanted to draw your attention to the proposed approach to the tenancy termination notice period for this provision.

I note that the 2021 consultation paper sought community views on the length of the notice period connected to this termination provision, noting the length of the notice period may impact on the provider's eligibility for financial support or assistance. The Consultation paper stated:

*Where the landlord is a private owner who has entered into an agreement with a community housing provider to offer their property as an affordable rental under the ACT Government's affordable community housing scheme, the landlord's eligibility for a land tax exemption is currently connected to the tenant being able to satisfy household income limits. The landlord's liability for land tax exemption is assessed on the first day of each quarter. Requiring the landlord to give lengthy notice to the tenant where the tenant becomes ineligible for the affordable housing may affect the landlord's liability for land tax (particularly in circumstances where more than 3 months' notice (ie longer than a quarter) is required).*

The Public Exposure Draft Bill released today proposes a notice period for this provision which is the later of the following:

- 26 weeks after the day the lessor gives the notice to vacate to the tenant;

- the day the tenant stops being eligible to live in the premises;
- the day the lessor stops being eligible for funding or assistance for the premises.

A minimum 26 week notice period is proposed so that tenants do not receive less notice than they would currently under the without cause termination provision. However, I would like to reassure supported accommodation providers who currently participate in the affordable community housing program that, in recognition of the proposed amendments to the Residential Tenancies Act, it is Treasury's intention to review whether associated changes are required for current land tax exemption scheme. If deemed appropriate, updates will be made before the commencement date for the proposed legislation. Noting feedback from Community Housing Providers on the potential financial impacts of a 26 week notice period, the Government is keen to ensure the affordable rental scheme remains viable and attractive to investors.

In relation to supported accommodation providers who participate in the National Rental Affordability Scheme (NRAS), I note that NRAS regulations currently provide that tenants will be ineligible for continued accommodation if their combined gross income exceeds the income limit for their household by 25% or more in 2 consecutive eligibility years. The notice period for this provision has been designed so that the notice to vacate may be issued in anticipation of a tenant becoming ineligible so that it takes effect from the day the tenant stops being eligible to live in the premises. This notice period would therefore allow NRAS accommodation providers to issue the notice to vacate to a tenant who has exceeded the income limit for their household by 25% so that it takes effect on the day they become ineligible at the end of the 2 year period. This supports providers to align the end of the tenancy with the end of the tenant's eligibility for assistance.

Feedback on this issue, as well as any other aspects of the reforms, is welcome.

#### **Providing Feedback on the Public Exposure Draft Bill**

I would welcome your engagement with the Public Exposure Draft Bill and the accompanying Explanatory Statement and to send through your thoughts and feedback. The Public Exposure Draft Bill and the Explanatory Statement can be found on the [YourSay website](#) and submissions can be emailed to [civilconsultation@act.gov.au](mailto:civilconsultation@act.gov.au). Submissions on the Public Exposure Draft will end in 5 weeks, on **Friday 26 August 2022**. Please note that no extensions of time will be possible for the consultation process.

Thank you for your engagement on this reform to date. I look forward to hearing about your thoughts on this important issue.

Yours sincerely

Shane Rattenbury MLA  
Attorney-General

## Termination Provisions for Landlords in the *RESIDENTIAL TENANCIES ACT 1997*

### Existing termination provisions for landlords

**NB** The list below does not include reasons a tenant may terminate a tenancy.

The list below also does not incorporate the current no cause termination provision which allows the landlord to terminate the tenancy by giving 26 weeks notice that falls on or after the end of a fixed term.

Act Reference	Landlord's reason for ending the tenancy	Termination Process	When is the ground available?
s 36 (1) (h)	If the <b>landlord and tenant agree</b> in writing to terminate the agreement and the tenant moves out in accordance with that agreement.	<b>Agreement in writing</b>	Periodic or fixed term
Schedule 1, Standard Terms, cl 96 and s 47	The <b>landlord</b> genuinely intends to <b>live in the property</b> or a <b>relative or someone with a close relationship</b> with the landlord genuinely <b>intends to live in the property</b> .	<b>8 weeks notice to vacate</b> and a statutory declaration from the landlord confirming their intention to live (or have someone close to them live) in the property  (If tenant doesn't vacate - application to ACAT under s 47)	Periodic tenancy only
Schedule 1, Standard Terms, cl 96 and s 47	The landlord genuinely intends to <b>sell the property</b>	<b>8 weeks notice to vacate</b>  (If tenant doesn't vacate - application to ACAT under s 47)	Periodic tenancy only
Schedule 1, Standard Terms, cl 96 and s 47	The landlord genuinely intends to <b>rebuild, renovate or make major repairs</b> to the property, which cannot reasonably be carried out with the tenant living there	<b>12 weeks notice to vacate</b>  (If tenant doesn't vacate - application to ACAT under s 47)	Periodic tenancy only
s 8 (4) definition of <b>fair clause for posted people</b> and s 47	If the <b>landlord is posted to Canberra in the course of their employment</b> and exercises the posting termination clause where it has been included in the tenancy agreement	Inclusion of the posting clause in the agreement  <b>8 weeks notice to vacate and evidence of posting</b>  (If tenant doesn't vacate - application to ACAT under s 47)	Fixed or periodic

s 49 and Schedule 1, Standard Terms, cl 92	Breach of the tenancy agreement – <b>failure to pay rent</b>	<b>1 week notice to remedy</b> and (if the tenant doesn't pay the rent) <b>2 week notice to vacate</b> <sup>1</sup>  (If tenant doesn't vacate - application to ACAT under s 49)	Fixed or periodic
s 48 and Schedule 1, Standard Terms, cl 93	<b>Breach of the tenancy other than a failure to pay rent</b>	<b>2 week notice to remedy</b> and (if the tenant remedy the breach)  <b>2 week notice to vacate</b> <sup>2</sup>  (If tenant doesn't vacate - application to ACAT under s 48)	Fixed or periodic
s 51	The tenant has caused (or recklessly permitted): <ul style="list-style-type: none"> <li>• <b>serious damage to the premises, or other property of the landlord ,</b></li> <li>• <b>injury to the landlord or a member of the landlord's family</b> (or if the landlord is a corporation – injury to a representative of the corporation or a member of the representative's family</li> <li>• <b>serious or continuous interference with the quiet enjoyment of nearby premises</b></li> </ul>	Application to ACAT	Fixed or periodic
s 50	Where the <b>landlord will suffer significant hardship</b> if the tenancy is not terminated and ACAT is satisfied that the landlord's hardship will be greater than what the tenant would suffer if the agreement were to be terminated.	Application to ACAT	During the fixed term only
ss 86-87	The <b>premises not fit for habitation</b> or is <b>not</b> (or will not be) <b>available because of Government action</b>	<b>1 week notice to vacate</b>	Fixed or periodic
s 53	The tenant lived in the property as <b>part of an employment agreement that has ended</b> and the landlord needs to use the property for another employee.	Application to ACAT	Fixed or periodic
s 36 (k)	The property is used as <b>crisis accommodation and the landlord needs to</b>	<b>4 weeks notice to vacate</b> and the landlord must have given the tenant information	Fixed or periodic

<sup>1</sup> Note – this is a simplified version of the process. For more detail, refer to *Residential Tenancy Act 1997*, schedule 1, standard residential tenancy terms, cl 92.

<sup>2</sup> Note – this is a simplified version of the process. For more detail, refer to *Residential Tenancy Act 1997*, schedule 1, standard residential tenancy terms, cl 93.

	<b>use it for someone other than the current tenant.</b>	about alternative accommodation	
s 52	The landlord entered into the agreement because of a <b>false or misleading statement made by the tenant.</b>	Application to ACAT	Fixed or periodic
s 54	The <b>tenant purports to:</b> <ul style="list-style-type: none"> <li>• <b>consent to a person becoming a co-tenant</b></li> <li>• <b>assign or sublet the premises</b></li> </ul> and does not follow the process set out in the standard terms (or a term endorsed by ACAT) (for example they do not obtain the landlord's consent)	Application to ACAT	Fixed or periodic
s 55	Where the <b>tenant repudiates the tenancy</b> (that is, they indicate that they are unwilling or unable to comply with the agreement) but does not move out of the property	Application to ACAT	Fixed or periodic
ss 55A-55B	Where the premises <b>contains, or has contained loose-fill asbestos insulation</b> or where the property is an <b>eligible impacted property</b> under the ACT Government's loose-fill asbestos property buy back program <sup>3</sup>	Application to ACAT	Fixed or periodic
ss 61-63	The <b>tenant abandons the property</b>	<b>Tenancy ends on the date of abandonment</b>  Note: there is a process a landlord must follow in order to confirm the property has been abandoned. <sup>4</sup>  If there is a dispute as to the date of abandonment, parties can apply to ACAT for an order	Fixed or periodic
S 64	There is a <b>successor in title</b> to the property (other than when the property is sold) for example, if the landlord dies and the property is inherited by their child or where the landlord defaults on their mortgage and their mortgage provider forecloses on the mortgage.	8 weeks notice to vacate issued after the successor in title becomes entitled to possession of the property	Fixed or periodic
S 36 (1) (i)	If the <b>tenant and lessor are the same person.</b>	The tenant and lessor becoming the same person.	Fixed or periodic

<sup>3</sup> See the *Civil Law (Sale of Residential Property) Act 2003*, s 9A for a definition of eligible impacted property.

<sup>4</sup> See *Residential Tenancy Act 1997*, s 61A

## Proposed new termination provisions for landlords

In addition to the existing termination provisions, the following new termination provisions are proposed:

Type of landlord and section of the Act reference	Landlord's reason for ending the tenancy	Termination Process	When is the ground available?
Any landlord  Schedule 1 Standard Residential Tenancy Terms  Amended clause 96	Where the landlord wants to <b>use the property for a lawful non-residential purpose</b> (such as operating a business), where zoning and unit titles rules permit.	<b>26 weeks notice to vacate</b> and evidence supporting the landlord's reason for the notice, eg statutory declaration or a development application for the proposed change of use.  (If tenant doesn't vacate - application to ACAT under s 47)	Periodic tenancy only
Commissioner for Social Housing only  New schedule 2 Additional terms for residential tenancy agreements  New clause 2.4	Where the Commissioner decides the tenant is no longer eligible to receive housing assistance	<b>26 weeks notice to vacate</b>  (If tenant doesn't vacate - application to ACAT under s 47)	Fixed or Periodic
Commissioner for Social Housing only  New schedule 2 Additional terms for residential tenancy agreements  New clause 2.4	Where a tenant of the Commissioner is party to 2 tenancies (eg because they have transferred to a new property, the Commissioner may <b>terminate original tenancy after the tenant has commenced occupation of the new premises.</b>	<b>1 weeks notice</b> issued after the tenant has commenced occupation of the new premises  (If tenant doesn't vacate - application to ACAT under s 47)	Fixed or Periodic
Commissioner for Social Housing only  New schedule 2 Additional terms for residential	Where the <b>Commissioner requires a transfer</b> under a Housing Assistance Program and an alternative premises has been refused.	26 weeks notice to vacate issued after the tenant has refused an offer of alternative accommodation	Fixed or Periodic

tenancy agreements New clause 2.4		(If tenant doesn't vacate - application to ACAT under s 47)	
Commissioner for Social Housing only New schedule 2 Additional terms for residential tenancy agreements New clause 2.6	Where the Commissioner has provided a temporary period of housing assistance to a tenant and the temporary period of assistance has ended.	<b>26 weeks notice to vacate</b>	Fixed or Periodic
A community housing provider who has been provided with a public housing asset in order to provide a housing assistance program only. New schedule 2 Additional terms for residential tenancy agreements New clause 2.2	<b>Where the landlord is required to return the premises to the Commissioner</b> when housing assistance has been withdrawn from the landlord.  This may apply when the Commissioner leases a property to a community housing provider to provide community social housing (or another form of housing assistance) but the Commissioner then requires the community housing provider to return the property to the Commissioner – this provision allows the landlord (the community housing provider) to terminate the tenancy with the tenant.	<b>8 weeks notice where the Commissioner intends to sell the property</b>  <b>12 weeks notice where the Commissioner intends to renovate, redevelop or rebuild the property</b>  <b>In all other cases, 26 weeks</b>  (If tenant doesn't vacate - application to ACAT under s 47)	Fixed or Periodic
Landlords who: a) are registered community housing providers; or b) have their properties managed through a registered community housing provider; or c) receive	Where the tenant is assessed as <b>no longer eligible for supported accomodaiton</b> .	<b>26 weeks notice</b>  (If tenant doesn't vacate - application to ACAT under s 47)	

<p>Commonwelath or ACT Governement funding to provide accommodation assistance or other health or welfare support programs.</p> <p>New schedule 2 Additional terms for residential tenancy agreements</p> <p>New clause 2.5</p>			
<p>Any landlord</p>	<p>Where the tenant has caused or permitted threats, harrassment, intimidation or abuse of the lessor, the lessor's agent or a representative or employee of the lessor and the behaviour justifies termination of the agreement</p>	<p><b>Application to ACAT.</b> ACAT may suspend the termination order for up to 3 weeks if satisfied that, were the order not suspended for the specified period, the tenant would suffer significant hardship which would be greater than the hardship suffered by the lessor if the order were suspended.</p>	<p>Fixed or periodic</p>