

2019

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PRESENTATION SPEECH

**PRESENT EXPOSURE DRAFT BILL
RESIDENTIAL TENANCIES AMENDMENT BILL 2019 (No2)**

**Presented by
Gordon Ramsay MLA
Attorney-General**

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Madam Speaker

I rise to speak to the tabling of a Public Exposure Draft of the Residential Tenancies Amendment Bill 2019 (No 2). Tabling this Exposure Draft in the Assembly is testament to my government's commitment to hearing from relevant stakeholders and members of public about reforms to two complex areas of residential tenancy law: namely, occupancy law and the share housing framework. We anticipate that, the proposed text of the amendments together with a draft explanatory statement, will provide a basis for more detailed, thorough discussion about the reforms.

Although the focus of the *Residential Tenancies Act 1997* is the relationship between landlord and tenant under a residential tenancy agreement, part 5A of the Act turns to the relationship between grantor and occupant under an occupancy agreement.

Occupancy agreements are a form of statutory licence. They have less protections, processes and requirements than residential tenancy agreements. This makes occupancy agreements highly adaptable for a diverse range of purposes where the more rigid provisions of a residential tenancy agreement may be inappropriate. Occupancy agreements are regularly used in the crisis accommodation sector, in which some of the most vulnerable Canberrans are supported through difficult periods and provided the opportunity to move into more long-term housing options. The student accommodation sector is also a significant user of occupancy agreements in the ACT. Other users of occupancy agreements include boarders and lodgers, people in supported housing programmes, and people residing in residential parks (or caravan parks).

When the Territory first began modernising its residential tenancy legislation back in the 1990s, the ACT Community Law Reform Committee observed some principles should apply equally regardless of the legal type of residential agreement. For example, both tenants and occupants need accommodation without arbitrary interference with their privacy.

In 2004, the Territory took its first major step towards providing basic protections for occupants by introducing part 5A of the *Residential Tenancies Act 1997*. Although the flexibility of an occupancy agreement has meant that they are available for a variety of purposes, these past fifteen years have shown that flexibility also means a lack of certainty about how and when an occupancy agreement should be used. Over time, it has become clear that part 5A requires adjustment for it to appropriately meet the growing demand and needs across the range of accommodation sectors.

The exposure draft reflects the Government's commitment to clarify the nature of occupancies, improve the processes that relate to owner-renters within caravan and manufactured home parks, and provide clearer and fairer share housing processes in the ACT. The exposure draft also reflects our commitment to ensuring meaningful, informed discussion on legislative reforms with a wide range of stakeholders. It is anticipated that the Exposure Draft of the Bill together with the draft explanatory statement will facilitate a detailed discussion about issues that affect the lives of those subject to occupancy agreements or share housing arrangements including Canberrans who may be particularly vulnerable.

I emphasise that the text of the Bill is a draft. We will draw on feedback to adjust provisions to ensure that we appropriately minimise any adverse consequences and optimise efficient, fair and effective outcomes.

Occupancy law reforms

Turning to some of the specifics of the proposed reforms, first, the exposure draft of the Bill proposes a new definition of an occupancy agreement to clarify the difference between an occupancy agreement and a residential tenancy agreement. This will allow users of the *Residential Tenancies Act* to properly identify which rights and obligations apply to them without having to undertake complex legal analysis to determine if an agreement is an occupancy or tenancy agreement. As a result, occupants and grantors will be able to make more informed decisions about their residential agreements as well as expect clearer legal advice and decisions from legal professionals and decision-making bodies.

Second, the draft proposes to mandate that certain occupancy principles will form part of an occupancy agreement. While part 5A of the *Residential Tenancies Act* currently contains occupancy principles which a person must have regard to, mandating compliance with these principles will assist to ensure that there are essential, basic, minimum protections provided to all occupants. To strengthen minimum protections for occupants, the draft bill also proposes to introduce a number of new occupancy principles. The occupancy principles are nevertheless drafted to be adaptable to a range of occupancy accommodation contexts. Grantors will be provided with clear guidance regarding their obligations towards occupants, and occupants will be able to seek the enforcement of a more robust set of rights.

One of the new occupancy principles, included within these minimum protections is a new requirement that grantors provide occupants with information about dispute resolution processes. This must include information about how an occupant can access internal dispute processes, a community dispute resolution provider, the ACT Civil and Administrative Tribunal, and the ACT Human Rights Commission. This step, which increases the information available to an occupant when seeking to enforce their rights, is a simple example of how Canberra is progressing towards being a restorative city.

Building upon this new principle, the draft also proposes to provide occupants access to an enforceable conciliation process facilitated by the ACT Human Rights Commission. Occupants are currently able to make a complaint to the ACT Human Rights Commission but only where their complaint matches a ground listed in section 41 of the *Human Rights Commission Act 2005*. It is proposed to streamline this process by allowing all occupants to access the non-adversarial dispute resolution framework of the ACT Human Rights Commission. This provides greater clarity and expands the available options to seek the enforcement of their rights and to resolve disputes.

Third, the draft proposes amendments to the complex legal framework applicable to people who reside in caravan and manufactured home parks. This draft Bill proposes a new framework that provides greater clarity and certainty when a resident seeks to sell the dwelling they own while it is erected within a residential park. It also clarifies the process involved in the disposal of moveable dwellings and their contents when they have been abandoned, amending the *Uncollected Goods Act 1996* to provide park operators with a more efficient means to manage the removal of abandoned dwellings without exposing occupants to undue risks. Additionally, the draft proposes amendments that will clarify the process to be followed when a person who owns their dwelling on a site in a residential park wants to assign their interests in an occupancy agreement to another person.

Share housing framework

Finally, turning to the amendments relating to share housing, the public exposure draft contains the proposed framework for modernising this framework in the ACT. Canberrans deserve residential tenancy law that reflects the modern realities of living. Share housing is an extremely common form of tenancy in the ACT, including being utilised by students and young professionals. The law governing share housing is currently a complex mix of property and contract law. The public exposure draft proposes a model that is simple, modern, and better reflects community behaviours and expectations.

I encourage the ACT community to access the ACT Government's 'Have Your Say' website, where they can access information on the reforms being proposed and provide feedback on the exposure draft Bill. We look forward to engaging with stakeholders and the wider ACT community on the development of the final Bill, for introduction in 2020.

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