

EXPOSURE DRAFT

Attorney-General

(Prepared by Parliamentary Counsel's Office)

Residential Tenancies Legislation Amendment Bill 2022

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EXPOSURE DRAFT

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(Prepared by Parliamentary Counsel's Office)

Residential Tenancies Legislation Amendment Bill 2022

A Bill for

An Act to amend legislation about residential tenancies, 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 Legislation Amendment Act 2022*.

2 Commencement

- (1) This Act (other than the provisions mentioned in subsection (2)) commences on the day after this Act's notification day.

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

- (2) The following provisions commence 12 months after this Act's notification day:

- section 4
- section 8
- sections 12 to 15
- sections 18 to 23
- sections 26 to 32
- sections 40 to 42
- sections 44 to 48
- sections 50 to 53
- section 56
- schedule 1.

3 Legislation amended

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

Note This Act also amends the *Housing Assistance Act 2007* (see sch 1).

Part 2 Residential Tenancies Act 1997

4 Section 8

substitute

8 Terms included in residential tenancy agreements

- (1) A residential tenancy agreement for premises—
 - (a) is taken to contain the standard residential tenancy terms—
 - (i) for a fixed term agreement—as in force on the day the parties enter into the agreement; or
 - (ii) for a periodic agreement—as in force from time to time; and
 - (b) is taken to contain the social housing termination clauses if—
 - (i) the premises are a social housing dwelling; and
 - (ii) the lessor is the housing commissioner; and
 - (c) is taken to contain the temporary housing assistance termination clause if—
 - (i) the premises are a social housing dwelling; and
 - (ii) the lessor is the housing commissioner; and
 - (iii) the tenant is receiving temporary housing assistance for the premises; and
 - (d) is taken to contain the community housing provider termination clause if the lessor is a registered community housing provider who leases premises owned by the housing commissioner or another Territory entity; and
 - (e) is taken to contain the supported accommodation clauses if the premises are supported accommodation; and

- (f) is taken to contain the posting termination clause if the lessor and tenant agree to the clause being included; and
 - (g) is taken to contain the break lease fee clause if—
 - (i) the agreement is a fixed term agreement; and
 - (ii) the lessor and tenant agree to the clause being included; and
 - (h) may contain any other term—
 - (i) that is consistent with the standard residential tenancy terms; or
 - (ii) that is inconsistent with a standard residential tenancy term if the term has been endorsed by the ACAT under section 10.
- (2) Despite subsection (1) (a) (i), an amendment of this Act (other than an amendment to the standard residential tenancy terms) that affects the operation of the standard residential tenancy terms applies to a fixed term agreement.
- (3) To remove any doubt, subsection (1) (a) (ii) applies to a periodic agreement that commences on the expiry of a fixed term agreement.
- (4) In this section:

break lease fee clause means the clause in schedule 2, section 2.1.

community housing provider termination clause means the clause in schedule 2, section 2.2.

posting termination clause means the clause in schedule 2, section 2.3.

social housing termination clauses means the clauses in schedule 2, section 2.4.

supported accommodation clauses the clauses in see schedule 2, section 2.5.

temporary housing assistance termination clause means the clause in schedule 2, section 2.6.

5 New section 10A

in division 2.2, insert

10A Meaning of *publish*—div 2.2

In this division:

publish means communicate or distribute information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public.

**6 Energy efficiency rating—advertising
Section 11A (7)**

omit

7 New section 11AB

after section 11AAA, insert

11AB Minimum housing standards—advertising and disclosure

- (1) A person commits an offence if—
- (a) the person publishes an advertisement for the lease of residential premises; and
 - (b) the advertisement does not contain—
 - (i) a statement about whether the premises comply with the minimum housing standards; or
 - (ii) if the premises are exempt from complying with a minimum housing standard—a statement that the premises are exempt.

Maximum penalty: 5 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) A person commits an offence if—
 - (a) the person publishes an advertisement for the lease of residential premises; and
 - (b) the advertisement includes a statement about the premises complying with the minimum housing standards; and
 - (c) the statement is false or misleading.Maximum penalty: 5 penalty units.
- (4) Subsection (3) does not apply if the person has a reasonable excuse.
- (5) Also, subsection (3) (c) does not apply if the statement is not false or misleading in a material particular.
- (6) An offence against this section is a strict liability offence.

8 New sections 11AC and 11AD

insert

11AC Lessor or agent must advertise rental rate for premises

- (1) A person commits an offence if—
 - (a) the person publishes an advertisement for the lease of residential premises; and
 - (b) the advertisement does not state the rental rate payable for the premises.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) In this section:

rental rate means a single amount and does not include a range of amounts or a minimum or maximum amount.

11AD Lessor or agent must not solicit rent bidding

- (1) A person commits an offence if the person solicits or invites a tenant to offer a rental rate for premises that is higher than the advertised rental rate for the premises.

Maximum penalty: 20 penalty units.

- (2) However, subsection (1) does not prevent a lessor, or the agent of a lessor, from accepting an offer from a tenant for a higher rental rate than the advertised rental rate if the offer was made by the tenant without solicitation or invitation from the lessor, or the agent of the lessor.
- (3) An offence against this section is a strict liability offence.

**9 Lessor's obligations
New section 12 (3) (g)**

insert

- (g) a written statement that contains the following information:
- (i) if the premises are required to comply with a minimum housing standard—
 - (A) a statement about whether the premises comply; and
 - (B) if the premises do not comply with the standard—the reason why the premises do not comply and the proposed compliance date that the premises must comply with the standard;
 - (ii) if the premises are exempt from complying with a minimum housing standard—the reason for the exemption.

10 Section 12 (4), new definition of *proposed compliance date*

insert

proposed compliance date, in relation to premises that do not comply with a minimum housing standard, means—

- (a) if a regulation prescribes a period in which the premises must comply—the end of the period; or
- (b) in any other case—1 month after the day the residential tenancy agreement for the premises is entered into.

11 New division 2.5

insert

Division 2.5 Minimum housing standards**19A Minimum housing standards**

- (1) A regulation may prescribe minimum standards (the ***minimum housing standards***) for premises made available for occupation under a residential tenancy agreement, including in relation to the following matters:
 - (a) physical accessibility;
 - (b) energy efficiency;
 - (c) safety and security;
 - (d) sanitation;
 - (e) amenity.

- (2) A regulation made for subsection (1) may apply, adopt or incorporate a law or instrument as in force from time to time.

Note The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

- (3) In this section:

law means—

- (a) a territory law; or
- (b) an Act or statutory instrument, or a provision of an Act or statutory instrument, of the Commonwealth or a State.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

19B Lessor's obligations about minimum housing standards

- (1) A lessor must ensure that premises made available for occupation under a residential tenancy agreement comply with the minimum housing standards applying to the premises not later than the proposed compliance date mentioned in section 12 (4).
- (2) If, after entering into a residential tenancy agreement, the lessor becomes aware that the premises do not comply, or no longer comply, with a minimum housing standard applying to the premises, the lessor must ensure the premises comply with the standard as soon as practicable after becoming aware of the noncompliance.

19C Lessor must keep records about minimum housing standards

A lessor must keep the following records for premises made available for occupation under a residential tenancy agreement:

- (a) if the premises are required to comply with a minimum housing standard—evidence that the premises comply;

- (b) if the premises are exempt from complying with a minimum housing standard—evidence supporting the exemption;
- (c) any other record prescribed by regulation.

12 **Termination**
Section 36 (1) (b)

substitute

- (b) if the lessor serves a termination notice in accordance with the standard residential tenancy terms and the tenant vacates the premises in accordance with the notice;
- (ba) if the tenant serves a termination notice in accordance with the standard residential tenancy terms and—
 - (i) the lessor accepts the notice; and
 - (ii) the tenant vacates the premises in accordance with the notice;

13 **Section 36 (1) (n)**

omit

fair clause for posted people

substitute

posting termination clause

14 **Section 36 (2), definition of *fair clause for posted people***

substitute

posting termination clause—see schedule 2, section 2.3.

15 New section 45A*insert***45A Threats, harassment, intimidation or abuse by lessor etc**

- (1) This section applies if—
 - (a) the lessor has or is likely to engage in any of the following conduct against a tenant or related person:
 - (i) conduct that is threatening;
 - (ii) conduct that the tenant or related person is likely to find threatening;
 - (iii) conduct that is intimidating or harassing;
 - (iv) conduct that the tenant or related person is likely to find intimidating or harassing;
 - (v) conduct that is abusive;
 - (vi) conduct that the tenant or related person is likely to find abusive; or
 - (b) the lessor has permitted another person to engage in any conduct mentioned in paragraph (a) against a tenant or related person.
- (2) On application by a tenant, the ACAT may terminate a residential tenancy agreement if satisfied that it is appropriate to do so.
- (3) In deciding whether it is appropriate to terminate the agreement, the ACAT must take the following into account:
 - (a) the nature, frequency and duration of the conduct;
 - (b) the circumstances of the conduct, including any behaviour of the tenant or related person;
 - (c) whether the conduct is likely to continue;
 - (d) whether the lessor has stopped, or is likely to stop, the conduct;

(e) any family violence order or protection order made against the lessor by the Magistrates Court;

(f) any order under a law of a State or a foreign country that has the same effect, or substantially the same effect, as an order mentioned in paragraph (e);

Note **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

(g) the effect of the conduct on the tenant and any related person;

(h) whether any other order under this Act is reasonably available;

Example

an order under s 83

(i) any other matter the ACAT considers relevant.

(4) In this section:

lessor includes an agent or representative of the lessor.

related person means—

(a) a person who lives at the premises; or

(b) a family member of the tenant.

16 New section 46AA

after section 46, insert

46AA Termination of agreement for failure to comply with minimum housing standards

On application by a tenant, the ACAT may terminate a residential tenancy agreement if satisfied that the lessor has failed to comply with section 19B (Lessor's obligations about minimum housing standards).

17 Termination of agreement for aged care or social housing needs
Section 46A (5), definitions of *registered community housing provider* and *social housing dwelling*

omit

18 No breach of standard residential tenancy terms
New section 47 (1A) and (1B)

insert

- (1A) In considering whether to make an order under subsection (1), the ACAT must not—
- (a) if the application relates to a termination notice served by the lessor in accordance with a social housing termination clause requiring the tenant to transfer to another social housing dwelling—review the housing commissioner’s decision to require the tenant to transfer to another social housing dwelling; or
 - (b) if the application relates to a termination notice served by the lessor in accordance with a social housing termination clause because the housing commissioner decides to stop giving housing assistance to the tenant—review the housing commissioner’s decision to stop giving housing assistance to the tenant.
- (1B) To remove any doubt, subsection (1A) does not limit the operation of the *Human Rights Act 2004*, section 40C (2) (b).

19 New section 51A*insert***51A Threats, harassment, intimidation or abuse by tenant etc**

- (1) This section applies if the ACAT is satisfied that—
- (a) a tenant has or is likely to engage in any of the following against a lessor or related person:
 - (i) conduct that is threatening;
 - (ii) conduct that the lessor or related person is likely to find threatening;
 - (iii) conduct that is intimidating or harassing;
 - (iv) conduct that the lessor or related person is likely to find intimidating or harassing;
 - (v) conduct that is abusive;
 - (vi) conduct that the lessor or related person is likely to find abusive; or
 - (b) a tenant has permitted another person to engage in any conduct mentioned in paragraph (a) against a lessor or related person.
- (2) On application by a lessor, the ACAT may—
- (a) make a termination and possession order if satisfied that it is appropriate to make the order; or
 - (b) refuse to make a termination and possession order if satisfied that—
 - (i) the tenant has either—
 - (A) stopped the conduct; or

- (B) agreed to stop the conduct and is reasonably likely to stop the conduct in accordance with that agreement; and
 - (ii) it is appropriate to make the order.
- (3) If the ACAT makes a termination and possession order under subsection (2) (a), the ACAT may suspend the operation of the termination and possession order for a stated period of not more than 3 weeks if satisfied that—
 - (a) the tenant would suffer significant hardship if the operation of the order was not suspended for the period; and
 - (b) the tenant's hardship would be greater than the hardship that would be suffered by the lessor if the operation of the order was not suspended for the period; and
 - (c) it is appropriate to suspend the operation of the order for the period.
- (4) In deciding whether it is appropriate to make a termination and possession order, the ACAT must take the following into account:
 - (a) the nature, frequency and duration of the conduct;
 - (b) whether the conduct was engaged in by the tenant, someone else living at the premises, or another person who does not ordinarily live at the premises;
 - (c) the circumstances of the conduct, including any behaviour of the lessor or related person;
 - (d) whether conduct is likely to continue;
 - (e) whether the tenant has stopped, or is likely to stop, the conduct;
 - (f) any family violence order or protection order made against the tenant or another person living at the premises by the Magistrates Court;

- (g) any order under a law of a State or a foreign country that has the same effect, or substantially the same effect, as an order mentioned in paragraph (f);

Note **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

- (h) the effect of the conduct on the lessor;
- (i) whether any other order under this Act is reasonably available;

Example

an order under s 83

- (j) any other matter the ACAT considers relevant.

- (5) In this section:

related person means—

- (a) an agent or representative of the lessor; or
- (b) a family member of the lessor.

20 Section 57

substitute

57 Retaliatory applications

- (1) This section applies if—
 - (a) a lessor has applied for a termination and possession order under this part; and
 - (b) the ACAT is satisfied that—
 - (i) 1 or more of the following happened:
 - (A) the tenant applied to the ACAT for an order in relation to the lessor;
 - (B) the tenant complained to a government entity in relation to the lessor;

(C) the tenant took reasonable action to secure or enforce the tenant's rights;

Examples

- the tenant sought legal advice
- the tenant sought mediation

(D) the ACAT made an order in favour of the tenant against the lessor;

(E) the tenant published information, or disclosed information that was published, about the premises, the residential tenancy agreement, or the lessor; and

- (ii) for the event mentioned in subparagraph (i) (E)—the tenant did not, knowingly or recklessly, publish or disclose information that was false or misleading; and
- (iii) the lessor was motivated to apply for the termination and possession order because of an event mentioned in subparagraph (i).

(2) The ACAT must not make the termination and possession order.

(3) In this section:

information includes an allegation, complaint or opinion.

publish includes communicate.

21 Sections 58 to 60

substitute

58 Lessor's defective termination notice if tenant vacates

- (1) This section applies if—
 - (a) the lessor purports to give a termination notice to a tenant; and
 - (b) the notice is a defective termination notice; and

- (c) the tenant vacates the premises in accordance with the defective termination notice.
- (2) The residential tenancy agreement terminates on the day the tenant vacates the premises.
- (3) If a tenant vacates premises in accordance with a defective termination notice (other than a notice that was defective because it was not given to the tenant in accordance with this Act), the former tenant may apply to the ACAT for the following orders:
 - (a) an order for compensation for wrongful eviction;
 - (b) an order for reinstatement as tenant in possession of the premises.
- (4) The ACAT must not make an order mentioned in subsection (3) (b) unless satisfied that—
 - (a) the premises are vacant; and
 - (b) the lessor has not entered into a residential tenancy agreement with another tenant; and
 - (c) it is appropriate to make the order.

59 Lessor's defective termination notice if tenant does not vacate

- (1) This section applies if—
 - (a) a lessor purports to give a termination notice to a tenant; and
 - (b) the notice is a defective termination notice for any reason, other than because it is not given in accordance with this Act.
- (2) The lessor may apply to the ACAT for—
 - (a) an order correcting the defect; and
 - (b) a termination and possession order.

- (3) The ACAT must not make an order under subsection (2) unless satisfied that the defective termination notice did not, and is not likely to, place the tenant in a significantly worse position than the tenant would have been in had the notice not been a defective termination notice.

60 Tenant's defective termination notice

- (1) This section applies if—
- (a) a tenant purports to give a termination notice to the lessor; and
 - (b) the notice is a defective termination notice.
- (2) If the tenant vacates the premises in accordance with the defective termination notice—
- (a) the residential tenancy agreement terminates on the day the tenant vacates the premises; and
 - (b) the former lessor may apply to the ACAT for an order for compensation for the former tenant's abandonment of the premises.
- (3) The ACAT must not make an order under subsection (2) (b) unless satisfied that the former lessor is not in a significantly worse position because of the defective termination notice than the former lessor would have been had the notice not been a defective termination notice.

22 New section 64AD

in division 4.7, insert

64AD Disallowing retaliatory notices to vacate

- (1) This section applies if—
- (a) a lessor has given a termination notice to the tenant in accordance with the standard residential tenancy terms; and

- (b) the tenant makes an application for an order disallowing the termination notice before the end of the notice period stated in the notice; and
- (c) the ACAT is satisfied that—
- (i) 1 or more of the following happened:
- (A) the tenant applied to the ACAT for an order in relation to the lessor;
- (B) the tenant complained to a government entity in relation to the lessor;
- (C) the tenant took reasonable action to secure or enforce the tenant's rights;
- Examples**
- the tenant sought legal advice
 - the tenant sought mediation
- (D) the ACAT made an order in favour of the tenant against the lessor;
- (E) the tenant published information, or disclosed information that was published, about the premises, the residential tenancy agreement, or the lessor; and
- (ii) for the circumstance mentioned in subparagraph (i) (E)—the tenant did not, knowingly or recklessly, publish or disclose information that was false or misleading; and
- (iii) the lessor was motivated to apply for the termination and possession order because of an event mentioned in subparagraph (i).

(2) The ACAT must make an order disallowing the termination notice.

(3) In this section:

information includes an allegation, complaint or opinion.

publish includes communicate.

**23 Waiver of notice requirements
Section 65 (2)**

substitute

- (2) Subsection (3) applies if—
 - (a) a tenant purports to give a termination notice to the lessor because of a rental rate increase; and
 - (b) the notice is a defective termination notice; and
 - (c) the tenant vacates the premises in accordance with the defective termination notice.
- (3) On application by the tenant, the ACAT may make an order correcting the defect in the defective termination notice if satisfied that the order would not put the former lessor in a significantly worse position than the former lessor would have been had the notice not been a defective termination notice.

24 New section 71AAA

in part 5, insert

71AAA Rent reduction for lessor's failure to comply with a minimum housing standard

- (1) On application by a tenant, the ACAT may order a reduction in the rental rate payable under a residential tenancy agreement (a *rent reduction order*) if the lessor fails to ensure premises comply with a minimum housing standard in accordance with section 19B.
- (2) A rent reduction order—
 - (a) takes effect from the day the premises fail to comply, or no longer comply, with the minimum housing standard, or any later date stated by the ACAT; and

- (b) remains in force for the period, not longer than 12 months, stated by the ACAT.
- (3) The ACAT may order a lessor to pay to the tenant the difference between the rent paid and the rent payable as a result of a rent reduction order.
- (4) Any purported increase in the rental rate in relation to premises for which a reduction order is in force is void and any amount paid above the reduced rental rate in accordance with a purported increase is a debt owing by the lessor to the tenant.

**25 Orders by ACAT
New section 83 (1) (da)**

insert

- (da) an order requiring the payment of compensation for any loss caused by the lessor's failure to ensure premises comply with a minimum housing standard in accordance with section 19B;

26 Section 83 (1) (f) (ii)

substitute

- (ii) that the person vacated the premises in accordance with a defective termination notice;

27 Section 83 (1) (k)

substitute

- (k) an order correcting a defective termination notice;

28 Section 83 (2), except notes

substitute

- (2) The ACAT may make an order under subsection (1) (k) only if satisfied that the defective termination notice did not, and is not likely to, place the person receiving the notice in a significantly worse position than the person would have been in had the notice not been a defective termination notice.

**29 Notice of intention to vacate—award of compensation
Section 84 (1) (b)**

omit

break lease clause

substitute

break lease fee clause

30 Section 84 (6), definition of *break lease clause*

substitute

break lease fee clause means the clause in schedule 2, section 2.1.

31 Section 85

substitute

85 Definitions—div 6.5A

In this division:

protected person—

- (a) in relation to a protection order under the *Family Violence Act 2016*—see that *Act*, dictionary; or
- (b) in relation to a protection order under the *Personal Violence Act 2016*—see that *Act*, dictionary.

respondent—

- (a) in relation to a protection order under the *Family Violence Act 2016*—see that [Act](#), dictionary; or
- (b) in relation to a protection order under the *Personal Violence Act 2016*—see that [Act](#), dictionary.

32 **New tenancy agreement—family violence and protection orders**
Section 85A (4), definition of *exclusion condition*

substitute

exclusion condition—

- (a) of a condition under the *Family Violence Act 2016*—see that [Act](#), section 39 (4); or
- (b) of a condition under the *Personal Violence Act 2016*—see that [Act](#), section 31 (4).

33 **Regulation-making power**
Section 136 (2) (d), except notes

omit

34 **Section 136 (3) and (4), and notes**

omit

35 **Schedule 1**
New clause 62A

after clause 62, insert

Premises must comply with minimum housing standards

62A The lessor must ensure the premises comply with the minimum housing standards applying to the premises.

Note A regulation may prescribe minimum housing standards for physical accessibility, energy efficiency, safety and security, sanitation or amenity (see Residential Tenancies Act, s 19A (1)).

36 **Schedule 1, heading before clause 82**

substitute

Access for making or inspecting repairs or complying with minimum housing standards**37** **Schedule 1, clause 82 (1)**

substitute

- 82 (1) On giving the tenant 1 week notice (or such other agreed period), the lessor may enter the premises at a reasonable time, having regard to the interests of the tenant and the lessor, for the purpose of—
- (a) making or inspecting repairs; or
 - (b) inspecting the premises to ensure the premises comply with the minimum housing standards; or
 - (c) undertaking work, or inspecting work undertaken, to ensure the premises comply with the minimum housing standards.

38 Schedule 1, clause 83

omit

The notice

substitute

A notice

39 Schedule 1, clause 85

omit

the notice to vacate

substitute

a notice to vacate

40 Schedule 1, clauses 94 and 95 and heading

omit

41 Schedule 1, clause 96 and heading

substitute

Termination of periodic tenancy

- 96 (1) For a periodic tenancy, the lessor may give the tenant—
- (a) if the lessor genuinely intends to live in the premises—8 weeks notice to vacate; or
 - (b) if the lessor genuinely believes the lessor's immediate relative intends to live in the premises—8 weeks notice to vacate; or
 - (c) if the lessor genuinely believes an interested person intends to live in the premises—8 weeks notice to vacate; or
 - (d) if the lessor genuinely intends to sell the premises—8 weeks notice to vacate; or

- (e) if the lessor genuinely intends to reconstruct, renovate or make major repairs to the premises and the reconstruction, renovation or repairs cannot reasonably be carried out with the tenant living in the premises—12 weeks notice to vacate; or
 - (f) if the lessor genuinely requires the premises for a lawful use other than as a home—26 weeks notice to vacate.
- (2) A notice to vacate under this clause must be accompanied by written evidence supporting the lessor's reason for the notice, for example, a statutory declaration, a development application or quotes from a tradesperson for renovations.
- (3) In this clause:

immediate relative means a son, daughter, son-in-law, daughter-in-law, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law or sister-in-law.

interested person, for a lessor, means a person who is not an immediate relative of the lessor but who has a close family or personal relationship with the lessor and who has a reasonable expectation arising from that relationship that the lessor would provide accommodation for that person.

42 New schedule 2*insert***Schedule 2 Additional terms for residential tenancy agreements**

(see s 8)

2.1 Break lease fee clause**Termination before end of fixed term—fee for breaking lease**

- (1) If the tenant ends a fixed term agreement before the end of the fixed term (other than for a reason provided for by the Residential Tenancies Act or the agreement), the tenant must pay a fee (a *break fee*) of the following amount:
 - (a) if the fixed term is 3 years or less—
 - (i) if less than half of the fixed term has expired—6 weeks rent; or
 - (ii) in any other case—4 weeks rent;
 - (b) if the fixed term is more than 3 years—the amount agreed between the lessor and tenant.
- (2) The lessor agrees that the compensation payable by the tenant for ending a fixed term agreement before the end of the fixed term is limited to the amount of the break fee specified in subclause (1).
- (3) However, the lessor and tenant agree that if, within the defined period after the tenant vacates the premises, the lessor enters into a residential tenancy agreement with a new tenant, the amount payable by the tenant is limited to—
 - (a) the amount of the break fee under subclause (1) less the amount of rent payable by the new tenant for the defined period; and

- (b) if the tenant vacates the premises more than 4 weeks before the end of the fixed term—the lessor’s reasonable costs (not exceeding the defined cost limit) of advertising the premises for lease and of giving a right to occupy the premises to another person.
- (4) In this clause:

defined cost limit means—

- (a) if half or more than half of the fixed term has expired—an amount equal to $\frac{2}{3}$ of 1 weeks rent; or
- (b) if less than half of the fixed term has expired—an amount equal to 1 weeks rent.

defined period means—

- (a) if subclause (1) (a) (i) applies—6 weeks; or
- (b) if subclause (1) (a) (ii) applies—4 weeks; or
- (c) if subclause (1) (b) applies— N weeks.

N is the number worked out as follows:

$$\frac{\text{break fee}}{\text{weekly rent payable at the time the tenant ends the agreement}}$$

2.2 Community housing provider termination clause

Termination by community housing provider if premises required by housing commissioner

- (1) The lessor may give the tenant—
- (a) 8 weeks notice to vacate the premises if the housing commissioner or another Territory entity who owns the premises (the ***housing owner***) gives the community housing provider notice that the housing owner intends to sell the premises; or

- (b) 12 weeks notice to vacate the premises if the housing owner gives the community housing provider notice that the owner intends to reconstruct, renovate or make major repairs to the premises and the reconstruction, renovation or repairs cannot reasonably be carried out with the tenant living in the premises; or
 - (c) 26 weeks notice to vacate the premises if the housing owner notifies the lessor that the owner requires the premises for any other purpose.
- (2) If the tenant is given a notice to vacate under this clause, the tenant may vacate the premises at any time during the 2 weeks before the date stated in the notice to vacate provided the tenant gives the lessor 4 days notice of the tenant's intention to vacate.
- (3) The tenancy agreement ends—
- (a) at the end of the relevant notice period mentioned in subclause (1); or
 - (b) if a later date is stated in the notice—on the stated date; or
 - (c) if the tenant gives notice under subclause (2)—on the day the tenant vacates the premises.

2.3 Posting termination clause

Termination because of posting

- (1) The tenancy agreement may be terminated—
- (a) if the lessor is posted to the ACT in the course of the lessor's employment—by the lessor giving the tenant at least 8 weeks notice to vacate the premises; or
 - (b) if the tenant is posted away from the ACT in the course of the tenant's employment—by the tenant giving the lessor at least 8 weeks notice of the tenant's intention to vacate the premises.

- (2) A notice under subclause (1) must be accompanied by evidence of the posting (for example, a letter from the employer of the lessor or tenant confirming the details of the posting).
- (3) The tenancy agreement ends—
 - (a) 8 weeks after the day the notice under subclause (1) is received;
or
 - (b) if a later date is stated in the notice—on the stated date.

2.4 Social housing termination clauses

Termination if tenant no longer eligible for housing assistance

- (1) This clause applies if—
 - (a) the tenant receives housing assistance under an approved housing assistance program in relation to the tenancy; and
 - (b) the housing commissioner decides the tenant is no longer eligible to receive housing assistance; and
 - (c) the tenant is no longer able to ask for a review of the decision about the tenant's eligibility to receive housing assistance.
- (2) The lessor may give the tenant 26 weeks notice to vacate the premises.
- (3) In this clause, a tenant is *no longer able to ask for a review* of a decision about the tenant's eligibility to receive housing assistance if—
 - (a) the period under the approved housing assistance program in which the tenant may make an application for review of the decision has ended and the tenant has not made an application;
or

- (b) if the tenant applies for review under the approved housing assistance program of the decision—the commissioner’s decision is confirmed.
- (4) If the tenant is given a notice to vacate under this clause, the tenant may vacate the premises at any time during the 2 weeks before the date stated in the notice to vacate provided the tenant gives the lessor 4 days notice of the tenant’s intention to vacate.
- (5) The tenancy agreement ends—
 - (a) 26 weeks after the day the notice to vacate is received by the tenant; or
 - (b) if a later date is stated in the notice—on the stated date; or
 - (c) if the tenant gives notice under subclause (4)—on the day the tenant vacates the premises.

Termination if tenant refuses transfer to alternate premises

- (1) This clause applies if—
 - (a) the housing commissioner gives the tenant written notice under an approved housing assistance program requiring the tenant to move to alternate rental premises; and
 - (b) the tenant has rejected, or failed to accept, an offer from the housing commissioner to enter into a tenancy agreement for the alternate rental premises; and
 - (c) the tenant is no longer able to ask for a review of the housing commissioner’s decision to require the tenant to move to alternate premises.
- (2) The lessor may give the tenant 26 weeks notice to vacate the premises.

- (3) To remove any doubt, this clause also applies if the housing commissioner requires the tenant to move to alternate rental premises when the tenant begins receiving ongoing housing assistance after the tenant's temporary housing assistance stops.
- (4) In this clause, a tenant is *no longer able to ask for a review* of a decision to require the tenant to move if—
 - (a) the period under the approved housing assistance program in which the tenant may make an application for review of the decision has ended and the tenant has not made an application; or
 - (b) if the tenant applies for review under the approved housing assistance program of the decision—the commissioner's decision is confirmed.
- (5) If the tenant is given a notice to vacate under this clause, the tenant may vacate the premises at any time during the 2 weeks before the date stated in the notice to vacate provided the tenant gives the lessor 4 days notice of the tenant's intention to vacate.
- (6) The tenancy agreement ends—
 - (a) 26 weeks after the day the notice to vacate is received by the tenant; or
 - (b) if a later date is stated in the notice—on the stated date; or
 - (c) if the tenant gives notice under subclause (5)—on the day the tenant vacates the premises.

Termination if tenant is party to 2 tenancies

- (1) This clause applies if—
 - (a) the tenant agrees to move to alternate rental premises; and
 - (b) the tenant has commenced occupation of the alternate premises.
- (2) The lessor may give the tenant 1 weeks notice to vacate the premises.

- (3) The tenancy agreement ends—
 - (a) 1 week after the day the notice to vacate is received by the tenant; or
 - (b) if a later date is stated in the notice—on the stated date.

2.5 Supported accommodation clauses

Tenant agrees to provide information to lessor

- (1) The lessor may ask the tenant, in writing, to give the lessor any information the lessor reasonably believes is relevant to assessing—
 - (a) the lessor’s eligibility for government funding or assistance for the premises; or
 - (b) the tenant’s eligibility to live in the premises.
- (2) If the lessor makes a request under subclause (1), the lessor must give the tenant a reasonable period to comply with the request.
- (3) The tenant agrees to give the lessor any information requested under subclause (1) within the period stated in the lessor’s request.

Termination if tenant no longer eligible to live in premises

- (1) This clause applies if—
 - (a) the tenant does not give the lessor information in accordance with the lessor’s request; or
 - (b) under the rules or requirements of the government funding or assistance, the tenant stops being eligible to live in the premises, or will stop being eligible to live in the premises; or
 - (c) under the rules or requirements of the government funding or assistance, the lessor stops being eligible for the funding or assistance for the premises, or will stop being eligible for funding or assistance for the premises.

- (2) The lessor may give the tenant notice to vacate the premises provided that the notice is for the later of the following:
 - (a) 26 weeks after the day the lessor gives the notice to vacate to the tenant;
 - (b) the day the tenant stops being eligible to live in the premises;
 - (c) the day the lessor stops being eligible for funding or assistance for the premises.
- (3) A notice to vacate must include the following information:
 - (a) if the tenant did not give the lessor information in accordance with the lessor's request—a statement that the tenant did not give the requested information;
 - (b) if the tenant has stopped, or will stop, being eligible to live in the premises—the reason why;
 - (c) if the lessor has stopped, or will stop, being eligible for funding or assistance for the premises—the reason why;
 - (d) the name and contact details of a legal or advocacy service that may be able to provide the tenant with advice about the tenant's legal rights.
- (4) If the tenant is given a notice to vacate under this clause, the tenant may vacate the premises at any time during the 2 weeks before the date stated in the notice to vacate provided the tenant gives the lessor 4 days notice of the tenant's intention to vacate.
- (5) The tenancy agreement ends—
 - (a) on the later of the following:
 - (i) 26 weeks after the day the notice to vacate is received by the tenant;
 - (ii) the day the tenant stops being eligible to live in the premises;

- (iii) the day the lessor stops being eligible to receive funding or assistance for the premises; or
- (b) if a later date is stated in the notice—on the stated date; or
- (c) if the tenant gives notice under subclause (4)—on the day the tenant vacates the premises.

2.6 Temporary housing assistance termination clause

Termination if tenant's temporary housing assistance ends

- (1) This clause applies if—
 - (a) the housing commissioner provides temporary housing assistance to the tenant under an approved housing assistance program; and
 - (b) the housing commissioner does not, before the end of the temporary housing assistance period, decide that the tenant is eligible for ongoing housing assistance under an approved housing assistance program.
- (2) The lessor may give the tenant 26 weeks notice to vacate the premises.
- (3) If the tenant is given a notice to vacate under this clause, the tenant may vacate the premises at any time during the 2 weeks before the date stated in the notice to vacate provided the tenant gives the lessor 4 days notice of the tenant's intention to vacate.
- (4) The tenancy agreement ends—
 - (a) 26 weeks after the day the notice to vacate is received by the tenant; or
 - (b) if a later date is stated in the notice—on the stated date; or
 - (c) if the tenant gives notice under subclause (3)—on the day the tenant vacates the premises.

43 Dictionary, notes 1 and 2*substitute*

Note The [Legislation Act](#) contains definitions relevant to this Act.
For example:

- ACAT
- administrative unit
- adult
- Australian Consumer Law (ACT)
- building code
- calendar month
- child
- commissioner for fair trading
- corporation
- Criminal Code
- director-general (see s 163)
- disallowable instrument (see s 9)
- document
- domestic partner (see s 169 (1))
- entity
- Executive
- expire
- fail
- health practitioner
- housing commissioner
- human rights commission
- individual
- in relation to
- instrument (see s 14)
- may (see s 146)
- Minister (see s 162)
- month
- must (see s 146)

- notifiable instrument (see s 10)
- penalty unit (see s 133)
- police officer
- prescribed
- public holiday
- sign
- statutory instrument (see s 13)
- territory law
- under
- working day.

44 Dictionary, new definitions of *defective termination notice* and *family violence order*

insert

defective termination notice means a notice that—

- (a) if there is a form approved under section 133 (Approved forms—Minister) for a termination notice—is not in the approved form; or
- (b) if there is no form approved under section 133—does not contain the information required by the standard residential tenancy terms; or
- (c) is not given in accordance with this Act.

family violence order—see the [Family Violence Act 2016](#), dictionary.

45 Dictionary, definition of *FV Act*

omit

46 Dictionary, new definition of *housing assistance*

insert

housing assistance, in relation to a tenant—see the [Housing Assistance Act 2007](#), section 7.

47 Dictionary, new definition of *minimum housing standards*

insert

minimum housing standards—see section 19A (1).

48 Dictionary, definition of *personal protection order*

insert

personal protection order—see the [Personal Violence Act 2016](#), dictionary.

49 Dictionary, definition of *protected person*

omit

section 85 (1)

substitute

section 85

50 Dictionary, definition of *protection order*

substitute

protection order means—

- (a) a protection order under the [Family Violence Act 2016](#); or

Note The def *protection order* includes, among other things, an interim or final protection order (see [Family Violence Act 2016](#), dict).

- (b) a personal protection order under the [Personal Violence Act 2016](#).

51 Dictionary, new definition of *publish*

insert

publish, for division 2.2 (Definitions—div 2.2)—see section 10A.

52 Dictionary, definition of *PV Act*

omit

53 Dictionary, definition of *respondent*

omit

section 85 (1)

substitute

section 85

54 Dictionary, definition of *standard residential tenancy terms*

substitute

standard residential tenancy terms—

(a) means—

(i) the standard residential tenancy terms mentioned in schedule 1; and

(ii) any additional term mentioned in schedule 2 that, under section 8 (1) (b) to (g), is taken to be included in a residential tenancy agreement; but

(b) does not include a term mentioned in section 8 (1) (h).

55 Dictionary, new definitions of *supported accommodation* and *temporary housing assistance*

insert

supported accommodation means premises made available by a lessor, other than the housing commissioner, for occupation by a tenant under a residential tenancy agreement for which the lessor receives government funding or assistance to provide the premises to the tenant.

Examples

- 1 affordable housing provided or managed by a community housing provider
- 2 accommodation provided in accordance with the National Rental Affordability Scheme
- 3 specialist disability accommodation

temporary housing assistance—see the [Housing Assistance Act 2007](#), dictionary.

56 Dictionary, definition of *termination notice*

substitute

termination notice means a written notice that—

- (a) if there is a form approved under section 133 (Approved forms—Minister) for a termination notice—is in the approved form; and
- (b) if there is no form approved under section 133—contains the information required by the standard residential tenancy terms; and
- (c) is served in accordance with this Act.

Part 3 Residential Tenancies Regulation 1998

57 New section 5B

insert

5B Minor modification—Act, s 71AA, def *minor modification*, par (b)

- (1) The following are minor modifications to premises under a residential tenancy agreement:
 - (a) planting vegetables, fruit, flowers, herbs or shrubs if—
 - (i) existing vegetation or plants do not need to be removed; and
 - (ii) for shrubs—the shrubs will not grow to more than 2m in height;
 - (b) installing or placing an above ground composting tumbler or composting bin if existing vegetation or plants do not need to be removed.
- (2) However, subsection (1) does not apply—
 - (a) to any common property of a class A unit or class B unit; or
 - (b) to a balcony of a class A unit; or
 - (c) if the minor modification contravenes a rule of the owners corporation and the owners corporation has not given permission for the modification.
- (3) In this section:

class A unit—see the *Unit Titles Act 2001*, section 10.

class B unit—see the *Unit Titles Act 2001*, section 11.

common property—see the *Unit Titles Act 2001*, section 13.

owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

rule, for an owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

Schedule 1 Housing Assistance Act— Other amendments

(see s 3)

[1.1] Sections 20 and 21

substitute

20 Approved housing assistance programs—determinations

- (1) The housing commissioner may make a determination for an approved housing assistance program.
- (2) A determination is—
 - (a) for a determination that deals with a relevant matter—a disallowable instrument; or
 - (b) for any other determination—a notifiable instrument.
- (3) In this section:

relevant matter means—

 - (a) the review of a person’s entitlement to housing assistance; or
 - (b) requiring a person receiving housing assistance to move to alternate premises; or
 - (c) eligibility for temporary housing assistance.

21 Approved housing assistance programs—operational guidelines

- (1) The housing commissioner may make guidelines for the management or operation of an approved housing assistance program.
- (2) A guideline is—
 - (a) for a guideline that deals with a relevant matter—a disallowable instrument; or

- (b) for any other guideline—a notifiable instrument.
- (3) In this section:
- relevant matter* means—
- (a) the review of a person’s entitlement to housing assistance; or
 - (b) requiring a person receiving housing assistance to move to alternate premises; or
 - (c) eligibility for temporary housing assistance.

[1.2] New part 11

insert

Part 11

Transitional—Residential Tenancies Legislation Amendment Act 2022

111 Meaning of *commencement day*—pt 11

In this part:

commencement day means the day the *Residential Tenancies Legislation Amendment Act 2022*, schedule 1, amendment 1.1 commences.

112 Housing assistance program determinations

- (1) The *Housing Assistance Public Rental Housing Assistance Program (Review of Entitlement to Housing Assistance) Determination 2020 (No 1)* (NI2020-658), as in force immediately before the commencement day, is taken to be a disallowable instrument made under section 20.

- (2) The [Legislation Act](#), chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments) does not apply to the instrument mentioned in subsection (1).
- (3) The following determinations, as in force immediately before the commencement day, are taken to be notifiable instruments made under section 20:
 - [Housing Assistance Public Rental Housing Assistance Program \(Community Rental Housing Assistance – Modified Eligibility Criteria\) Determination 2012 \(No 1\)](#) (NI2012-254)
 - [Housing Assistance Public Rental Housing Assistance Program \(Exempt Income and Assets\) Determination 2020 \(No 1\)](#) (NI2020-113)
 - [Housing Assistance Public Rental Housing Assistance Program \(Exempt Income and Assets\) Determination 2020 \(No 2\)](#) (NI2020-173)
 - [Housing Assistance Public Rental Housing Assistance Program \(Housing Needs Categories\) Determination 2011 \(No 2\)](#) (NI2011-507)
 - [Housing Assistance Public Rental Housing Assistance Program \(Residency Time Limits—Exemptions\) Determination 2020 \(No 1\)](#) (NI2020-521)
 - [Housing Assistance Public Rental Housing Assistance Program \(Special Needs Applicants and Dwellings\) Determination 2012 \(No 1\)](#) (NI2012-358).

113 Operational guidelines

- (1) The [Housing Assistance Public Rental Housing Assistance Program \(Review of Entitlement to Housing Assistance\) Operation Guideline 2013 \(No 1\)](#) (NI2013-534) is repealed.
- (2) All other guidelines made under section 21, as in force immediately before the commencement day, are taken to continue in force.

114 Expiry—pt 11

This part expires 1 year after the commencement day.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

[1.3] Dictionary, notes 1 and 2

substitute

Note The [Legislation Act](#) contains definitions relevant to this Act. For example:

- ACAT
- director-general (see s 163)
- entity
- Executive
- exercise
- function
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- planning and land authority
- reviewable decision notice
- territory land
- year.

[1.4] Dictionary, new definition of *temporary housing assistance*

insert

temporary housing assistance means housing assistance identified as temporary housing assistance in an approved housing assistance program.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2022.

2 Notification

Notified under the [Legislation Act](#) on 2022.

3 Republications of amended laws

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