



## Rental Reforms

The ACT Government wants to improve renters' rights and housing security for Canberrans by creating fairer tenancy laws.

### THE CONVERSATION:

The conversation on a Public Exposure Draft of the Residential Tenancies Legislation Amendment Bill 2022 took place between 27 July 2022 to 26 August 2022. This was a second round of community consultation following an earlier consultation on a community Consultation Paper in 2021.

In 2021, the ACT Government released a [Consultation Paper](#) about residential tenancy laws in the Territory, and possible changes, including: removing "no cause" evictions, limiting rent bidding, clarifying a tenant's right to grow food and to compost, and introducing minimum standards for rental properties.

We invited the community to consider the Consultation Paper and share their ideas about how to improve tenancy laws. In response, the ACT Government received 49 written submissions and 256 survey responses. [A Listening Report](#) summarising what we heard is available on the [YourSay website](#).

Informed by the community's feedback to the Consultation Paper, the ACT Government prepared a draft bill to implement the proposed reform ([the Public Exposure Draft or the Draft Bill](#)), which was shared on the YourSay website on **27 July 2022**.

We invited the Canberra community to share their feedback and ideas about how to improve and refine the Draft Bill, prior to its introduction in the Legislative Assembly. Submissions closed on **26 August 2022**. In response, we received **43** written submissions and **217** quick comments from a diverse group of people and organisations, with different perspectives and experiences. In addition to the YourSay consultation **1140** standard form campaign letters were received in relation to the proposed reforms.

This Listening Report summarises this valuable feedback and ideas.

### THE PROPOSED REFORMS:

#### REMOVING NO CAUSE EVICTIONS

In the ACT, a landlord can end a tenancy by issuing a Notice to Vacate with 26 weeks' notice. The landlord does not need to disclose a reason, or otherwise prove that the termination was reasonable or justifiable. The landlord also does not need to show that a tenant breached their tenancy agreement or engaged in unlawful conduct. These terminations are often referred to as "no cause" or "without grounds" evictions.



To improve the rights and security of tenure for tenants and to ensure tenants are aware of the reason they are being asked to leave their tenancy, the ACT Government committed to changing residential tenancy laws to prohibit “no cause” evictions in the Parliamentary and Government Agreement (PAGA) for the 10<sup>th</sup> Legislative Assembly.

In 2021, we asked the community to share their ideas about how best to implement this commitment. We asked whether new grounds for termination should be introduced when no cause evictions are ended to ensure that landlords can continue to manage their properties effectively and, if so, how those new termination provisions should be framed. We also asked if any additional protections should be introduced at the same time. This valuable feedback informed the Draft Bill.

In line with the ACT Government’s commitment in the PAGA for the 10<sup>th</sup> Legislative Assembly, the Draft Bill includes a provision which would remove “no cause” evictions.

Under existing legislation, which the Government does not propose to change, tenants can be evicted under a range of “cause terminations”, such as breaching their tenancy agreement (by failing to pay rent or damaging the property) or the landlord wanting to sell, renovate or move into the property. A list of existing termination provisions is attached at the end of this document.

To support ending “no cause” evictions, the Government proposes to introduce new termination provisions to allow landlords to continue to manage their properties effectively. The Draft Bill proposes the introduction of grounds for termination where a landlord or a tenant has engaged in behaviour that is threatening, harassing, intimidating or abusive towards the other party. This provision will allow the impacted party to apply directly to the ACT Civil and Administrative Tribunal (ACAT) for a tenancy termination order. The Draft Bill also proposed a new termination provision for circumstances where the landlord wants to convert the use of the premises to another lawful purpose (such as running a business).

The Draft Bill also creates new bespoke termination provisions to support the Commissioner for Social Housing and community housing providers to effectively manage public and community housing stock effectively. As Housing ACT and community housing providers currently use “no cause” terminations to manage these tenancies in certain circumstances (such as where a tenant is no longer eligible to remain in the premises), the new tenancy termination provisions will support public and community housing providers to continue to target those most in need (by terminating the tenancies of those no longer in need and transferring tenants to ensure appropriate utilisation of stock).

Some stakeholders expressed human rights concerns about these new bespoke termination provisions as they were concerned that they were too focused on the administrative needs of the lessor and did not provide sufficient consideration of the impacts of the tenancy termination on the tenant. They were concerned failing to consider the individual circumstances of the tenant could lead to an arbitrary interference with a person’s home. To address this, they recommended the introduction of a test which requires ACAT to consider whether the termination is reasonable and proportionate with consideration for a range of factors including the circumstances of the tenant. This feedback will be considered ahead of the Bill’s introduction in the Legislative Assembly.

## **RENT BIDDING**



Rent bidding occurs when a prospective tenant offers, or is asked to offer, more than the advertised price for a rental property. Rent bidding is not prohibited in the Territory unless a landlord or agent has solicited a rental bid in a way that is misleading, deceptive, or otherwise dishonest.

During initial consultations, we asked the community whether rent bidding should be regulated and, if so, how. We heard from tenants and landlords who shared stories of how rent bidding has impacted their experience of renting or managing rental properties in the Territory. Following the initial consultation there was widespread support for banning solicited rent bidding but considerably more mixed feedback in relation to banning voluntary rent bidding.

Informed by this feedback, the Draft Bill prohibits landlords and agents from asking, or otherwise encouraging, tenants to offer rent above the advertised price. However, it does not prohibit tenants from offering rent above the advertised price, nor does it prohibit landlords from accepting offers of rent above the advertised price.

## **STRENGTHENING A TENANT'S ABILITY TO GROW FOOD**

The law allows a tenant to do some gardening and composting activities without asking their landlord for consent. For example, a tenant may grow plants in a pot or removable garden bed or use an above ground compost tumbler, provided that doing so does not cause any damage to the rental property or require the tenant to make any changes to the rental property.

However, a tenant must ask for their landlord's consent before engaging in more extensive gardening and composting activities. For example, a tenant must ask for permission before installing an in-ground composting system, or planting vegetables in a garden bed.

The rules for when a landlord can and cannot withhold their consent, depends on how the law classifies the changes to the rental property.

We asked the community whether the ACT Government should make it easier for tenants to grow food and to compost. There was general support for this idea, however, landlords were concerned that tenants should not be allowed to make more significant changes to the property which could damage existing gardens or landscaping.

Informed by this feedback, the Draft Bill clarifies that without the endorsement of the ACAT:

- if a tenant wishes to plant vegetables, fruit, flowers, herbs or shrubs (under 2 metres) in a garden, and they do not need to remove existing plants to do so, a landlord cannot unreasonably withhold their consent.
- if a tenant wishes to use a removeable composting tumbler or bin, and there is sufficient space to do so, a landlord cannot unreasonably withhold their consent.

Should a landlord wish to withhold consent in these circumstances, they would need to apply to the ACAT. Where a tenant wants to make more significant changes, for example, if they want to remove existing plants or modify existing landscaping, they can still ask their landlord's permission to do so, however, there would be no constraints on a landlord refusing permission to these more significant changes.

These changes would not impact all properties and spaces. For example, these changes would not apply to common property within a unit complex, or on certain unit balconies as the management of these areas is the responsibility



of the owners' corporation for the unit complex, meaning consent would be required from the owners' corporation rather than the landlord.

## INTRODUCING MINIMUM STANDARDS

Current residential tenancy laws allow the ACT Government to introduce minimum standards for rental properties in relation to safety and security, physical accessibility, energy efficiency, amenity, and sanitation. However, this power has not been used yet.

During initial consultations, we noted that work to introduce a minimum standard for energy efficiency was already underway, but we then asked the community which of the remaining minimum standards should be introduced as a priority. We also sought community views on how minimum standards will be implemented.

Although the Draft Bill does not introduce any new minimum standards, it does introduce several changes that will support the future implementation of minimum standards, including:

- introducing an obligation for landlords to say whether the property meets any minimum standards when advertising it for rent and when entering the tenancy agreement;
- creating a right for a landlord to enter a rental property to ensure that it complies with minimum standards, (for example, to assess or undertake installation work);
- introducing a new ground for termination, that allows a tenant to end a tenancy if the property does not meet minimum standards; and,
- allowing a tenant to apply to the ACT Civil and Administrative Tribunal for a rent reduction for any period where the property did not meet minimum standards or to seek compensation for any loss they have incurred because of the properties failure to meet the minimum standards.

It is noted that a minimum energy efficiency standard for residential tenancies will commence on 1 April 2023. Information about the new energy efficiency minimum standard is available here:

<https://www.justice.act.gov.au/renting-and-occupancy-laws/energy-efficiency-standards-for-rental-homes>

The ACT Government will undertake further community consultation before any other minimum standards are introduced.

## WHO WE ENGAGED:

**We invited Canberrans and other stakeholders to consider the Draft Bill and share their ideas about how to improve it. We heard from tenants, landlords, community legal centres, advocacy groups and community and social housing providers.**

We received **43** written submissions to the Public Exposure Draft. **217** quick comments on the proposed reforms were made by **76** Canberrans on the YourSay website. In addition, the ACT Government met with members of the



real estate sector and community legal sector to receive their verbal feedback on the proposed reforms. There were also a number of consistent form letters sent to the Government outside the YourSay community consultation, which relate to the proposed reforms and are discussed further below.

We received submissions from:

Category of Respondent	Number of Submissions	Percentage of Total Respondents
Tenants	9	21%
Landlords and agents	5	11%
Other Individuals (*)	11	26%
Community legal centres, community support services and advocacy groups	13	30%
Other legal stakeholders	2	5%
Government bodies	2	5%
Community and social housing providers	1	2%
	<b>43</b>	<b>100%</b>

\* Some individuals did not disclose whether they were a tenant, a landlord, or someone else.

The ACT Government received responses from a diverse range of individuals and organisations. This has provided us with a variety of perspectives to consider.

## REPORT ON WHAT WE HEARD

The ACT Government thanks everyone who took the time to share their comments and ideas about these rental reforms. Feedback from the community will help us to refine and improve the draft tenancy laws.

### Key insights from the community

### QUICK COMMENTS

The YourSay page allowed community members to leave 'Quick comments' on the proposed rental reforms. It also allowed people to give a 'thumbs up' or 'thumbs down' to comments left by other people. In total **217** comments were left by **76** contributors.

**Top 5 quick comments with most thumbs up were:**

Quick comment	Thumbs up
Leases are private contracts. Consider amendment to enable parties to oust jurisdiction of ACAT at time of lease signing (similar to prenup)	<b>268</b>



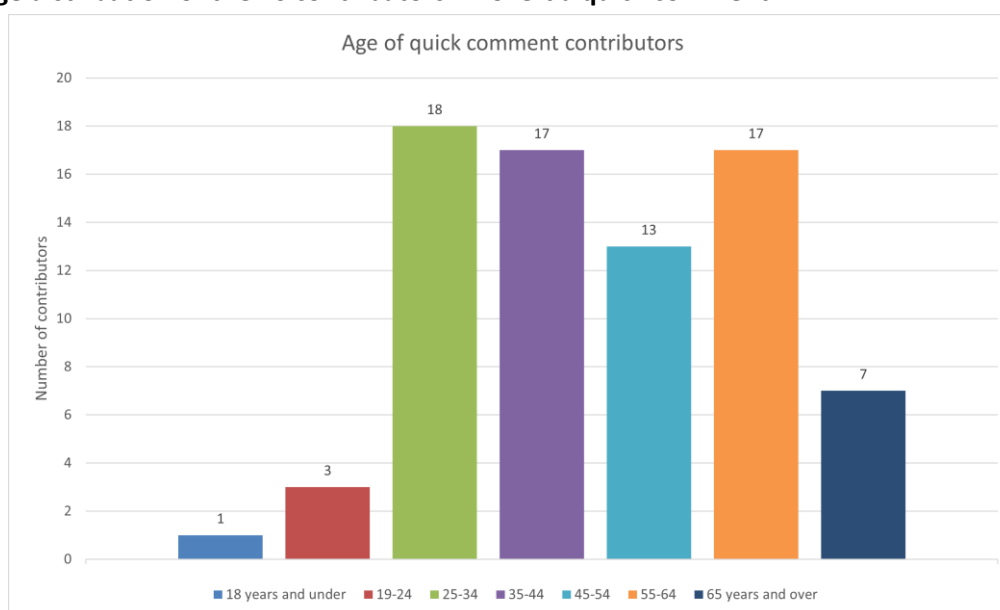


Instead of minimum standards tenants should pay for property inspection to specify flaws before offer like NRMA car pre-purchase inspection.	<b>238</b>
Propose amending 11AC to clarify lessor can advertise multiple rental rates for property subject to inclusions (e.g. furnished, excl. carpark)	<b>229</b>
Highest land taxes in ACT = highest rents in Australia. More anti landlord policies = less rentals properties and even higher rents. Think	<b>205</b>
Schedule 2, 2.1(3)(a)-(b) means if tenant breaks lease and vacates 4 weeks before fixed term ends, landlord can't recoup advertising costs	<b>203</b>

### Top 5 quick comments with most thumbs down votes were:

Quick comment	Thumbs down
The only reason for no cause evictions is so landlords can make money. Otherwise there are plenty of protections for them and their property	<b>129</b>
As a Canberran locked out of the market, I'd love to see these rogue landlords sell up... more homes for homeowners, rather than investors	<b>126</b>
We love to invest in and maintain our rental garden and reduce waste through compost. Surely this benefits landlords & ratepayers!	<b>105</b>
Minimum standards are needed. Older rentals have terrible window insulation leading to freezing properties and expensive bills	<b>104</b>
Minimum standards should include environmental factors, as there is little incentive for landlords to currently improve these	<b>102</b>

### Below: The age distribution of the 76 contributors who left a quick comment:





## Overall sentiment

The quick comments were sorted according to sentiment: positive, negative, mixed or neutral if the comment did not relate to the rental reforms proposed in the Draft Bill. The overall sentiment in relation to the reform proposals expressed through the Quick comment engagement tool was:

- **12.44% positive**
- **7.37 % mixed**
- **48.85% Negative**
- **30.88 % Neutral\***

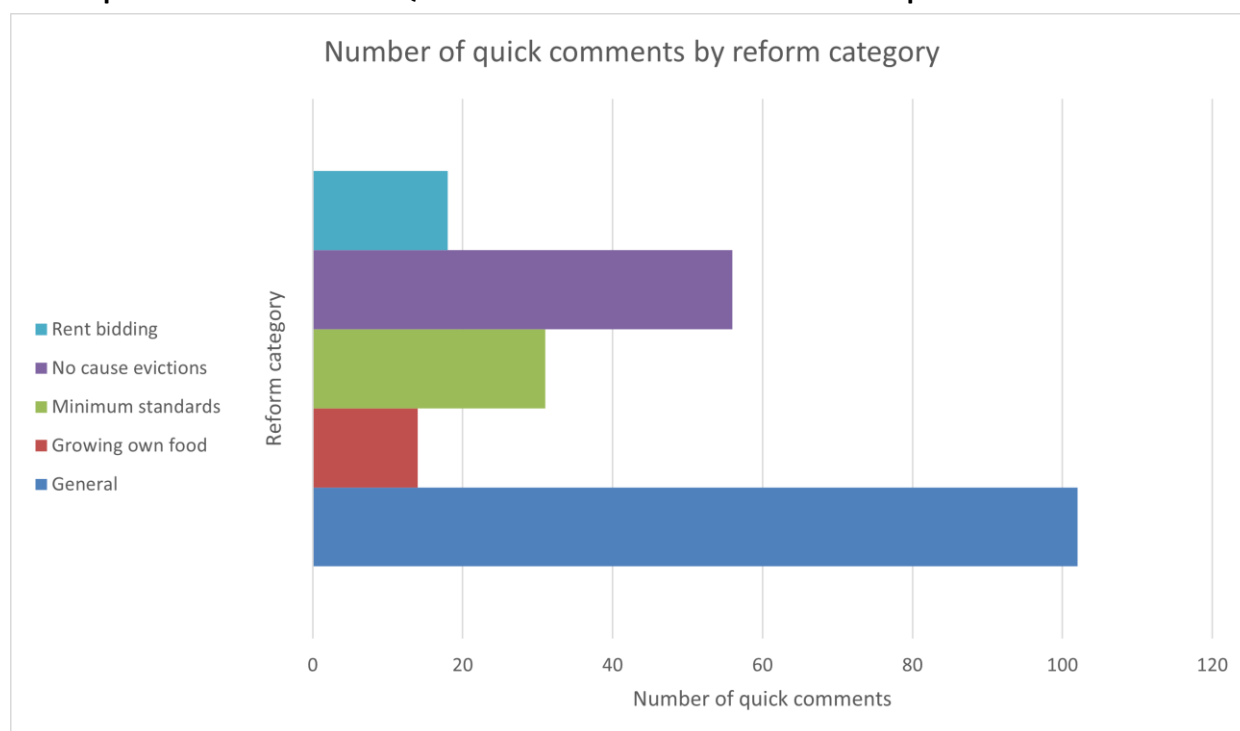
\*Neutral comments applied when comments not relevant or related to rental reform in the ACT.

**Note:** This does not include the views expressed via submissions which are discussed further below.

## Topics Commented On

Reform Topic	Number/ Per centage of quick comments
No cause evictions	54 or 24.88%
Rent bidding	17 or 7.83%
Grow own food and compost	14 or 6.45%
Minimum standards	13 or 14.29 %
General (about rental reform in ACT)	103 or 47.47%

## Below: Comparison of sentiment of Quick comments across 4 rental reform topics





### Full list of 'Quick comments'

You can find the full list of quick comments on the YourSay page here:

<https://yoursayconversations.act.gov.au/expanding-rights-renters/quick-comment>

## COMMENTS RECEIVED VIA SUBMISSIONS

### TOPIC 1: REMOVING NO CAUSE EVICTIONS

During our initial consultations in 2021 and early 2022, we heard many different perspectives on the proposal to remove “no cause” evictions. The submissions we received in response to the Draft Bill confirmed that the community remains divided on this issue. Of the 36 written submissions that offered comments on this proposal, 25 (69%) supported the removal of “no cause” evictions, while 11 (31%) did not.

Most submissions that supported the removal of “no cause” evictions were received from tenants, community support services and peak body or advocacy groups. These stakeholders argue that removing “no cause” evictions will increase housing security for Canberrans that rely on rental accommodation and ensure that tenants are only asked to leave their homes for a justifiable reason. One tenant explained that they were “thrilled to see this news and hope that it will prevent this from happening to more renters in the future”.

Several tenants told us about their personal experiences of having a tenancy come to an end without cause and shared the significant impact this had on their emotional and physical health. Tenants often commented that they had been asked to leave a property that they considered their home, without a reason, and that this felt unfair. One tenant commented that “having a secure and affordable roof over your head is a matter of dignity for those of us who rent.”

The majority of submissions that did not support the removal of “no cause” evictions were received from landlords, or members of the community who did not share whether they were a tenant, landlord or someone else. These stakeholders explained that they felt that removing “no cause” evictions is an unreasonable interference with a landlord’s right to manage their investment property in the way they saw fit. Several submissions also suggested that the new laws would force some landlords to reconsider whether their investment is financially viable, which may lead to a reduction in the number of properties available to rent in the ACT.

### Proposed new grounds for termination

As discussed above our initial consultation paper proposed several new grounds for tenancy termination to allow landlords to effectively manage their rental properties once no cause terminations are removed. This is because the existing grounds do not cover all reasonable reasons a landlord may need or want to end a tenancy. The Draft Bill proposed a number of new termination grounds – most of which related to the management of public, social or affordable housing tenancies.





In response, several organisations including community legal centres, community support services and other advocacy groups told us that they were concerned that the new grounds for termination were too broad, and that any new termination ground should be drafted in such a way as to apply as narrowly as possible. They argued that this would ensure that the new termination grounds are not open to misuse or create an unfettered discretion to evict.

For example, the Draft Bill introduces a new ground for termination where the tenant has engaged in behaviour that is threatening, harassing, intimidating or abusive, or is likely to do so. We received a significant number of submissions from community legal centres and community support services telling us that they were concerned how this termination provision may impact people experiencing complex vulnerability. For example, one submission made the following comment: “[f]or people with acute mental ill health and forms of disability, their behaviour can at times be beyond their control”.

These submissions advocated for this new section to be abandoned, or for significant amendments to be made, including changing the language to ensure that a tenancy cannot be terminated under this section unless the tenant has actually engaged in behaviour that is threatening, harassing, intimidating or abusive, rather than on the basis that they are likely to do so. In contrast to this view, several landlord and real estate providers were strongly supportive of the inclusion of a provision of this nature as they felt that it would provide an important protection for landlords and their agents. However, both landlord and tenant advocates recommended that, if the provision is to be retained, it be modified to include a notice requirement prior to an application being made to the ACAT.

Community legal centres, community support services and other advocacy groups also told us that they were concerned about the new grounds on which a social or public housing tenancy could be terminated. These stakeholders argued that the Draft Bill does not offer sufficient protections for tenants who are reliant on public, social or affordable housing, with one organisation commenting that “[w]e need to ensure that the most vulnerable tenants are the most protected, especially given the significant power disparity between those on low incomes and the ACT Government.” Specifically, they expressed a concern that the termination clauses were too broad and were lacking in transparency and oversight.

These submissions argued that the new grounds on which a public or social housing tenancy could be terminated, and their intended scope, should be clearly and narrowly defined in the Draft Bill. These stakeholders also advocated for the introduction of a “reasonable and proportionate test” which requires the ACAT to consider whether an eviction is reasonable and proportionate in the circumstances of each case. Significantly, 11 organisations made or endorsed the following (or very similarly worded) recommendations:

1. That the ACT Government introduce a standalone ‘reasonable and proportionate’ test based on the Victorian provisions which requires the ACT Civil and Administrative Tribunal to consider whether an eviction order would be reasonable and proportionate in the circumstances of each case taking into account a mandatory list of considerations.
2. That the ACT Government limit the grounds for eviction rather than introduce a raft of broad grounds for eviction and clearly set out the grounds in the *Residential Tenancies Act 1997*.
3. That the proposed ‘behavioural grounds’ for eviction be removed from the Bill.
4. That any new termination provisions should ensure that the landlord is required to apply to ACAT for an eviction order before a tenancy can be terminated (except where the tenant vacates the premises).



In contrast to the views expressed by tenant advocates, real estate industry advocates encouraged the introduction of additional termination grounds including allowing terminations at the end of fixed term tenancies or recommending that landlords be allowed to terminate a tenancy after several more minor tenancy breaches in a “3 strikes and you’re out” approach to tenancy termination. These stakeholders argued that termination provisions of this nature would support landlords in circumstances where the tenant is ‘difficult’ and repeatedly breaches their agreement but where there may not have been a single significant breach which would allow for termination.

### ‘Hear Our Voice’ campaign initiated by the Real Estate Institute of the ACT

During the consultation period the Real Estate Institute of the ACT (REIACT) launched a campaign called ‘Hear Our Voice’ where they encouraged landlords and real estate agents to send a standard form letter to ACT Government Ministers objecting to the proposed reforms. It is noted that REIACT’s website promoting the campaign advised that the Government was no longer consulting on the proposed reforms.

**This was not correct**, and the Government was in fact seeking further community views on the Draft Bill in addition to and following the Discussion Paper on the proposed reforms that was released for community consultation 12 months earlier, at the time the campaign was initiated. The Government wrote to REIACT on 5 August 2022 to request that the incorrect and misleading information on the REIACT website regarding the reform process be corrected.

The REIACT website also incorrectly stated that with the removal of no cause terminations, landlords would have no option other than selling, renovating or moving back into the property in order to end the lease. This communication is not correct. There are a range of existing termination provisions under which a tenancy can be terminated, which the Government does not propose to change, such as the tenant breaching their tenancy agreement by failing to pay rent or damaging the property. Additionally, the Government in the Draft Bill proposed new termination provisions to support landlords to continue to effectively manage their properties. A list of existing and proposed new termination provisions put forward by the Public Exposure Draft Bill is attached at the end of this document.

A full list of the termination grounds that will be available under the proposed reforms was included in the Attorney-General’s open letter to the community, including a letter to REIACT, about the reforms on the YourSay website as well as an explanation as to why the Government is considering the proposed reforms.

It is also noted that it is already the case that *any* tenancy termination may be challenged at ACAT (including the current no cause termination ground and termination where the owner wants to sell renovate or move in). The Government is not proposing to change this aspect of the current legislation either as ACAT oversight of tenancy terminations is an important procedural safeguard to ensure that a person is not required to leave their home without the independent review of a neutral third party to the tenancy agreement.

As a result of the campaign, we received 1,140 standard form letters from landlords and agents. The letters raised the concern that if the proposed changes, particularly the removal of no cause terminations and the introduction of minimum standards were to progress, it would result in many landlords deciding to leave the



investment market, which could, in turn, reduce the available supply of properties and thereby exacerbate rental affordability issues. The letters argued the ultimate losers from the reforms would be tenants themselves.

Given the incorrect premises upon which the campaign correspondence was generated, it is difficult to know if landlords and agents would have expressed the same level of concern about the proposed reforms had they been provided with accurate information about the reform proposals and an explanation as to why the Government is considering the proposed changes.

Of note, several private landlords who were encouraged to send the campaign letter by their real estate agents, chose to write separately to the ACT Government to indicate they did not support REIAC's views or that they were in support of the reforms.

It is also noted that tenant feedback was overwhelming supportive of the changes to no cause evictions and that tenants did not express concern that the removal of the provision would have negative tenancy market impacts or lead to increased rental affordability issues.

## TOPIC 2: RENT BIDDING

After our initial consultations with the community, we understood that rent bidding was a common practice in Canberra and that this concerned some people. Most people, including tenants, landlords and real estate agents, told us that they would support a prohibition on landlords and real estate agents from *asking* a prospective tenant to pay more than the advertised rental price. However, the community had mixed views about whether tenants should be prevented from *offering* to pay more than the advertised price for a property.

The submissions we received in response to the Draft Bill confirmed that the community remained divided on this issue. Of the 17 written submissions that offered comments on the rent bidding proposal, 14 (82%) supported some form of prohibition on soliciting rental bids, while 3 (18%) did not.

Most submissions that supported a complete prohibition on rent bidding were received from tenants or community support services. Indeed, 9 (53%) submissions advocated for a more restrictive approach, prohibiting landlords and real estate agents from soliciting *and* accepting offers above the advertised rental price. Several submissions argued that a partial prohibition on rent bidding would not offer tenants sufficient protection because, with increased pressures on rental availability and affordability, "people seeking homes feel they have no option but to offer, without being asked to".

However, not all tenants have expressed support for a full prohibition on rent bidding. During our initial consultation, some tenants shared personal stories of how, after struggling to secure a rental property, offering rent that exceeded the advertised price allowed them to find a home for their family. For this reason, they did not believe that the ACT Government should restrict tenants from offering rent bids. While we did not hear similar stories during the Public Exposure Draft consultation, these experiences remain important to consider.

A further submission, while not supportive of any prohibition on rent bidding, noted that the proposal may create inequality between tenants, as without prompting or encouragement from a landlord or real estate agent,



a tenant who is unaware of their ability to engage in rent bidding and offer a higher rental price may be disadvantaged when applying and negotiating rental properties.

Generally, landlords supported minimal government regulation on rent bidding. They told us that rent bidding is a legitimate means to finding the market price for their investment property.

#### **Idea: Allow landlords to list a single property at multiple rates**

The Draft Bill introduces an offence for a landlord or agent who advertises a rental property without a single, fixed rent amount. This was included to support the partial prohibition on rent bidding by removing other ways for landlords and real estate agents to encourage prospective tenants to offer different amounts by not stating a rental rate.

One landlord told us that they were concerned that the requirement to advertise a rental property at a single, fixed rate was too inflexible. Instead, they suggested that a landlord should be able to “advertise and market multiple rental rates for a single property [provided that this was on the basis of] inclusions and prospective tenant needs (e.g. short/long term lease, furnished/unfurnished or including/excluding parts of the property like car parks and storage)”. They argued that allowing prices to incorporate inclusions would allow tenants to select an appropriate rental rate according to their required inclusions and would allow them not to have to pay for things they did not need.



### TOPIC 3: MINIMUM STANDARDS

Of the 24 written submissions we received with comments on the proposal to introduce minimum standards, 15 (63%) were supportive of introducing minimum standards for rental properties, while 6 (25%) told us that they were concerned about the proposal.

Consistent with earlier consultations, tenants and community support services told us that the introduction of minimum standards would ensure that tenants lived in appropriate, comfortable rental properties. One individual commented that “minimum standards are necessary and long overdue”.

However, many tenants and tenant advocacy services also told us that they were concerned about the introduction of a landlord’s right to enter the property to ensure compliance with minimum standards. This is discussed further below.

Generally, landlords told us they were worried that it is not clear what minimum standards will be introduced. Several commented that depending on the nature of any future minimum standards, compliance may be a significant financial burden for landlords, particularly those who own older housing stock, and that this may be a financial pressure which forces some landlords to sell. Landlords and agents expressed concern that this could then lead to broader tenancy market supply challenges, which could, in turn, exacerbate rental affordability issues.

Several tenant advocates commented on enforcement of minimum standards and encouraged the ACT Government to consider the introduction of a regulator for residential tenancies which could proactively undertake compliance audits and issues fines to landlords in the event of non-compliance. These advocates noted that tenants are often reluctant to take enforcement action against their landlords and, as such, non-compliant landlords may never be held accountable.

Landlord stakeholders also provided feedback that it would be unreasonable to allow tenants to end a tenancy or to seek a rent reduction in circumstances where the tenant had refused access to the rental property to allow the landlord to comply with the standard.

#### **Idea: Provide further clarity in relation to a landlord’s right of access to the property**

The Draft Bill provides new grounds for a landlord to enter a rental property, including to inspect the property to assess if it complies with the minimum standard, to complete work to the property, or to inspect the work once it has been completed. This is to make sure that landlords can meet their obligations to ensure that their rental property complies with any minimum standards.

However, 7 (29%) of the submissions that commented on minimum standards told us that they were concerned about the scope of the new grounds for entry. Tenants have a right to peace and quiet enjoyment of their rental property, and these submissions believed that the proposed grounds would leave tenants vulnerable to violations of that right.

One community organisation suggested that tenants could elect when they want a landlord to inspect a premises on the basis of a property not complying with minimum standards, and made the following comment, “[l]essors





should be being encouraged to attend when requested by tenants, but they should not have unlimited opportunities to seek access to inspect repairs...[landlords] should be being encouraged to consolidate required visits (unless more visits are wanted by tenants)". Several submissions made similar suggestions and comments.

## TOPIC FOUR: RIGHT TO GROW FOOD AND TO COMPOST

Consistent with the initial consultation, there was strong community support for making it easier for a tenant to grow food and to compost at their rental property.

In response to the Draft Bill, we received 11 written submissions offering feedback and comments on the proposal, 7 (64%) of which told us that they supported strengthening a tenant's right to grow food and to compost, referencing benefits for the environment, tenant wellbeing and cost of living. A further 3 (27%) submissions told us that they supported the proposal in principle, if the law mandated certain safeguards. For example, the exclusion of properties where growing food may not be appropriate (such as a unit within a complex), requiring tenants to seek informed consent from landlords, and to return the property to its original condition.

## WHAT'S NEXT?

**The ACT Government will use the feedback received from the community and other stakeholders to improve and refine the new residential tenancy laws before a Bill seeking to implement the changes is introduced into the ACT Legislative Assembly.**

To keep up to date on the reforms to residential tenancy laws, please visit the project page [here](#). To find out about other initiatives, policies, and projects in Canberra, please visit [www.yoursay.act.gov.au](http://www.yoursay.act.gov.au).

### Key Timings

The ACT Government committed to removing "no cause" evictions in the Parliamentary and Governing Agreement for the 10 <sup>th</sup> Legislative Assembly	November 2020
Targeted consultation with industry and community organisations	Early 2021
Consultation Paper released for community feedback	August 2021
Community consultation on residential tenancy reforms through YourSay website	5 August 2021 to 15 October 2021
Listening Report on community consultation released	April 2022





The ACT Government considered community feedback on the consultation paper, and drafted the Public Exposure Draft of the Bill

October 2021 to July 2022

Public Exposure Draft of the Bill released for community feedback

27 July 2022

Listening Report on further community consultation released

Late 2022

The ACT Government will consider community feedback on the Public Exposure Draft of the Bill, and refine and improve the new residential tenancy laws

August 2022 onwards

#### THANK YOU FOR YOUR FEEDBACK

We received

**44**

written submissions in response to the Public Exposure Draft of the Bill

We received

**217**

quick comments from 76 posters on the Public Exposure Draft of the Bill

We received

**1140**

'Hear Our Voice' campaign letters in response to the proposed reforms



## ATTACHMENT: EXISTING AND PROPOSED NEW 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 <sup>1</sup>	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</b> and evidence of posting (If tenant doesn't vacate - application to ACAT under s 47)	Fixed or periodic
s 49 and Schedule 1,	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)	Fixed or periodic

<sup>1</sup> Note – This provision will remain unchanged in substance. However, the Bill proposes to move this provision from section 8 to new Schedule 2. It will also be renamed the 'posting termination clause'.



Standard Terms, cl 92		<b>2 week notice to vacate</b> <sup>2</sup> (If tenant doesn't vacate - application to ACAT under s 49)	
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 remedies the breach) <b>2 week notice to vacate</b> <sup>3</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 use it for someone other than the current tenant.</b>	<b>4 weeks notice to vacate</b> and the landlord must have given the tenant information about alternative accommodation	Fixed or periodic
s 52	The landlord entered into the agreement	Application to ACAT	Fixed or

<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 92.

<sup>3</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.



	because of a <b>false or misleading statement made by the tenant.</b>		periodic
s 54	<p>The <b>tenant purports to:</b></p> <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> <p>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)</p>	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>4</sup>	Application to ACAT	Fixed or periodic
ss 61-63	The <b>tenant abandons the property</b>	<p><b>Tenancy ends on the date of abandonment</b></p> <p>Note: there is a process a landlord must follow in order to confirm the property has been abandoned.<sup>5</sup></p> <p>If there is a dispute as to the date of abandonment, parties can apply to ACAT for an order</p>	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>4</sup> See the *Civil Law (Sale of Residential Property) Act 2003*, s 9A for a definition of eligible impacted property.

<sup>5</sup> See *Residential Tenancy Act 1997*, s 61A



## PROPOSED NEW TERMINATION PROVISIONS FOR LANDLORDS INCLUDED IN THE PUBLIC EXPOSURE DRAFT BILL

In addition to the existing termination provisions, the following new termination provisions were proposed in the Public Exposure Draft Bill. It is noted that these proposed new termination provisions may change in response to public feedback before the Bill is introduced into the Assembly

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 tenancy	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 (If tenant doesn't vacate - application to ACAT under s 47)	Fixed or Periodic



agreements New clause 2.4		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 Commonwealth or ACT Government funding to	Where the tenant is assessed as <b>no longer eligible for supported accommodation</b> .	<b>26 weeks notice</b> (If tenant doesn't vacate - application to ACAT under s 47)	





<p>provide accommodation assistance or other health or welfare support programs.</p> <p>New schedule 2</p> <p>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>