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

RESIDENTIAL TENANCIES LEGISLATION AMENDMENT BILL 2016

EXPLANATORY STATEMENT

**Presented by
Simon Corbell MLA
Attorney-General**

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INTRODUCTION

This Explanatory Statement relates to the Residential Tenancies Legislation Amendment Bill 2016 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The *Residential Tenancies Act 1997* (the Act) sets out the rules for residential tenancy in the ACT.

OVERVIEW OF THE AMENDMENT BILL

The purpose of this Bill is to give effect to a number of recommendations arising out of a review of the operation of the Act.

There are a number of amendments that are intended to make it easier for a tenant who is impacted by domestic violence to change their living arrangements if this is necessary. Specifically, a protected person will be able to apply to the ACT Administrative Tribunal (ACAT) for orders varying their tenancy arrangements in certain circumstances. The existing provisions in section 85 of the Act are expanded by the Bill so that a protected person need not have a final protection order in order to seek relief from ACAT. In addition, the new provisions will give ACAT the power to make an order terminating a residential tenancy agreement and, if appropriate, requiring the lessor to enter into a new agreement with the protected person. The new provisions ensure that the lessor's rights are explicitly considered by ACAT in making such an order. The ACAT is also provided with the power to determine the liabilities of the protected person or any other tenants under the existing residential tenancy agreement in relation to the bond paid under the agreement.

The Bill also clarifies that the significant hardship provisions in section 44 of the Act may be used to terminate a residential tenancy agreement where a protected person is living on the premises with the respondent to the protection order.

Where a protected person remains in the rental premises, they may need to take practical measures to secure the property by changing the locks. The standard residential tenancy terms provide that the lessor or tenant may change locks in an emergency without the consent of the other party but the terms do not specifically refer to breakdowns in relationships between tenants or domestic violence and personal protection orders. The Bill includes a new provision in the standard residential tenancy terms so that a tenant or person residing at the residence who is a protected person under an interim or final order may change the locks. A copy of the key to the changed lock must be provided to the lessor or their agent as soon as possible.

The Bill makes a number of refinements to the provisions of the Act relating to condition reports. Currently, the Act only requires a condition report at the point at which a tenant takes possession of the premises. A condition report is evidence of the condition of the premises at the time the tenant took possession but there is no explicit linkage with a condition report at the end of the tenancy. In order to help in managing end of tenancy disputes about the condition of the premises, the Bill amends the Act to include provisions to complement the requirement for an ‘entry’ condition report with an ‘exit’ condition report. The Bill also modifies the mechanism for releasing the bond money to allow an early opportunity for the resolution of any dispute before an application is made for release of the bond. The amendments include a new provision that puts a positive obligation on the lessor to provide to the tenant an application for payment of the bond money out of the trust account within 3 working days after the termination of the residential tenancy. If the lessor wishes to make a deduction from the bond, the lessor must include in the form the reason for the deduction. The intention of this provision is to give lessors and tenants a better opportunity to negotiate any claim on the bond by the lessor, particularly when operating in combination with new requirement for an end of tenancy condition report.

The Bill amends the Act to explicitly include as an item that the lessor may deduct from the bond the reasonable costs of re-securing a property where a tenant has failed to return keys to the lessor at the conclusion of the tenancy.

The Bill includes a new optional ‘break lease’ term that a lessor and tenant may agree to include in the residential tenancy agreement. This term will specify the amount that the tenant must pay if they terminate a fixed term lease early and will provide greater certainty for both tenants and lessors. If the residential tenancy agreement contains a ‘break lease’ term, the lessor will not be eligible to apply to ACAT for compensation under section 84 in the event of early termination by the tenant.

The Bill also makes some amendments to the *Uncollected Goods Act 1995* aimed at clarifying uncertainty about the application of the Uncollected Goods Act to the storage and disposal of possessions left on premises at the end of a tenancy. There are a couple of scenarios under which goods may be left on rental premises by the tenant at the end of a residential tenancy agreement: (i) the tenant has agreed with the relevant person (lessor/agent) that they will collect the goods at a later date; or (ii) the tenant has left the goods with no indication of when they will be collected. The amendments to the Uncollected Goods Act clarifies that it applies to goods that are ‘held’ as well as goods that are received.

The Bill also amends the Uncollected Goods Act to ensure that where the goods left on the premises at the end of a tenancy are personal documents (eg passports, birth certificates and the like) they are dealt with appropriately. The Uncollected Goods Act currently provides that goods of this type may be disposed of by public auction after 3 months. The amendments will require personal documents to be disposed of only by returning them to the authority that issued the documents or, if that is not practicable, in a lawful manner that does not result in personal information about the owner of the document becoming publicly available.

In addition, the Bill gives the lessor a right of access to the leased residential premises if the lessor reasonably believes that the premises have been abandoned.

The Bill makes amendments to ensure that tenants are more informed about the potential energy consumption costs by adding a provision so that if residential premises do not have an existing energy efficiency rating, then this fact must be included in any advertising for the lease of those premises. This new provision will complement the existing requirement that if there is an existing energy efficiency rating for residential premises, then this must be contained in any advertisement for the lease of the premises.

Further amendments made by the Bill will require all leased residential properties to have smoke alarms installed in accordance with the building code. The Bill includes transitional arrangements the effect of which are that all leased residential premises should have smoke alarms installed by the end of 12 months after the amendments commence. There is a corresponding obligation for the tenant to change the battery in the smoke alarm.

HUMAN RIGHTS IMPLICATIONS

The proposed amendments give effect to recommendations made in the review of the *Residential Tenancies Act 1997*. The amendments in the Bill engage with the Human Rights Act in a number of respects.

Recognition and equality before the law

The Bill supports section 8 (Recognition and equality before the law) of the *Human Rights Act 2004*.

The Residential Tenancies Act does not distinguish between public and private tenancy arrangements. The recent review of the Act considered whether this should change. In particular, JACS considered legislative approaches taken in other jurisdictions, such as the *Residential Tenancies Act 2010* (NSW) (the NSW Act), which contains separate provisions for the regulation of social housing tenancies. Part 7 of the NSW Act regulates social housing tenancies. Matters addressed in part 7 include acceptable behaviour agreements for tenants, eligibility assessments, termination notices and neighbourhood impact statements.

Following consideration of written submissions and consultation with Housing and Community Services ACT (Community Services Directorate), it was concluded that the Residential Tenancies Act should not be amended to provide for differential treatment of public housing tenants. The policy position is to continue to regulate public tenancies in the same way as private tenancies, giving social housing tenants a mainstream tenancy experience. Separate regulation of social housing tenants was considered to be discriminatory. It was considered to be inappropriate to include specific provision for regulating behaviour by social housing tenants, when behaviour issues may be of concern in private and public tenancies alike.

Social housing matters, including housing assistance programs, are addressed specifically in the *Housing Assistance Act 2007*.

The amendments proposed by this Bill were developed in consultation with Housing and Community Services ACT. Consideration was given to their impact on both public and private tenancy arrangements.

The Commissioner for Housing ACT and Housing and Community Services ACT are public authorities for the purposes of section 40 of the Human Rights Act. The Bill does not propose any limitations to the obligations of the Commissioner or Housing and Community Services to act consistently with human rights under section 40B of the Human Rights Act.

Protection of the family and children

The proposed Bill supports section 11 (Protection of the family and children) of the Human Rights Act by providing protections and certainty of legal tenure for people experiencing family and personal violence. As noted above, the Bill provides mechanisms for creating and terminating tenancy arrangements to assist a protected person. The Bill also includes a new provision in the standard residential tenancy terms so that a tenant or person residing at the residence who is a protected person under an interim or final order may change the locks.

Many studies have shown that domestic violence can have a devastating impact on families and children.¹ The proposed amendments have been made with the explicit purpose of protecting vulnerable people from violence, including families and children.

Freedom of movement

Section 13 of the Human Rights Act states that –

Everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

The nature of the right affected

The right to freedom of movement recognises that a person’s ability to move freely and choose a place of residence is an indispensable condition for their free development. This means that people are entitled to move from one place to another, and to establish themselves in a place of their choice. This right must be observed by public authorities that have the power to affect a person’s movement, including by preventing their free movement or restricting their access to all or certain parts of the ACT. In addition, the right to freedom of movement requires the Government to ensure a person’s movement or choice of residence in the ACT is not restricted by public or private interference.

However, the right to freedom of movement is not absolute and may necessarily be restricted by limits that are reasonable and justifiable in a free and democratic society. The right to freedom of movement is based on Article 12 of the International Covenant on Civil and Political Rights, which recognises that the right may be subject only to restrictions that are provided by law and are necessary to protect, among other things, public order and the rights and freedoms of others.²

Importance of the purpose of the limitation

Clause 24 of the Bill allows a protected person under an interim or final domestic violence or personal protection order to apply to the ACT Civil and Administrative Tribunal (ACAT) for an order to vary their living arrangements. Specifically, the limitation allows the ACAT to make orders terminating an existing residential tenancy (which may include the respondent) and requiring a lessor to enter into a residential tenancy agreement with the protected person and anyone else mentioned in the application.

However, this limitation is only proposed in circumstances where a court order has been made excluding the person from the premises, or the respondent to the order has given an undertaking to the court to leave the premises.

¹ Domestic Violence Prevention Centre Gold Coast Inc., “Impact of domestic violence on children and young people”, <http://www.domesticviolence.com.au/pages/impact-of-domestic-violence-children-and-young-people.php>

² UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.9&Lang=en [accessed 20 May 2016].

These amendments may potentially limit a respondent's right to freedom of movement by excluding them from a valid residential tenancy agreement, thereby restricting their ability 'to reside in a place of one's choice.'³ This limitation is designed to ensure the enjoyment of rights and freedoms of others, in particular the protected person's right to security of the person under section 18 of the Human Rights Act.

The limitation also ensures that a protected person does not suffer undue hardship, including financial difficulty or loss of accommodation, by reason of having sought a protection order against a respondent.

Nature and extent of the limitation

Where human rights are limited by law, it is necessary in a free and democratic society for reasonable limitations to be accompanied by adequate and effective safeguards that protect against arbitrary interferences with the right to freedom of movement.

First, termination of a respondent's tenancy agreement is subject to robust judicial and administrative oversight as it requires consideration by the ACAT and may only occur after the grant of a personal protection order or domestic violence protection order by an ACT Court. Second, to make an order to terminate an existing tenancy, ACAT must be satisfied that is reasonable to make the order:

- a) in light of the length of the protection order and time remaining on the term of the existing tenancy agreement; and
- b) in light of the interests of any other tenants (albeit, not including the respondent).

The Bill ensures that a respondent is given the opportunity to oppose an application to terminate a residential tenancy to which they are a party. New section 85A(3)(c) requires that the respondent is made a party to the application and thereby has an opportunity to oppose it and flag any undue hardship they may suffer if the residential tenancy is terminated by the ACAT.

Relationship between the limitation and its purpose

The limitation represents a proportionate measure to prevent personal or domestic violence being perpetrated against a protected person by ensuring that a respondent abides by an undertaking to leave the premises or an applicable exclusion clause.

The limitation may only be engaged if a competent court finds that the respondent has engaged in domestic violence or the respondent has engaged in personal violence and may do so again if the order is not made.

Allowing the ACAT to order the termination of a residential tenancy to which both the protected person and relevant respondent are party advances the security of the protected person and ensures they do not suffer financial hardship or loss of accommodation as a result of domestic or personal violence against them.

³ Ibid.

Given these serious safety concerns and ACAT's general discretion to consider the consequences of termination on a respondent, this limitation is justifiable and proportionate.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

Given the level of judicial and administrative scrutiny before the ACAT may make a termination order against a respondent and the absence of viable alternatives to address serious safety concerns for a protected person, any limitation on the right to freedom of movement is justifiable and proportionate to this purpose.

The proposed amendments in clause 24 of the Bill also engage section 12(a) of the Human Rights Act (see below). For the same reasons (above) as the limitation on section 13 of the Human Rights Act is justified, the limitation on the right in section 12 (a) is also justified.

Privacy and reputation

Section 12(a) of the Human Rights Act states that –

Everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The nature of the right affected

Section 12 of the Human Rights Act gives effect to article 17 of the ICCPR and protects individuals from unlawful and arbitrary interference with privacy relating to their family, home or correspondence. An interference that is lawful may still be arbitrary if it is unreasonable or unjustified in all the circumstances of the case.

The proposed amendments to the Uncollected Goods Act support section 12 by recognising that goods left on residential premises may include personal documents such as passports or birth certificates. The Bill amends the Uncollected Goods Act to include an appropriate process for disposing of these documents in a lawful manner that protects the personal privacy of the owner of the document so that the document owner's personal information does not become publicly available.

The rights in section 12 of the Human Rights Act are also engaged by the amendment in clause 20 of the Bill. Clause 20 inserts proposed new section 61A which provides that a lessor may enter premises during the residential tenancy agreement where the lessor believes on reasonable grounds that the premises have been abandoned by the tenant. The expression 'arbitrary interference' in article 17 of the ICCPR extends to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.⁴

⁴ UN Human Rights Committee (HRC), *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, available at: <http://www.refworld.org/docid/453883f922.html> [accessed 31 May 2016]

Importance of the purpose of the limitation

New section 61A is complementary to section 36 (e) and sections 62 and 63 of the Act. Section 36 (e) provides that a residential tenancy agreement may be terminated if the tenant abandons the premises that are the subject of the agreement. Sections 62 and 63 provide that if a tenant abandons premises the lessor may apply to the ACAT for compensation for the loss of rent. Providing lessors with a right to access a property they reasonably believe to be abandoned, without a warrant, will assist lessors to quickly identify whether and when premises have been abandoned and help to mitigate any losses as required by section 38 of the Act. This in turn will reduce the potential liability of a tenant to pay compensation under sections 62 and 63.

Nature and extent of the limitation

The ability of the lessor to enter the premises is limited by the terms of section 61A (1).

Before entering the premises the lessor:

- (i) must have taken all reasonable steps to contact the tenant (this would include such steps as writing to the tenant at the address given by the tenant for the service of notices, and also contacting the tenant by any email, telephone number or other contact details known to the lessor); and
- (ii) must believe on reasonable grounds that the premises have been abandoned (for example, the lessor has had no response from any of attempts to contact the tenant and has observed that there is a broken window at the premises with shattered glass lying around).

The provision only authorises the lessor to enter the premises to confirm whether they have been abandoned. It does not authorise the lessor to take any further steps that are not otherwise authorised by the Act. In addition, section 61A(3) provides that the lessor may only enter the premises at a reasonable time. The lessor must not enter the premises on Sunday, on a public holiday, before 8am or after 6pm. This provision is proposed with the intention of minimising inconvenience to the tenant in the event that the premises have not been abandoned.

Relationship between the limitation and its purpose

The limitation in new section 61A represents a proportionate measure to help lessors mitigate loss and to minimise the potential compensation liability of tenants who abandon premises by ensuring that the right may only be exercised in circumstances where there is a clear indication that the premises have in fact been abandoned.

This provision is similar to existing provisions in the New South Wales *Residential Tenancies Act 2010*.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

The lessor has no clear avenue under the Act for obtaining authority to enter the premises in the circumstances of abandonment. While the ACAT has a general power to make ‘any other order’ that it considers to be necessary or convenient (*ACT Civil and Administrative Tribunal Act 2008*, section 56), this power is dependent on there being a ‘matter that may be the subject of an application to the ACAT’ in order for ACAT to have this jurisdiction.

FINANCIAL IMPLICATIONS

The Bill has no financial implications.

CLAUSE NOTES

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act (if passed) as the *Residential Tenancies Legislation Amendment Act 2016*.

Clause 2 Commencement

Clause 2 provides a split commencement for the Act. The provisions of the Act relating to family violence orders and personal protection orders will commence on the later of the commencement of the *Family Violence Act 2016*, section 6 and the commencement of section 3 of the Act. Other provisions will commence on a day to notified by the Minister or, if no day is notified, 1 year after notification of the Act.

Clause 3 Legislation amended

This clause provides that the legislation amended is the *Residential Tenancies Act 1997* and the *Uncollected Goods Act 1996*.

Part 2 Residential Tenancies Act 1997

Clause 4 Standard residential tenancy terms New section 8 (1) (ba)

Clause 4 inserts new section 8 (1) (ba) so a fixed term agreement may include an optional 'break lease' clause if both the lessor and tenant agree to its inclusion.

Clause 5 Section 8 (2)

Clause 5 inserts a new *break lease clause* and substitutes a *fair clause for posted people*. These are both optional clauses that may be included in a tenancy agreement if both the lessor and the tenant agree.

The break lease clause is a new clause that specifies the break fee that a tenant must pay if the tenant ends a fixed term agreement early (other than for a reason already permitted under the Act). The purpose of the provision is to limit the amount of compensation that may be payable by the tenant to the lessor in these circumstances.

The change in the fair clause for posted people is to increase the period of required notice from 4 weeks to 8 weeks and to include a requirement that the notice be accompanied by evidence of the fact that the relevant person has been posted either to, or away from, Canberra in the course of their employment.

Clause 6 Energy efficiency rating—advertising
Section 11A (1) (b), except penalty

Section 11A of the Act currently requires a person to publish information about the energy efficiency rating (EER) of residential premises when advertising those premises for rent. The existing provision only requires publication of this information where an EER statement is available. This amendment will insert an additional requirement so that if there is no EER statement for the premises then this must also be stated in the advertisement.

Clause 7 New section 11B

This clause inserts a new requirement for a lessor to ensure that residential premises have smoke alarms installed in compliance with the building code. The new requirement only applies where a residential tenancy agreement is entered after the provision commences. Existing tenancies where the residential tenancy agreement is ongoing will have a further year to comply with the requirement under the transitional provisions in part 13.

Clause 8 Successive residential tenancy agreements
Section 22

This clause makes an amendment consequential to the amendments made by clauses 10, 14 and 15.

Clause 9 Section 29 heading

This clause makes an amendment consequential to the amendments made by clauses 10, 14 and 15.

Clause 10 New section 30A

This clause inserts a new provision requiring a final inspection and condition report to be completed at the end of a residential tenancy agreement. New section 30A requires the end of tenancy inspection and condition report to be completed by the lessor and tenant jointly as the intention of this amendment is to assist in managing end of tenancy disputes about the condition of the premises. An end of tenancy condition report may still be completed in the absence of the other party provided the other party has been given reasonable opportunity to be present. A tenant would not be penalised for signing the condition report, other than in respect of not having an input into what is included in the evidence about the condition of the report. If the parties cannot agree on the condition report, then there will be provision on the form for each party to make their own observations about the condition of the premises.

Clause 11 Deductions from bond
Section 31 (a)

This clause clarifies that the lessor is only able to recover from the bond the *reasonable* cost of repairs to the premises as a result of damage caused by the tenant.

Clause 12 New section 31 (aa)

This clause inserts a new provision to explicitly provide that a lessor is entitled to deduct from the bond the reasonable costs of securing the premises if the tenant fails to return the keys.

Clause 13 Section 31 (c)

This clause clarifies that the lessor is only able to recover from the bond the *reasonable* cost of replacing any fuel (such as gas, oil or wood) supplied to the premises by the lessor at the commencement or during the course of the tenancy.

Clause 14 Sections 32 to 34

This clause substitutes a new process for applying for release of the bond for a residential tenancy agreement.

New section 32 defines a *bond release application* for the purposes of the division.

New section 33 sets out the provisions under which the tenant and lessor may make a bond release application. The particular provision under which the application may be made will vary according to whether the application is made by the tenant and lessor jointly or by either party separately.

New section 34 places a positive obligation on the lessor to give the tenant a signed bond release application form within 3 working days after the termination of the residential tenancy. If the lessor wishes to make a deduction from the bond, the lessor must include in the form the reason for the deduction.

New section 34A sets out the process for the bond if the lessor and the tenant make a joint application for release of the bond. If both the lessor and tenant have agreed on the bond refund arrangements and signed the bond release application then either party may give the application to the Territory and the bond will be paid out in accordance with the application.

New section 34B sets out the process for the tenant to apply for release of the bond if the parties have not all signed the application (eg because they have not been able to reach an agreement on the release arrangement). This may be because the lessor has either not provided the bond release application, or the lessor and tenant are not able to agree on deductions from the bond, or, if there is more than one tenant, not all tenants have signed the form. On receiving such an application, the Territory is required to give notice of the application to the other parties. The purpose of the notice is to give those parties the opportunity to dispute the application. If there is no dispute then the bond may be paid out in accordance with the application. If a dispute is notified to the Territory then the application must be decided by the ACAT under section 35 of the Act.

New section 34C sets out the process for the lessor to apply for release of the bond if either the tenant has not signed the application or the lessor has not been able to give the application to the tenant. On receiving such an application, the Territory is required to give notice of the application to the other parties. The purpose of the notice is to give those parties the opportunity to dispute the application. If there is no dispute then the bond may be paid out in accordance with the application. If a dispute is notified to the Territory then the application must be decided by the ACAT under section 35 of the Act.

New section 34D sets out the process for applying for release of a bond before the end of the tenancy agreement. This may only be done in limited circumstances. The provision is to the same effect as current section 32(3) of the Act.

New section 34E provides that the Territory must pay out a bond in accordance with the terms of an order of the ACAT.

Clause 15 Disputes about all or part of bond
Section 35 (1) (a)

This clause makes a consequential amendment to the dispute resolution process as a consequence of the revised procedure in sections 32-34E.

Clause 16 Termination
New section 36 (n)

This clause inserts a new provision in section 36 to clarify that termination of a residential tenancy agreement under a fair clause for posted people provision is a permitted circumstance for termination of an agreement under the Act.

Clause 17 New section 36 (2)

This clause is complementary to clause 16 and defines *fair clause for posted people* for the purposes of the section.

Clause 18 Entry for eviction purposes
New section 37 (6)

This clause inserts a new section 37 (6) as a consequence of the inclusion of new section 61A by clause 20.

Clause 19 Significant hardship
Section 44 (1), new example

This clause inserts a new example into section 44 (1). The effect of section 44 (1) is that a tenant may apply to ACAT for an order terminating a fixed term residential tenancy agreement on the ground that the tenant would suffer significant hardship if the agreement were to continue. The new example makes it clear that an interim order under the *Family Violence Act 2016* that prohibits one of the tenants from being on the premises with the other tenant would be a situation of significant hardship that would fall under this provision. The significant hardship provisions are an additional option for a tenant affected by an interim order – such a tenant may also wish to consider making an application for an order under new division 6.5A (inserted by clause 22).

Clause 20 New section 61A

This clause inserts new section 61A to provide that a lessor may enter premises during a residential tenancy agreement in circumstances where the lessor believes that the premises have been abandoned. Before entering premises under this section, the lessor must have taken all reasonable steps to contact the tenant, and in addition, the lessor must have

reasonable grounds to believe that the premises have been abandoned by the tenant. The section provides an example of how a lessor might take all reasonable steps to contact the tenant and arrive at such a belief. The lessor must not enter the premises on Sunday, on a public holiday, before 8am or after 6pm.

Clause 21 Section 84(1)(b)

This clause substitutes section 84(1)(b). Section 84 applies in circumstances where a tenant provides a lessor with a notice to vacate before the end of a fixed term agreement, and allows a lessor to apply to ACAT for compensation. This clause provides that a lessor may only apply to ACAT for compensation if the agreement does not include a break lease clause.

Clause 22 New section 84(5)

This clause makes a consequential amendment to the amendment made in clause 21. This clause refers to the definition of ‘break lease clause’ in section 8(2).

Clause 23 New division 6.5A heading

This clause inserts a new division heading for the amendments inserted by clause 22.

Clause 24 Section 85

This clause substitutes a new division 6.5A (Powers and decisions of ACAT—protection orders) for existing section 85. The purpose of the new division is to make it easier for a person to modify their rental arrangements where this is necessary because of a protection order. The new provisions expand on, and replace, current section 85 of the Act.

New section 85 sets out definitions for the division.

New section 85A provides that a protected person under a protection order may apply to ACAT for an order to terminate an existing residential tenancy agreement or an order to terminate an existing agreement and requiring the lessor to enter into a new agreement with the protected person. This provision is broader than current section 85 in that the new provision (i) broadens the application of the provision to an interim order as well as final orders; (ii) broadens the criteria for the exclusion aspect of the order so that it is clear that the protection order does not have to contain an ‘exclusion condition’ as such, but can contain a condition prohibiting the respondent from being with a particular distance from the protected person; and (iii) allows the protected person to apply for a termination order either separately, or in combination with an order requiring the lessor to enter into a new agreement with the protected person.

New section 85B sets out the matters that must be considered by the ACAT in deciding whether to grant an order under section 85A. This provision makes it clear that the ACAT must consider the interests of all of the relevant parties in deciding an application. The ACAT is also explicitly empowered to determine the liabilities of the respondent, the protected person and any other tenants in relation to the bond paid under the agreement.

Clause 25 New part 13

This clause inserts transitional provisions in the Act.

New section 144 contains definitions for the part.

New section 145 provides a transitional period of up to 12 months for premises that are under an existing lease at the time new section 11B (Smoke alarms) commences to have smoke alarms installed as new section 11B only requires the lessor to ensure that smoke alarms are installed before entering into a residential tenancy agreement.

New section 146 places a corresponding obligation on the tenant to replace the batteries in a smoke alarm as necessary.

New section 147 provides for the expiry of the transitional provisions.

**Clause 26 Standard residential tenancy terms
 Schedule 1, new clause 23A**

New clause 23A in the standard residential tenancy terms is a complementary provision to new section 30A and sets out the requirement for the lessor and tenant to undertake a joint final inspection of the premises and prepare a condition report at the end of the tenancy.

Clause 27 Schedule 1, new clause 53A

New clause 53A in the standard residential tenancy terms is a complementary provision to new section 11A and requires the lessor to install and maintain smoke alarms.

Clause 28 Schedule 1, clause 54 (5)

New clause 54 (5) in the standard residential tenancy terms allows a tenant who is a protected person to change the locks on the premises without the agreement of the other party. New clause 54 (6) is a complementary provision that requires the tenant to give a copy of the key to the changed lock to the lessor (unless this would compromise the safety of the protected person).

Clause 29 Schedule 1, new clause 63A

New clause 63A in the standard residential tenancy terms is complementary to new section 11A and places an obligation on the tenant to replace the battery in a smoke alarm whenever necessary.

Clause 30 Dictionary, note 2

This clause inserts a new note in the dictionary that notes that *building code* and *working day* are defined terms in the *Legislation Act 2001*.

Clause 31 Dictionary, new definitions

This clause inserts new definitions in the dictionary.

Part 3 Uncollected Goods Act 1996

Clauses 32 to 34

These clauses amend the Uncollected Goods Act so that it is clear that the Act applies to goods that are ‘received’ as well as goods that are simply left – eg left on premises at the end of a residential tenancy agreement.

Clause 35 Section 21

This provision amends the Uncollected Goods Act so that uncollected goods that are personal effects must be disposed of in a way that does not compromise the privacy of the person who the personal effects relate to.

Clause 36 Dictionary, definition of *personal effects*

This clause omits the definition of personal effects in the dictionary as this term is now defined in section 21.