

2019

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Residential Tenancies Amendment Bill 2019

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Standard residential tenancy terms Section 8 (1) (a)	2
5 New section 8 (1A) and (1B)	3
6 Disputes about all or part of bond New section 35 (2A)	3
7 Termination New section 36 (1) (ba)	3
8 New sections 46A and 46B	4

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Contents

	Page	
9	Certain breaches of standard residential tenancy terms New section 48 (3) and (4)	6
10	Failure to pay rent—payment order Section 49A (2) and (3)	6
11	Abandonment during periodic agreement Section 63 (2)	7
12	Meaning of <i>tenancy dispute</i> New section 72 (2) (aa)	7
13	Orders by ACAT New section 83 (l)	7
14	New section 83 (2)	7
15	Notice of intention to vacate—award of compensation New section 84 (4A)	8
16	Applications under s 85A—ACAT orders Section 85B (2) (b)	8
17	Section 85B (2) (c) (i)	8
18	New section 85B (6)	9
19	Regulation-making power New section 136 (2) (d), (3) and (4)	9
20	Standard residential tenancy terms Schedule 1, clause 28	10
21	Schedule 1, clause 60 (j)	10
22	Schedule 1, clause 70 (a)	10
23	Schedule 1, clause 81	11
24	Schedule 1, clause 96 (1) (a) to (c)	11
25	Dictionary, new definition of <i>periodic agreement</i>	12

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(As presented)

(Attorney-General)

Residential Tenancies Amendment Bill 2019

A Bill for

An Act to amend the *Residential Tenancies Act 1997*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Residential Tenancies Amendment Act 2019*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written notice.

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

7 *Note 2* A single day or time may be fixed, or different days or times may be
8 fixed, for the commencement of different provisions (see [Legislation Act](#),
9 s 77 (1)).

10 *Note 3* If a provision has not commenced within 6 months beginning on the
11 notification day, it automatically commences on the first day after that
12 period (see [Legislation Act](#), s 79).

13 **3 Legislation amended**

14 This Act amends the *Residential Tenancies Act 1997*.

15 **4 Standard residential tenancy terms**
16 **Section 8 (1) (a)**

17 *substitute*

18 (a) is taken to contain the standard residential tenancy terms
19 mentioned in schedule 1—

20 (i) for a fixed term agreement—as in force on the day the
21 parties enter the agreement; or

22 (ii) for a periodic agreement—as in force from time to time;
23 and

1 **5 New section 8 (1A) and (1B)**

2 *insert*

3 (1A) Despite subsection (1) (a) (i), an amendment of this Act (other than
4 schedule 1) that affects the operation of schedule 1 applies to a fixed
5 term agreement.

6 (1B) To remove any doubt, subsection (1) (a) (ii) applies to a periodic
7 agreement that commences on expiry of a fixed term agreement, on
8 the day the periodic agreement commences.

9 **6 Disputes about all or part of bond**
10 **New section 35 (2A)**

11 *insert*

12 (2A) The referral of the application and notice of dispute is taken to be an
13 application to the ACAT about a tenancy dispute.

14 **7 Termination**
15 **New section 36 (1) (ba)**

16 *insert*

17 (ba) if a tenant terminates an agreement under section 46A because
18 the tenant has accepted aged care or social housing
19 accommodation;

1 **8 New sections 46A and 46B**

2 *in division 4.3, insert*

3 **46A Termination of agreement for aged care or social housing**
4 **needs**

5 (1) This section applies if a tenant under a residential tenancy agreement
6 accepts accommodation in—

7 (a) a residential aged care facility; or

8 (b) a social housing dwelling.

9 (2) The tenant may, by written notice to the lessor, terminate the
10 agreement.

11 (3) The tenant must give the lessor at least 14 days notice of the
12 termination.

13 (4) The tenancy ends on the date stated in the notice.

14 *Note* The tenant is not liable to pay compensation for the early termination of
15 the agreement (see s 84 (4A)).

16 (5) In this section:

17 ***registered community housing provider***—see the *Community*
18 *Housing Providers National Law (ACT)*, section 4 (1).

19 *Note* The *Community Housing Providers National Law (ACT) Act 2013*, s 7
20 applies the Community Housing Providers National Law set out in the
21 *Community Housing Providers (Adoption of National Law) Act 2012*
22 (NSW), appendix as if it were an ACT law called the
23 *Community Housing Providers National Law (ACT)*.

1 **residential aged care facility** means a residential facility that provides
2 residential care within the meaning of the *Aged Care Act 1997*
3 (Cwlth), section 41-3 (Meaning of *residential care*) to residents at the
4 facility.

5 **social housing dwelling** means—

- 6 (a) premises managed by the housing commissioner; or
7 (b) premises provided by a registered community housing provider.

8 **46B Termination of fixed term agreements if premises for sale**

9 (1) This section applies in relation to a tenant of premises that are the
10 subject of a fixed term agreement, if the lessor offers the premises for
11 sale and—

12 (a) the sale offer is made within 6 months after the start of the
13 agreement and the lessor did not disclose the intended sale
14 before entering into the agreement; or

15 (b) the lessor requires the tenant to permit access to the premises to
16 allow inspections by a prospective buyer (a **buyer inspection**
17 **request**) and—

18 (i) the lessor makes more than 1 buyer inspection request; and

19 (ii) a subsequent buyer inspection request is made more than
20 8 weeks after the day the lessor made the first buyer
21 inspection request.

22 (2) The tenant may, by written notice to the lessor, terminate the
23 agreement.

24 (3) The tenant must give the lessor at least 14 days notice of the
25 termination.

26 (4) The tenancy ends on the date stated in the notice.

27 *Note* The tenant is not liable to pay compensation for the early termination of
28 the agreement (see s 84 (4A)).

1 **9 Certain breaches of standard residential tenancy terms**
2 **New section 48 (3) and (4)**

3 *insert*

4 (3) For subsection (1) (a) (i), if the application is about the use of
5 premises for an illegal purpose, the ACAT must also be satisfied
6 that—

7 (a) the tenant has used the premises, or permitted the premises to be
8 used, for an illegal purpose; and

9 (b) the illegal use justifies the termination of the tenancy.

10 (4) For subsection (3), the matters the ACAT may consider include the
11 following:

12 (a) the nature of the illegal use;

13 (b) any previous illegal use;

14 (c) the previous history of the tenancy.

15 **10 Failure to pay rent—payment order**
16 **Section 49A (2) and (3)**

17 *substitute*

18 (2) Instead of making a termination and possession order, the ACAT may
19 make an order (a *payment order*) requiring the tenant to pay 1 or both
20 of the following:

21 (a) the rent, or a stated part of the rent, that has become payable;

22 (b) future rent as it becomes payable.

23 (3) The ACAT must not make a payment order unless satisfied—

24 (a) the tenant is reasonably likely to make the payments required
25 under the order; and

1 (b) if the payment order is an order mentioned in
2 subsection (2) (b)—

3 (i) the lessor has made more than 3 applications for a
4 termination and possession order under section 49 (2) in
5 the 12-month period immediately before the day the
6 ACAT makes the order; and

7 (ii) it is in the interests of justice to do so.

8 **11 Abandonment during periodic agreement**
9 **Section 63 (2)**

10 *omit*

11 **12 Meaning of *tenancy dispute***
12 **New section 72 (2) (aa)**

13 *insert*

14 (aa) a referral of an application and notice of dispute taken to be an
15 application about a tenancy dispute under section 35 (2A); and

16 **13 Orders by ACAT**
17 **New section 83 (l)**

18 *insert*

19 (l) any other order the ACAT considers appropriate including
20 declaratory orders in relation to a matter in this Act.

21 **14 New section 83 (2)**

22 *before note 1, insert*

23 (2) The ACAT may make an order under subsection (1) (k) only if
24 satisfied that the defect did not, and is not likely to, place the person
25 receiving the notice in a significantly worse position than the person
26 would have been in had the notice, or service of the notice, not been
27 defective.

- 1 **15 Notice of intention to vacate—award of compensation**
2 **New section 84 (4A)**
- 3 *insert*
- 4 (4A) No compensation may be awarded to the lessor if the agreement is
5 lawfully terminated under the following sections:
- 6 (a) section 46A (Termination of agreement for aged care or social
7 housing needs);
- 8 (b) section 46B (Termination of fixed term agreements if premises
9 for sale);
- 10 (c) section 64AA (Termination—affected residential premises);
- 11 (d) section 64AB (Termination—eligible impacted property).
- 12 **16 Applications under s 85A—ACAT orders**
13 **Section 85B (2) (b)**
- 14 *omit*
- 15 any other tenants (other than the respondent)
- 16 *substitute*
- 17 the protected person, the respondent and any other tenants,
- 18 **17 Section 85B (2) (c) (i)**
- 19 *omit*
- 20 or the protected person’s dependent children
- 21 *substitute*
- 22 , or the dependent children of the protected person or of any other
23 person mentioned in the application,

18 New section 85B (6)

insert

- (6) The ACAT may suspend the operation of an order for a stated period of up to 3 weeks if satisfied that—
- (a) the protected person would suffer significant hardship if the order were not suspended for the stated period; and
 - (b) the hardship would be greater than the hardship the lessor would suffer if the order were suspended for the stated period.

**19 Regulation-making power
New section 136 (2) (d), (3) and (4)**

insert

- (d) minimum standards for premises made available for occupation under a residential tenancy agreement, including in relation to the following matters:
- (i) physical accessibility;
 - (ii) energy efficiency;
 - (iii) safety and security;
 - (iv) sanitation;
 - (v) amenity.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

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

Note A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

1 (4) The [Legislation Act](#), section 47 (5) and (6) does not apply in relation
2 to a law or instrument applied, adopted or incorporated under
3 subsection (3).

4 *Note* A law or instrument applied, adopted or incorporated under s (3) does not
5 need to be notified under the [Legislation Act](#) because s 47 (5) and (6) do
6 not apply (see [Legislation Act](#), s 47 (7)).

7 **20 Standard residential tenancy terms**
8 **Schedule 1, clause 28**

9 *omit*

10 1 calendar month

11 *substitute*

12 2 weeks or a longer period nominated by the tenant

13 **21 Schedule 1, clause 60 (j)**

14 *after*

15 heating

16 *insert*

17 , cooling

18 **22 Schedule 1, clause 70 (a)**

19 *substitute*

20 (a) use the premises, or permit them to be used, for an illegal
21 purpose; or

22 *Note* The ACAT must not make a termination and possession
23 order for a breach of this term unless satisfied of certain
24 matters (see Residential Tenancies Act, s 48 (3) and (4)).

23 Schedule 1, clause 81

2 *substitute*

- 3 81 The tenant must permit reasonable access to the premises, on the
4 lessor giving 48 hours notice, to allow inspection of the premises
5 by prospective purchasers of the premises, but only if—
- 6 (a) the lessor intends to sell the premises; and
- 7 (b) the lessor has previously notified the tenant in writing of
8 the lessor's intention to sell.
- 9 81A (1) The tenant must not unreasonably refuse an inspection of the
10 premises by a prospective purchaser.
- 11 (2) However, a tenant is not required to agree to more than 2
12 inspections a week.
- 13 (3) The inspection must take place at a time agreed between the
14 parties with reasonable regard to the work and other
15 commitments both of the tenant and of the lessor (or their
16 agents).
- 17 (4) If the parties are unable to agree on an appropriate time, the
18 lessor or the tenant may apply to the tribunal for an order
19 permitting access at a stated time.

24 Schedule 1, clause 96 (1) (a) to (c)

21 *omit*

22 4 weeks

23 *substitute*

24 8 weeks

- 1 **25 Dictionary, new definition of *periodic agreement***
- 2 *insert*
- 3 *periodic agreement* means a residential tenancy agreement that is not
- 4 a fixed term agreement.
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Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 26 September 2019.
- 2 **Notification**
Notified under the [Legislation Act](#) on 2019.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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