

2019

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Residential Tenancy Amendment Bill 2018 (No 2)
Amendments to be moved by Caroline Le Couteur MLA**

SUPPLEMENTARY EXPLANTORY STATEMENT

**Circulated by
Caroline Le Couteur MLA**

This supplementary explanatory statement relates to the amendments to the Residential Tenancies Amendment Bill 2018 (No 2) (the Bill) by Caroline Le Couteur as presented to the Legislative Assembly. It has been prepared in order to assist the reader's understanding of amendments and to help inform debate on them. It does not form part of the amendments to the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the amendments. It is not, and is not meant to be, a comprehensive description of the amendments.

Purpose of the amendments

The amendments will strengthen two parts of the Bill:

- Expand the definition of a minor modification to a rental dwelling and amend the Bill so that lessor consent is not required for minor modifications; and
- Require that any advertisement for the lease of a residential property include notice of any conditions regarding the keeping of animals that have been endorsed by the ACT Civil and Administrative Tribunal (ACAT).

The amendments also amend the *Residential Tenancies Act 1997* (RTA) to:

- Require that any advertisement for the lease of a residential property include notice of lease term that is inconsistent with a standard residential tenancy agreement that has been endorsed by the ACAT;
- Establish a process for the development and enforcement of minimum housing standards for rental properties;
- Remove the standard lease terms relating to the termination of tenancy without cause and provide additional grounds for lessors to terminate a tenancy;
- Increase the time limit for tenants to move out of a rental property where it is being sold from eight to twelve weeks;
- Require lessors to provide tenants with a statutory declaration stating the reason they are terminating the tenancy if their grounds are that a family member will be moving into the property, they are conducting major renovations, or if the house is being sold; and
- Require lessors to allow tenants to pay their rent directly into a bank account nominated by the lessor.

Human rights implications

The proposed new section 11AA, which requires that any advertisement for the lease of a residential property include notice of either of:

- a term that is inconsistent with a standard residential tenancy agreement that has been endorsed by the ACT Civil and Administrative Tribunal (ACAT); or
- a term requiring the lessor's consent to keep an animal at the property, and any conditions regarding the keeping of animals at that property that have been endorsed by the ACAT.

This amendment, which will require lessors to provide additional information to prospective tenants, may limit their right to freedom of expression protected by section 16 of the *Human Rights Act 2004* (HRA). Section 28 of the HRA, however, allows for human rights to be limited if that limit is reasonable. The proposed new section 11AA will have a very minor impact on lessors' freedom of expression. Balanced against this, it will provide additional information to prospective tenants that will assist their decision making regarding whether to inspect or apply for a particular rental property.

Details of amendments

Clause 1

Proposed new clause 4A: new section 11AA

This clause requires that certain special conditions must be advertised, being either of:

- a term that is inconsistent with a standard residential tenancy agreement that has been endorsed by the ACAT;
- a term requiring the lessor's consent to keep an animal at the property, and any conditions regarding the keeping of animals at that property that have been endorsed by the ACAT.

This proposed new section will provide prospective tenants with information that will assist their decision making regarding whether to inspect or apply for a particular rental property. It responds to the proposed new section 71AE(4)(b) in the Bill, which allows the lessor to obtain prior approval from the ACAT to impose a condition on the consent of keeping an animal in a particular dwelling.

Proposed new clause 4B: new section 12(3)(ca)

As well as the information that lessors are currently required to provide to tenants prior to entering into a residential tenancy agreement, that are detailed in section 12 of the RTA, this amendment requires that a lessor provide information about minimum standards created by these amendments (see item 3 below). Specifically it requires the lessor to provide the tenant with information that explains:

- The minimum housing standards;
- The processes that are open to a tenant to pursue action should the tenant believe that the house does not meet a minimum standard; and
- If the premises that are being leased has an exemption from any of the minimum standards, along with a copy of that exemption.

Proposed new clause 4C: New part 3A

Part 3A includes proposed new sections 35A to 35N, and relates to minimum housing standards for rental properties. These sections create a framework for the development and enforcement of minimum housing standards in rental properties. These can relate to, but are not limited to:

- The provision and maintenance of locks and other security devices;
- Construction, condition and safety of premises;
- Sanitation and plumbing;
- Supply of hot and cold water;
- Ventilation and protection from damp;
- Heating;
- Laundry and cooking facilities;
- Electrical safety;
- Lighting;
- Hard-wired smoke detectors.

The amendments provide that these standards, once developed, will be published as notifiable instruments by the Minister.

Proposed new section 35A

This section defines the key terms used for the new Part 3A, *rectification notice* and *rectification work*.

- *Rectification notice* is the formal notification that a tenant gives to a landlord under section 35E that informs the landlord that the tenant does not believe the premises meet the minimum housing standards and requiring the landlord to undertake rectification work so that the minimum housing standards are met.
- *Rectification work* means work required to comply with the minimum housing standards.

Proposed new section 35B and 35C

These sections provide that minimum housing standards must be determined by the minister, the matters that minimum housing standards must relate to, and that a determination of minimum housing standards is a disallowable instrument.

Proposed new section 35D

This provision requires the Minister to undertake public consultation before determining a minimum housing standard. The provision also sets out the process a process for that consultation.

Proposed new section 35E

This section requires lessors to meet any minimum housing standards determined by the Minister.

Proposed new section 35F

This section provides for tenants to give written notice to a lessor that requires the lessor to ensure that the premises comply with a stated minimum housing standard.

Proposed new section 35G

This section provides that if the tenant has given a lessor a rectification notice and the lessor has not complied with that notice within the prescribed period the tenant may ask the commissioner for fair trading to investigate their complaint.

Proposed new section 35H

This section outlines the process to be followed by the commissioner for fair trading in regards to investigating whether or not a premises has failed to comply with minimum housing standards when requested by the tenant. The commissioner must give a copy of a written report to both the tenant and the lessor and, if the commissioner considers that the premises do not comply with a minimum housing standard may negotiate with the tenant and the lessor to reach an agreement about rectification work, or if the tenant and the lessor cannot reach an agreement must propose rectification work and the timelines that this must be completed within.

Proposed new section 35I

This section allows for the commissioner of fair trading to investigate whether a lessor has failed to ensure that premises comply with the minimum housing standards, independently of a tenant initiated request to investigate. The commissioner may choose to investigate housing standards without a tenant request, for example, in the case of investigating standards in public housing premises or when a third party (such as a housing advocate) alerts the commissioner that premises do not meet housing standards. The commissioner must, however, have the written permission of the tenant to enter the premises to undertake an investigation.

Proposed new section 35J

This section allows for the tenant to ask the commissioner for fair trading to investigate the completion of work following a report from the commissioner under proposed new sections 35H or 35I.

Proposed new section 35K

This provision provides an avenue for a tenant that disagrees with a report provided under proposed new sections 35H or 35I, or considers that proposed rectification work was not carried out on time or satisfactorily, to apply to the ACAT to make an order.

Proposed new section 35L

If the commissioner for fair trading or a tenant has applied to the ACAT for an order, the ACAT may make one or more of the following orders:

- require that the lessor ensure the premises comply with a stated minimum housing standard;
- require payment of all or part of the rent payable under the residential tenancy agreement until the premises comply with the stated minimum housing standard;
- direct payment out of any amount paid into the ACAT as appropriate;
- order a reduction in rent payable under the residential tenancy agreement until the premises comply with the stated minimum housing standard;
- terminate, with the tenant's consent, the residential tenancy agreement.

Proposed new section 35M

This section allows for a Minister to exempt premises, or classes of premises, from complying with minimum housing standards.

Proposed new section 35N

This section requires that the Minister reviews the operation of this part and report to the Legislative Assembly as soon as possible after the end of the second year of operation.

Clause 2

Clause 13, proposed new section 71AA

This proposed new section provides Bill's definitions of *minor modification* and *special modification*.

- a minor modification is:
 - o a renovation, alteration or addition that can be removed or undone so that the premises are restored to substantially the same condition as the premises were in at the commencement of the agreement, fair wear and tear excepted.; or
 - o a modification prescribed by regulation.

Whilst the meaning of minor modification remains the unchanged, the amendment provides a new list of examples, which now includes: picture hooks, furniture anchors, child safety gates, and child-resistant locks on gates.

The meaning of a special modification has been amended so that minor modifications are no longer classed as special modifications. The definition otherwise remains unchanged. Special modifications are a renovation, alteration, or addition for one of the following reasons:

- the safety of the tenant or other people on the premises;
- on written recommendation of a health practitioner to assist with a tenant's disability;
- to improve the energy efficiency of the premises;
- to allow access to telecommunications services;
- the security of the premises, or the tenant or other people on the premises;
- any other reason prescribed by regulation.

This section makes clear that a special modification does not include a minor modification.

Clause 3

Proposed new clauses 15A and 15B

These proposed amendments change the standard residential tenancy terms by removing the requirement that the tenant and lessor may agree that rent is to be charged electronically and replace it with a new term that provides for the tenant to choose whether to pay rent directly into a bank account nominated by the lessor or by another means. This amendment means that tenants will not be able to be forced to use a rent payment method where they are required to provide personal information, or where such information might be held on a computer server in another country.

Clause 4

Proposed new section 16

This proposed new clause 16 amends Schedule 1, clause 67 so that tenants may make a minor modification to a rental premises without the lessor's consent.

Clause 5

Clause 18

This amendment removes clauses 94 and 95 from the standard residential tenancy terms. These clauses relate to termination of tenancy by a lessor without cause, and currently provide for a notice period of 26 weeks. Removing these two clauses will end no cause evictions. Lessors will instead have to provide a reason for terminating a tenancy.

Clause 6

Proposed new clause 18A

The current clause 96(1)(d) of the standard residential tenancy terms allows for a lessor to give a tenant eight weeks' notice to terminate a periodic tenancy if the lessor genuinely intends to sell the premises. This amendment increases this notice period to 12 weeks, giving tenants more time to find new accommodation.

Proposed new clauses 18B and 18C

These amendments strengthen the current clause 96(1)(e) of the standard residential tenancy terms by including the demolition of a dwelling as a reason for terminating a periodic tenancy.

Proposed new clause 18D

This amendment provides two additional reasons for a lessor to terminate a periodic tenancy. Proposed new clause 96(1)(f) of the standard residential tenancy terms allows for a lessor to give 12 weeks' notice if they intend to use the premises for a business or any other purpose other than being used as a home. Proposed new clause 96(1)(g) allows for a lessor to give 12 weeks' notice if the lessor is a territory authority and the premises are required for another purpose.

Proposed new clause 18E

This amendment requires lessors who serve a notice to terminate a periodic tenancy on the grounds that they intend to live the premises, an immediate relative intends to live in the premises, or an interested person intends to live in the premises that they must provide the tenant with a statutory declaration about that intention.

Clause 7

Clause 19, proposed new dot point in Dictionary

This amendment adds *territory authority* to *Note 2* of the Residential Tenancies Act's dictionary. This reflects the mention of territory authority in proposed new clause 18D, described in number 10 above.

Clause 8

Clause 20

This amendment reflects the addition of minimum housing standards by directing the reader to the definition of *minimum housing standards* (proposed new section 35B), and the associated definitions of a *rectification notice* and *rectification work* (both contained in the new proposed section 35A). It also reflects the change in definitions of both *minor modifications* and *special modifications* (sections 71AA and 71AAA of these proposed amendments).