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

**RESIDENTIAL TENANCIES AMENDMENT BILL 2018 (No 2)**

**EXPLANATORY STATEMENT**

**Presented by  
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## **RESIDENTIAL TENANCIES AMENDMENT BILL 2018 (No 2)**

This explanatory statement relates to the Residential Tenancies Amendment Bill 2018 (No 2) (the Bill) 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 is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

### **Overview**

#### **Purpose of the Bill**

The Bill will amend the *Residential Tenancies Act 1997* to provide an improved framework for residential tenancy agreements.

The Bill includes amendments which are intended to:

- make it easier for tenants to keep pets in rental properties
- make it easier for tenants to make modifications in rental properties
- refine the domestic violence and personal protection order provisions to assist the ACAT to address practical issues that have arisen with current drafting
- allow tenants to vacate with no penalty during a fixed term when notice of a 'no cause' termination has been given
- provide that a tenant does not need to pay a 'break lease' fee if the lessor finds a replacement tenant, subject to reasonable costs
- require lessors to apply to ACAT for any rental increase in excess of a prescribed amount unless the tenant and lessor agree to the increase.

The amendments will commence on a day fixed by the Minister by written notice, with a default commencement of twelve months from its notification day.

#### **Human rights implications**

The Bill supports the rights of recognition and equality before the law (s 8, *Human Rights Act 2004*) and privacy and reputation (s 12, *Human Rights Act*).

#### **Recognition and equality before the law**

The Bill amends the RTA to make it easier for tenants with disabilities to make modifications to their homes. If a tenant receives a written recommendation from a health practitioner that the modification should be made to assist the tenant in relation to the tenant's disability, this is an example of a 'special modification'.

The Bill creates a presumption in favour of special modifications. The Bill requires a tenant to seek the consent of the lessor to make any modifications to the property. However, for a special modification, the lessor cannot refuse consent without the approval of the ACAT. The ACAT may only refuse the modification if satisfied that the lessor would suffer hardship, the special modification would be contrary to a territory law, the special modification is likely to require modifications to other residential premises or common areas or the special modification would result in additional maintenance costs for the lessor. The Bill also provides a regulation-making power to include additional reasons for ACAT to refuse the modification.

### Privacy and reputation

The Bill enhances a tenant's right to privacy by making it easier for a tenant to make modifications to their home and keep pets. These amendments support the tenant's ability to consider the rental property their home and personalise the space.

## **Regulatory impact analysis**

The Bill will have a regulatory impact on lessors. The proposals have been developed with a view to improving protections for tenants while enabling lessors to be consulted on issues that will affect the properties they own.

### Pet ownership

The policy intention of the amendments relating to pet ownership is to make it easier for tenants to keep pets in rental properties.

New clauses 74A and 74B for Schedule 1 create a default presumption in favour of pets, and new sections 71AE and 71AF provide a framework whereby lessors who want to refuse a request for a pet, must adhere to the procedure in the Act proper, and seek the ACAT's approval of that refusal.

The purpose of this amendment is to provide an explicit pet-friendly presumption in the RTA, while giving the lessor the opportunity to be consulted. This incorporates the consent model from the recent amendments to residential tenancies in Victoria, while providing a presumption in favour of pets.

The proposed amendments provide that if the agreement requires the tenant to seek the consent of the lessor to keep a pet, the lessor may impose reasonable conditions on consent about the number of animals kept on the premises or the cleaning or maintenance of the premises. The lessor may impose other conditions with the approval of ACAT.

### Modifications

New clause 67(3) of the standard terms provides that unless otherwise agreed, at the end of the tenancy the tenant is responsible for restoring the premises to substantially the same condition as the premises were in at the commencement of

the tenancy agreement, fair wear and tear excepted. The parties may also agree to leave the modifications in place at the end of the tenancy.

New sections 71AA, 71AB, 71AC and 71AD provide for different processes for seeking consent to modifications, depending on the nature of the modification. Clause 67 provides that in all cases, the tenant must seek the consent of the lessor before making any modifications to the property. The lessor may give consent subject to a condition that the tenant use a suitably qualified tradesperson to undertake the modification.

If the modification is a special modification, the lessor may only refuse consent if the lessor obtains the ACAT's prior approval.

A special modification includes:

- a minor modification 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; and
- a modification for reasons of safety, disability, improving energy efficiency, access to telecommunication services, security or any other prescribed reason.

In making a decision on the modification, ACAT must consider issues including whether the modification would cause the lessor to suffer significant hardship, would be contrary to a territory law, is likely to require modifications to other residential premises or common areas and would result in additional maintenance costs to the lessor.

For all other more substantial modifications, the onus is on the tenant to apply to ACAT for approval. The Bill includes criteria for ACAT to consider when deciding whether a modification should be permitted.

This amendment makes it easier for tenants to make modifications, while ensuring that the lessor is appropriately consulted. By requiring the lessor to seek the approval of ACAT for a special modification, the amendment creates a presumption in favour of these modifications. For other more substantial mechanisms, the onus is on the tenant to seek ACAT approval.

Lessor consent to a modification may be also be provided under other legislation. For example, the lessor may consent to a substantial renovation or alteration that requires a development approval in accordance with section 139(2)(b)(i) of the *Planning and Development Act 2007*.

#### Minor policy amendments to the provisions dealing with domestic violence and personal protection orders

The Bill amends the RTA to allow ACAT to make a termination and possession order to resolve issues that have arisen with current drafting.

The RTA was amended in 2016 to allow a protected person with a protection order made under the *Family Violence Act 2016* or *Personal Violence Act 2016* to apply to ACAT for orders changing their tenancy arrangements.

Members of ACAT have advised JACS officers that while these provisions deal with termination of a tenancy agreement, it is unclear whether orders may be made for termination and possession. The Bill amends the RTA to expressly allow ACAT to make orders of termination and possession in these circumstances.

#### 'No cause' terminations for periodic tenancies

The Bill amends the standard residential tenancy terms to allow a tenant who receives a 'no cause' termination notice during a fixed term to vacate the premises during the fixed term with no penalty by providing three weeks' notice to the lessor.

#### The 'break lease' fee

The Bill amends the 'break lease' fee provisions at section 8 of the RTA to limit the fee to the actual loss realised by the lessor. The Bill further caps the 'reasonable costs' of the lessor at 1 week's rent for advertising and letting costs, in line with the limits in sections 62(Abandonment during fixed term) and 84 (Notice of intention to vacate – award of compensation).

#### Rent increases

New sections 64B and 64C amend the RTA to require the lessor to seek ACAT approval of any rental increases above a prescribed amount. The policy intention is to confine the requirement for the lessor to seek ACAT approval of rental increases that are materially above market rent. The prescribed amount has been set at 10% greater than the rents component of the housing group of the Consumer Price Index for Canberra. The use of a regulation-making power means that this amount can be changed to respond to changes in the market.

The Bill retains the ability of the tenant to challenge a rental increase below the prescribed amount. The Bill also provides that the lessor does not have to seek ACAT approval if the tenant and lessor agree to the increase.

The purpose of this amendment is to have a more transparent process for increasing rent above certain amounts, provide more protections for vulnerable tenants and provide more ACAT oversight.

## CLAUSE NOTES

### Clause 1 Name of Act

This clause provides that the name of the Act is *the Residential Tenancies Amendment Act 2018 (No 2)*.

### Clause 2 Commencement

This clause enables the Act to commence on a day nominated by the Minister in a commencement notice.

If the Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

### Clause 3 Legislation Amended

This clause provides that the Bill amends the *Residential Tenancies Act 1997* and *Residential Tenancies Regulation 1998*.

### Clause 4 Standard residential tenancy terms – Section 8(2) definition of *break lease clause*, clause (2)

This clause amends the optional ‘break lease’ clause at section 8(2) of the Act.

The break lease clause is not part of the standard residential tenancy terms. It is an additional clause that the parties may agree to include in a residential tenancy agreement.

The break lease clause provides that if the tenant ends a fixed term agreement before the end of the fixed term, the tenant must pay a break fee to the lessor. If the fixed term is three years or less and if less than half of the fixed term has expired, the fee is six weeks rent. If the fixed term is three years or less, and more than half of the fixed term has expired, the fee is four weeks rent. If the fixed term is more than three years, the fee is the amount agreed between the lessor and the tenant.

This clause amends the break lease clause to address a situation where the tenant ends a fixed term agreement before the end of the fixed term and the lessor has found a replacement tenant. The purpose of this amendment is to limit the compensation to the lessor to the actual loss experienced by the lessor. This amendment provides that the tenant does not have to pay a break lease fee if the lost rent has been covered by a replacement tenant.

The tenant also needs to pay the lessor’s reasonable costs incurred in finding and entering into an agreement with the new tenant. These reasonable costs vary depending on how much of the agreement is left at the time the tenant has broken the lease, and capped at one week’s rent for advertising and re-letting costs. This aligns with the cap of one week’s rent for advertising and re-letting elsewhere in the Act (see sections 62 (Abandonment during fixed term) and 84 (Notice of intention to vacate – award of compensation)).

## **Clause 5 Termination, Section 36(1)(d)**

This clause makes an editorial amendment to section 36 to provide that a tenancy agreement may be terminated if ACAT terminates an agreement under division 4.5, division 6.5 or division 6.5A. This clarifies existing ACAT powers and is related to the amendments at clauses 15 and 16.

## **Clause 6 New sections 64B and 64C**

This clause inserts new sections 64B and 64C into the Act. These new sections apply to rent increases.

### New section 64B – Limitation on rent increases

New section 64B provides that a lessor may only increase the rent under a residential tenancy agreement by an amount that is more than the prescribed percentage if the ACAT has allowed the increase. This section also inserts a new regulation-making power to prescribe an amount that requires ACAT approval.

The lessor does not have to seek ACAT approval if the tenant agrees in writing to the increase. When seeking the tenant's agreement, the lessor must give the tenant a written notice stating the day the proposed increase takes effect (being a day not less than 8 weeks after the day the notice is given) and whether the proposed increase is equal to or more than the prescribed amount. If the increase is more than the prescribed amount, the notice must state that if the tenant does not agree to the increase, the lessor may only make the proposed increase with the prior approval of the ACAT.

### New section 64C – Tenant may apply for review

New section 64C provides that a tenant may apply to the ACAT for review of a proposed rental rate increase. An application must be made not less than two weeks before the date on which the rent increase is proposed to take effect. This section aligns with the tenant's application for review of a rent increase with the timeframe referred to in section 65 of the Act, which provides that ACAT may waive notice requirements for an application for the review of a rental rate increase in certain special circumstances, even though the application is made less than two weeks before the day when the proposed increase is to come into effect.

## **Clause 7 Orders – section 67**

This clause amends section 67 of the Act.

Section 67 provides that ACAT may make certain orders in relation to an application for review of a rental rate increase. This clause amends section 57 to provide that ACAT may make certain orders to allow or to review a rental rate increase. This is related to the amendment at clause 6 and reflects the new obligation for a lessor to apply to ACAT for approval of a rental increase that is more than the prescribed percentage.

## **Clause 8 Section 67 (as amended)**

This clause renumbers the amended section 67 as section 68A of the Act.

## **Clause 9 Guideline for orders – section 68(1) and (2)**

This clause substitutes section 68(1) and (2) of the Act.

Section 68(1) provides that ACAT must allow a rental rate increase that is in accordance with the standard residential tenancy terms unless the increase is excessive. This clause amends 68(1) to provide that the ACAT must allow a rental rate increase if the increase is allowed under the residential tenancy agreement and is *not* excessive.

New section 68(2) provides that unless the tenant satisfies the ACAT otherwise, a rental rate increase is not excessive if it is less than or equal to the prescribed amount. New section 68(2) also provides that unless the lessor satisfies the ACAT otherwise, a rental rate increase is excessive if it is more than the prescribed amount.

## **Clause 10 – Section 68(5)**

This clause omits section 68(5) from the Act.

Section 68(5) provided a definition of ‘index number’ for the rental increase provision. ‘Index number’ was defined as the rents component of the housing group of the Consumer Price Index for Canberra published from time to time by the Australian statistician. This definition has been moved to the *Residential Tenancies Regulation 1998* (see clause 23).

## **Clause 11 – Effect of orders – Section 69(1)**

This clause substitutes the reference to an ACAT order under section 67(a) or (c) of the Act with a reference to an ACAT order under section 68A(a) or (c) of the Act. This is related to the amendment renumbering section 67 of the Act as section 68A at clause 8.

## **Clause 12 – Section 69(3(a))**

This clause substitutes a reference to section 67(b) or (c) of the Act with a reference to section 68A(b) or (c) of the Act. This is related to the amendment renumbering section 67 of the Act as section 68A at clause 8.

## **Clause 13 – New part 5AA – Lessor’s consent in certain matters**

This clause inserts new Part 5AA into the Act. New Part 5AA amends the Act to include the process for seeking the lessor’s consent to keeping animals and modifications to the property.

### New section 71AA – Definitions

New section 71AA provides definitions for ‘minor modification’ and ‘special modification’. ‘Minor modification’ is defined as a modification 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). A minor modification may also be prescribed by regulation.

‘Special modification’ means a minor modification, or a modification that is for following purposes:

- the safety of the tenant or other people on the premises (e.g. furniture anchors, child safety gates or fittings)
- a disability modification that is recommended by a health practitioner (e.g. access ramps, safety rails, swimming pool fencing)
- improve the energy efficiency of the premises
- access to telecommunications services
- security of the premises, or the tenant or other people on the premises (e.g. deadlocks, security doors, security alarms)
- any other reason prescribed by regulation.

### New section 71AB – Process for tenant seeking consent – modifications generally

New section 71AB sets out the process for the tenant to seek the lessor’s consent to modifications to the property. A

The tenant may apply in writing to the lessor for the lessor’s consent. If the application is for a special modification, the lessor may only refuse consent if the lessor obtains the ACAT’s prior approval. In any other case, the lessor must not unreasonably refuse consent. The lessor may also impose a reasonable condition on consent, such as requiring the proposed modification to be done in a stated way to minimise damage to the premises.

If the application is in relation to a special modification, the lessor is taken to consent to the tenant’s application unless, within 14 days of receiving the application, the lessor applies to the ACAT under section 71AC.

### New section 71AC – Lessor to apply to ACAT for refusal – special modifications

New section 71AC provides the process for the lessor to apply to ACAT for refusal of special modifications.

ACAT must either approve the application, refuse the application or order that the lessor consent to the tenant’s application with conditions. For example, a condition may be that the work be undertaken by a qualified tradesperson.

The ACAT may make an order to approve the application to refuse consent or impose conditions on consent if satisfied that the lessor would suffer significant hardship, the special modification would be contrary to a territory law, the special modification is likely to require modifications to other residential premises or common areas, the special modification would result in additional maintenance costs for the lessor or if satisfied of any other prescribed matter.

### New section 71AD – Tenant may apply to ACAT for review of refusal – other modifications

New section 71AD provides a process for the tenant to apply to ACAT for review if a lessor refuses consent to make a modification to the premises (other than a special modification).

The tenant may apply to ACAT for an order that the lessor unreasonably refused the application.

ACAT must either approve the tenant's application, refuse the tenant's application or order that the lessor consent to the tenant's application but impose stated conditions on the consent. These conditions may include that the work be undertaken by a qualified tradesperson.

When making a decision, ACAT must consider whether the lessor would suffer significant hardship, the special modification would be contrary to a territory law, the special modification is likely to require modifications to other residential premises or common areas, the special modification would result in additional maintenance costs for the lessor or any other prescribed matter.

### Section 71AE – Process for tenant seeking consent – animals

New section 71AE applies if the residential tenancy agreement requires the tenant to seek the lessor's consent to keep an animal on the premises.

New section 71AE provides a process for seeking the consent of the lessor. The tenant may apply in writing to the lessor for consent to keep an animal on the premises. The lessor may only refuse consent if ACAT approves the refusal. The lessor may impose a condition on consent if the condition is a reasonable condition about the number of animals kept on the premises or the cleaning or maintenance of the premises, or a reasonable condition with the approval of ACAT. A tenant may apply to ACAT to resolve a tenancy dispute including a dispute about whether a condition is a reasonable condition.

The lessor is taken to consent to the tenant's application unless the lessor applies to ACAT for approval to refuse consent with 14 days of receiving the application.

### New section 71AF – Lessor to apply to ACAT for refusal – animals

New section 71AF provides the process for the lessor to apply to ACAT for an order approving the lessor's refusal of consent to keep an animal on the premises.

A lessor may apply to ACAT for an order approving the lessor's refusal to consent to the tenant's application to keep an animal on the premises, or to approve a condition on the lessor's consent to the tenant's application.

ACAT must approve the lessor's application, refuse the lessor's application or order the lessor to consent to the tenant's application but impose stated conditions on the consent.

ACAT may make an order to approve the lessor's application to refuse consent or to impose conditions on consent if satisfied that the premises are unsuitable to keep the animal, keeping the animal on the premises would result in unreasonable damage to the premises, keeping the animal on the premises would be an unacceptable risk to public health or safety, the lessor would suffer significant hardship or keeping the animal on the premises would be contrary to a territory law.

#### New section 71AG – Limitation on lessor's liability

New section 71AG provides that the lessor has no duty of care to any person arising from any consent given or required under section 71AF(5). This amendment is intended to ensure that the provision of a lessor's consent to their tenant keeping an animal on the premises (whether by default to otherwise) does result in the lessor taking on any liability which the lessor would otherwise not have assumed not they not provided their consent to the keeping of the pet.

#### **Clause 14 – New tenancy agreement – family violence and protection orders – Section 85A(2)**

This clause amends section 85A(2) of the Act.

Section 85A applies if the Magistrates Court has made a protection order, the respondent to the order is a party to a residential tenancy agreement in relation to premises, and the protected person under the order is either also a party to the residential tenancy agreement or has been living in the premises.

The protected person may apply to ACAT for an order terminating the existing residential tenancy agreement or an order terminating the existing residential tenancy agreement and requiring the lessor of the premises to enter into a residential tenancy agreement with the protected person and any other person mentioned in the application.

This clause substitutes the word 'either' for the word 'any'. This is related to the amendment at clause 15 below.

#### **Clause 15 – New section 85A(2)(c)**

This clause inserts new section 85A(2)(c) into the Act.

This clause provides that the protected person may apply for an order terminating a residential tenancy agreement and granting vacant possession of the relevant premises to the lessor.

This clarifies that ACAT may make orders for both termination and possession.

#### **Clause 16 – Standard residential tenancy terms, Schedule 1, clause 67**

This clause substitutes clause 67 of the standard residential tenancy terms at Schedule 1 of the Act.

New clause 67 provides that the tenant must not make any renovation, alteration or addition to the premises without the lessor's written consent. The lessor may give

consent subject to a condition that the tenant use a suitably qualified tradesperson to undertake the renovation, alteration or addition or to restore the premises at the end of the tenancy.

Unless otherwise agreed, the tenant is liable for the cost of any renovation, alteration or addition to the premises.

Unless otherwise agreed, at the end of the tenancy the tenant is responsible for restoring the premises to substantially the same condition as the premises were in at the commencement of the tenancy agreement (fair wear and tear excepted).

The lessor and tenant may agree that to any renovation, alteration or addition to the premises remaining in place at the end of the tenancy agreement.

### **Clause 17 – Schedule 1, new clauses 74A and 74B**

This clause inserts new clauses 74A and 74B into the standard residential tenancy terms at Schedule 1 of the Act.

New clause 74A creates a default arrangement in favour of a tenant keeping a pet. This clause provides that unless the residential tenancy agreement requires the tenant to seek the lessor's consent, the tenant may keep an animal or allow an animal to be kept on the premises.

New clause 75B provides that the tenant is responsible for any repairs or additional maintenance to the premises required as a consequence of keeping an animal on the premises.

### **Clause 18 – Schedule 1, clause 95**

This clause substitutes clause 95 of the standard residential tenancy terms at Schedule 1 of the Act.

Clause 95 of the standard residential tenancy terms provides that if a tenant is required to vacate the premises in accordance with a 'no cause' notice, the tenant may vacate the premises at any time during the 2 weeks before the date specified in the notice to vacate provided the tenant gives the lessor 4 days notice of intention to vacate.

This clause provides that the tenant may vacate the premises during the fixed term by providing three weeks notice to the lessor. If the term of the tenancy ends in less than two weeks, the tenant may vacate if giving notice to the lessor at least 4 days before vacating the premises.

### **Clause 19 – Dictionary, note 2**

This clause amends note 2 of the Dictionary of the Act.

Note 2 provides a list of terms that are defined in the *Legislation Act 2001* that are relevant to the Residential Tenancies Act.

This clause adds the terms 'health practitioner' and 'territory law' to the list.

**Clause 20 – Dictionary, new definitions of *minor modification* and *special modification***

This clause amends the Dictionary to refer to the definitions of ‘minor modification’ and ‘special modification’ in Part 5AA, section 71AA of the Act.

**Clause 21 – Dictionary, definition of *termination and possession order***

This clause amends the Dictionary definition of ‘termination and possession order’ in the Act by substituting the phrase ‘applicant for the order’ with the word ‘lessor’.

**Clause 22 – New section 5A**

This clause inserts new section 5A into the Residential Tenancies Regulation. This is related to the amendment at clause 6.

This provision includes a formula for working out the prescribed amount. The prescribed amount is the ‘percentage increase’ plus 10 per cent of the ‘percentage increase’. The percentage increase is defined as the increase in the rents component of the housing group of the consumer price index for Canberra since the last rental rate increase or since the beginning of the lease (whichever is later).