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

RESIDENTIAL TENANCIES AMENDMENT BILL 2019

EXPLANATORY STATEMENT

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RESIDENTIAL TENANCIES AMENDMENT BILL 2019

This explanatory statement relates to the Residential Tenancies Amendment Bill 2019 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to 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* (the RTA). The purpose of these amendments is to give effect to legislative recommendations from the 2016 review of the RTA. The Bill proposes to:

- increase the notice period required for landlords to terminate a periodic lease where the landlord or a person close to them wishes to move into the premises from 4 weeks to 8 weeks;
- create a head of power for the introduction of minimum standards for existing and new rental properties;
- create a right for a tenant to terminate a fixed term lease early in order to move into social housing or an aged care facility;
- reduce the burden of the sale of a rental property on its tenants by:
 - imposing reasonable limits on the right of access of the landlord to the property for inspections by prospective buyers; and
 - creating a right for tenants to terminate a fixed term tenancy if a sale process takes too long or should have been disclosed prior to the entry into the lease;
- remove the requirement for landlords to demonstrate detriment to their interest when terminating a lease for breach by the tenant if the tenant has used the premises (or permits them to be used) for an illegal purpose;
- reduce the maximum rent payable in advance to two weeks;
- include cooling in the list of urgent repairs;
- ensure that periodic tenancies adopt the Standard Terms as amended from time to time;
- clarify and strengthen the ACT Civil and Administrative Tribunal's (the Tribunal) powers to resolve residential tenancy disputes by:

- specifying that referrals of bond disputes from the Office of Rental Bonds constitute an application to the Tribunal;
- restoring the full range of orders that the Tribunal can make to resolve tenancy disputes;
- allowing the Tribunal to suspend the operation of its orders altering tenancy arrangements in family violence situations for up to three weeks;
- clarifying that, in making orders altering tenancy arrangements in family violence situations, the Tribunal may take into account the interests of the respondent to a protection order and any children who may be affected by the orders;
- allowing the Tribunal to make payment orders to require the payment of future rent even when there are no outstanding arrears; and
- ensuring the Tribunal's power to correct defective notices does not apply if the correction would disadvantage the party receiving a notice.

Human rights implications

The proposed amendments will engage the following human rights under the *Human Rights Act 2004* (HRA):

- a) the right to equality and non-discrimination (sections 8(2)-(3), HRA);
- b) the right not to have one's privacy, family, home or correspondence interfered with unlawfully or arbitrarily (section 12(a), HRA);
- c) the right of a family to be protected by society (section 11(1)), HRA); and
- d) the right of a child to the protection needed by the child because of being a child (section 11(2), HRA).

Equality and non-discrimination

The right to equality and non-discrimination is protected by sections 8(2)-(3) of the HRA. The HRA provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that everyone is equal before the law and entitled to the equal protection of the law without discrimination. 'Discrimination' under the HRA encompasses a distinction based on particular grounds (for example, race, colour or sex), which has either the purpose ('direct' discrimination), or the effect ('indirect' discrimination), of adversely affecting human rights.¹ That is, not every differential treatment will amount to discrimination as it must be linked to a prohibited ground of discrimination.²

¹ International Covenant on Civil and Political Rights (ICCPR) articles 2 and 26; *Althammer v Austria*, United Nations (UN) Human Rights Committee Communication no. 998/01 (2003) [10.2].

² The grounds of discrimination are not specifically or exhaustively defined under the HRA. However, the following examples of discrimination are provided in the HRA: 'race, colour, sex, sexual

The amendments will permit tenants who are transitioning into aged care or social housing to terminate their fixed term lease with 14 days' notice without being liable to pay compensation.³ The fact that tenants, for example, who otherwise face severe hardship, financially or otherwise, will not benefit from this proposed amendment does not amount to discrimination. This is because any such differential treatment is not clearly based on a prohibited ground of discrimination.

Further, even if this treatment were categorised as being linked to a ground of discrimination such as 'other status', the treatment is compatible with the right to equality and non-discrimination. In particular, section 28 of the HRA, sets out the criteria for when human rights including the right to equality and non-discrimination may be reasonably limited such that they are compatible with the HRA. Applying the criteria, the purpose of the measure is to support individuals moving into aged care and public housing, noting the benefits both to the individual and to society more generally that such accommodation provides. The measure is of importance as, without this measure, vulnerable individuals may experience hardship in terminating their existing tenancy in order to accept an aged care or social housing place. Enabling tenants to terminate a tenancy in these circumstances, with notice but without the requirement to seek an order of the Tribunal or to pay additional compensation, is likely to be effective to achieve the stated purpose of the measure.

As tenants have signed leases assuming legal obligations for the property for a fixed term, it is only in exceptional cases that tenants should be permitted to break their lease early without payment of compensation and without any order from the Tribunal. That is, any differential treatment will be based on reasonable and objective criteria. In terms of the proportionality of the measure, tenants who otherwise face severe hardship will remain eligible to seek Tribunal approval to break their lease early, pursuant to section 44 of the RTA.

Right to privacy, family and home

Section 12 of the HRA protects the right to privacy, family, home or correspondence. Almost all of the proposed amendments, whether taken together or in isolation, promote the right not to have one's privacy, family, home or correspondence interfered with unlawfully or arbitrarily. For example, the amendment to increase notice requirements for inspections for prospective purchasers and set a maximum number of weekly inspections⁴ promotes a tenant's right to privacy and home by restricting the requirement for the tenant to give strangers access to their home. Increasing the notice period, a landlord must give when terminating a tenancy in order to move into the property,⁵ also promotes a tenant's right to privacy and home by increasing the security that a tenant has in their tenancy when they are not in breach of the tenancy agreement. Having a stable and relatively permanent place of residence provides a space for individual tenants to develop their identity and to have personal security and mental stability. Where the tenants of a residential

orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.'

³ Clause 8 of the Bill; new sections 46A and 46B of the RTA.

⁴ Clause 23 of the Bill; Schedule 1, clause 81 of the RTA.

⁵ Clause 9 of the Bill; new sections 48(3) - (4) of the RTA; Clause 22 of the Bill; Schedule 1, clause 70 (1) (a) - (c) of the RTA.

premises comprise a family, the proposed amendments also promote protections afforded to families in the ACT under section 11(1) of the HRA.

While most of the amendments promote the right to privacy and home, clauses 9 and 22 of the Bill, which modify the landlord's right to seek an order to terminate a tenancy agreement on the basis that the property has been used for an illegal purpose, engages and limits this right. This is because the measure may result in a person's tenancy being terminated and as such will interfere with that person's and their family's home. However, this right may be subject to reasonable limitations under section 28 of the HRA. Applying the criteria under section 28, the overarching purpose of the measure is to protect the legitimate interests of landlords in a property in circumstances where it is being used for an illegal purpose. As outlined in the 2016 review, the concern is that certain forms of illegal use of rental properties may adversely impact the interests of landlords in a property, such as, for example, by creating difficulties for landlords in re-letting the property. The measure, by clarifying how a tenancy may be terminated for 'illegal use', is likely to be effective to achieve the purpose of protecting the interests of landlords. It is acknowledged that the termination of a tenancy is a serious matter noting that it will result in an eviction of a tenant and their family from their home.

However, there are a number of significant safeguards to ensure that the provision operates in a way that is the least rights restrictive approach to achieving its purpose. Under the RTA, a key safeguard is that there is a structured process that sets out when, and in what circumstances, the landlord may terminate for illegal use of a property. In relation a tenant's breach of the illegal use clause of the Standard Terms, the process is for the landlord to serve a written notice requiring the tenant to remedy the breach within two weeks if it is capable of remedy (clause 93(a) of the Standard Terms). If the breach is not remedied after two weeks, the landlord can give a notice to vacate stating that the tenant has two weeks in which to vacate the property (clause 93(b) of the Standard Terms). The tenant may refuse to comply with the notice to vacate if they think the notice was unlawful or unreasonable. If the tenant refuses to comply with the notice, the landlord can seek an order from the Tribunal for the termination of the tenancy and eviction of the tenant (clause 93(c) of the Standard Terms). The Tribunal is not required to make an order in favour of the landlord; the power is discretionary (section 48(1) of the RTA).

Further, the Tribunal may make a termination and possession order only if it is satisfied that the tenant has used the premises, or permitted the premises to be used, for an illegal purpose *and* the illegal use of the premises justifies the termination of the tenancy (clause 9).⁶ In reaching a decision, the Tribunal may also consider the nature of the illegal use; any previous illegal use; the previous history of the tenancy (clause 9). Allowing the Tribunal to consider, for example, the previous

⁶ See, *Director of Housing v TK* [2010] VCAT 1839, where the Victorian Civil and Administrative Tribunal (VCAT) considered a similar provision in Victorian law and held that it was 'not sufficient that the premises are merely the scene of the commission of the crime.' Instead, 'there must be some real connection between the use of the rented premises and the illegal activity alleged...The purpose of the legislation is not to re-punish tenants for crimes they commit, but to prevent rented premises from being used for a purpose that is illegal.' The VCAT held that this interpretation was consistent with section 13 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) which corresponds to section 12 of the HRA.

history of the tenancy allows the Tribunal to consider the illegal use in its entire context. As such, this mechanism operates as an additional safeguard.⁷ Accordingly, the measure constitutes a reasonable limitation on the right to privacy and home under section 28 and, as such, is compatible with this right.

Rights of the child

The right of a child to protection (section 11(2), HRA) is promoted by the minor amendment giving the Tribunal the express power to take into consideration the interests of all children who may be affected by a family violence order or personal protection order. As the interests of children would be expressly considered, there will be a greater likelihood that children receive a higher level of protection from Tribunal orders.

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the name of the Act is the Residential Tenancies Amendment Act 2019.

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 6 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* (the RTA).

Clause 4 Standard residential tenancy terms, Section 8 (1) (a)

This clause clarifies how tenancy agreements incorporate changes to the RTA.

This clause will put beyond doubt that periodic leases will contain changes to the Standard Terms automatically; renters on periodic leases are subject to the most current framework of rights and obligations.

The clause also clarifies that fixed term agreements do not get similarly updated. This ensures that a tenant and a landlord who enter into a fixed term agreement have greater certainty that the terms of that agreement will not change for the duration of that term. As there can be significant penalties for landlords and tenants to terminate a fixed term tenancy agreement, this clarification protects their rights to

⁷ See, *NSW Land and Housing Corporation v Janiuk* [2017] NSWCTTT 632, where the Tribunal took into consideration the mental health of the tenant when the landlord sought an eviction order. See, also, *Commissioner for Social Housing in the ACT v Faull* [2008] ACTRRT 20, where the Tribunal was able to consider whether there were alternative remedies available to the landlord, whether the illegal use was more likely than not to cease, and the difficulties that would be faced by the tenant if evicted.

know what obligations they have undertaken and avoids potential retrospective amendment of existing fixed term residential tenancy agreements.

Clause 5 New sections 8 (1A) and (1B)

This clause ensures that causes of action which arise following the commencement of amendments to the RTA (other than to the Standard Terms) will be operative for both fixed term agreements and periodic agreements.

This clause also clarifies that the terms of a residential tenancy agreement will 'update' when a periodic agreement commences following the expiry of a fixed term.

If the parties enter into a new fixed term agreement instead, the new term will be governed by the new Standard Terms as in force on the day the parties enter the new agreement.

Clause 6 Disputes about all or part of bond, New section 35 (2A)

This clause ensures that when the Territory refers an application and notice of a dispute about a bond release application to the ACT Civil and Administrative Tribunal (the Tribunal), the parties themselves will not need to file an additional application to the Tribunal.

Clause 7 Termination, New section 36 (1) (aa)

This is a consequential amendment to clause 8 below.

Clause 8 New sections 46A and 46B

This clause inserts two new sections into the RTA to provide a tenant with two new grounds to terminate a tenancy.

The new section 46A provides a right for a tenant to terminate their tenancy agreement if they have accepted accommodation in a residential aged care facility or in a social housing dwelling. The tenant must give 14 days' notice of the termination, with the tenancy terminating on the date specified in the notice. The tenant is not liable to pay compensation for the early termination but, as the tenancy does not end until the date specified in the notice, is liable for the rent payable for the period to the termination date.

The new section 46B provides a right for a tenant to terminate a fixed term tenancy agreement under some circumstances where the landlord has decided to sell their property. The tenant's quiet enjoyment and exclusive possession of their property is limited when the landlord decides to sell the property during a fixed term lease. This new section will provide a tenant a right to terminate a fixed term tenancy if, within the first six months of a fixed term lease, the landlord notifies the tenant of their intention to sell the property and they did not disclose this intention prior to entering the lease. A tenant should be informed of this likely disruption when they enter into the fixed term agreement.

In addition, the new section will provide a tenant a right to terminate a fixed term tenancy if access to the property for inspections by prospective purchasers is

required for more than eight weeks (at which point the sale process may reasonably be deemed to be onerous on the tenant). The eight week period commences on the day the landlord makes the first buyer inspection request; the right to terminate arises if the landlord makes a subsequent inspection request following the period. The tenancy ends on the date stated in the notice, and not at the end of the eight week period. Although the tenant is not liable to pay compensation for the early termination of the agreement, they are liable for the rent payable for the period to the termination date.

Clause 9 Certain breaches of standard residential tenancy terms, New section 48 (3) and (4)

This clause inserts two new provisions within the section 48 of the RTA. Section 48 of the RTA provides a discretionary power to the Tribunal to make termination and possession orders on application by the landlord. The two new provisions are specifically to regulate the Tribunal's power when terminating a tenancy for a breach of the illegal use Standard Term (clause 70 (a) of the Standard Terms).

Most Australian jurisdictions permit a landlord to commence termination of a tenancy agreement if the tenant has used the property for an illegal or unlawful purpose. The 2016 review of the RTA noted that there were high-profile cases of illegal use of rental properties adversely impacting landlords, including creating difficulties re-letting the property.

New section 48 (3) is expressed in terms of 'use of the premises' and 'illegal purposes,' and does not express this provision in terms of unlawful conduct while on the premises or unlawful activities. For the Tribunal to make the termination and possession order on the basis of a breach of clause 70 (a) of the Standard Terms, the Tribunal must be satisfied that the tenant used the property, or permitted the property to be used, for an illegal purpose. In *Director of Housing v TK* [2010] VCAT 1839, the Victorian Civil and Administrative Tribunal (VCAT) considered a similar provision in Victorian law and held that it was 'not sufficient that the premises are merely the scene of the commission of the crime.' Instead, 'there must be some real connection between the use of the rented premises and the illegal activity alleged... The purpose of the legislation is not to re-punish tenants for crimes they commit, but to prevent rented premises from being used for a purpose that is illegal.' The VCAT held that this interpretation was consistent with section 13 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) which corresponds to section 12 of the HRA: the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily. The Tribunal must also be satisfied that the illegal use of the premises warrants the termination of the tenancy.

New section 48 (4), based on section 91 (2) of the *Residential Tenancies Act 2010* (NSW), provides a non-exhaustive list of matters that the Tribunal may consider when determining that there has been use of the property for an illegal purpose. In relation to the nature of the illegal use, this may include, for example, the risk that the illegal use presents to others, the extent to which the illegal use damages the property, and the impact of the illegal use on neighbours and the landlord. In relation to the previous history of the tenancy, this may inform whether the illegal use of the property justifies termination. For example, there might be mental health issues of the tenant underlying the illegal use which might make it unjust to terminate the

tenancy,⁸ or the Tribunal might consider whether there were alternative remedies available to the landlord, whether the illegal use was more likely than not to cease, and the difficulties that would be faced by the tenant if evicted.⁹ The Tribunal is also able to consider whether the illegal use breach provision is being used for an improper purpose: for example, where the tenant and landlord have been in conflict about some other issue entirely unrelated to the purported illegal use and the provisions of section 57 of the RTA are unavailable for technical reasons.

These new provisions are situated within the context of section 48, being a discretionary power of the Tribunal to make a termination and possession order.

Clause 10 Failure to pay rent – payment order, Section 49A (2) and (3)

This clause amends the power of the Tribunal to make payment orders. Although a landlord is entitled to the reliability and regularity of rental income, the RTA provides the Tribunal the flexibility to issue a payment order instead of a termination and possession order. This allows the tenant to remain in their home even if they have struggled to pay the rent when it fell due. Where the landlord has commenced Tribunal applications for termination and possession orders due to the tenant's failure to pay rent on time, it is desirable that the Tribunal has the power to make an order that, if there is a further failure to pay rent on time, the landlord may apply directly to the registrar of the Tribunal for a termination and possession order.¹⁰

Clause 11 Abandonment during periodic agreement, Section 63 (2)

This clause is consequential upon clause 25 below.

Clause 12 Meaning of tenancy dispute, New section 72 (2) (aa)

This clause is consequential upon clause 6 above.

Clause 13 Orders by ACAT, New section 83 (l)

This clause restores to the Tribunal the powers of the former Residential Tenancies Tribunal that existed prior to the *ACT Civil and Administrative Tribunal Act 2008*.

The clause makes it clear that the Tribunal has the power to make declaratory orders. This will allow the Tribunal to make declarations about matters of fact arising under the RTA. Examples might include a declaration that a tenant was not in breach of an agreement (in response to a notice to remedy), that a landlord has issued a retaliatory notice of intention to terminate the tenancy (in response to a notice to remedy), that a resident of a premises is a co-tenant on a lease (and not an occupant, a sub-tenant, or a mere licensee under section 128 of the RTA).

Clause 14 New section 83 (2)

This clause clarifies the Tribunal's power to correct a defect in a notice or in the service of a notice. The Tribunal may only correct defective notices when the defect

⁸ *NSW Land and Housing Corporation v Janiuk* [2007] NSWCTT 632.

⁹ *Commissioner for Social Housing in the ACT v Faull* [2008] ACTRRTT 20.

¹⁰ RTA, 49B.

did not, and is not likely to, significantly disadvantage the person receiving the notice. The test is whether the person receiving the notice is in a significantly worse position than they would have been in had the notice, or the service of the notice, not been defective. This resolves an anomaly with the drafting of the RTA arising from section 59 the RTA which detailed the Tribunal's powers to waive defects in a termination notice or its service.

In *Commissioner for Social Housing v Woodward* [2016] ACAT 85, the Tribunal held that the power under section 59 'is closer in scope to the "slip rule" than to a power to correct substantive errors.' In *Ikechukwu v Duoung* [2018] ACAT 97, the Tribunal held that there was no reason to read a similar limitation into the power conferred under section 83 (k). This amendment therefore ensures that sections 59 and 85 (k) are similarly constrained in scope.

Given the policy purpose of the notice periods, a notice issued to a party that fails in a significant respect to comply with the requirements for its form or service should, ordinarily, fail to be enforceable. This provides tenants and landlords with greater certainty about their rights and obligations when they receive a notice. Sections 59 and 83 (k) temper this position by providing the Tribunal with the discretionary power to correct defective notices. This would address a concern that it would be an inefficient use of the Tribunal's resources to be consumed by arguments about trivial or minor defects in form or service.

Clause 15 Notice of intention to vacate – award of compensation, New section 84 (4A)

This clause restructures part of the RTA to ensure that there are not multiple provisions dealing with the matter of restricting compensation for termination throughout the RTA. This clause does not create new rights or obligations.

Clause 16 Applications under s 85A – ACAT orders, Section 85B (2) (b)

This clause is part of a sequence that amends provisions of the RTA that were introduced in 2016 for orders related to domestic and family violence scenarios. The cases that have been brought to the Tribunal to date demonstrate that some of these provisions require minor amendment to ensure they work effectively.

This clause permits the Tribunal to take into consideration the interests of the respondent who may be affected by the orders as the current section 85B (2) (b) suggests that the Tribunal should not consider their interests. This amendment aligns the RTA with the original policy intent of the provision.

Clause 17 Section 85B (2) (c) (i)

This clause is part of a sequence that amends provisions of the RTA that were introduced in 2016 for orders related to domestic and family violence scenarios. The cases that have been brought to the Tribunal to date demonstrate that some of these provisions require minor amendment to ensure they work effectively.

This clause permits the Tribunal to take into consideration the interests of other children who are resident of the property. The current section 85 (2) (c) (i) allows the

Tribunal to consider the interests of the protected person's dependent children, but there may be children of the respondent or other tenants who could be affected by the order. This amendment better protects their rights as outlined in section 11(2) of the HRA.

Clause 18 New section 85B (6)

This clause is part of a sequence that amends provisions of the RTA that were introduced in 2016 for orders related to domestic and family violence scenarios. The cases that have been brought to the Tribunal to date demonstrate that some of these provisions require minor amendment to ensure they work effectively.

The drafting of the current provision does not permit the Tribunal to suspend the effect of its orders. Orders having immediate effect can have harsh implications for the parties to the matter. For example, the protected person may immediately bear full responsibility for the rent from that day, or the respondent to the protection order may have no time to remove their belongings from the property (and may be in custody). In such circumstances, it may be in the interests of justice for the Tribunal to have the power to suspend the operation of its orders for up to three weeks. This aligns this provision of the RTA with similar sections of the RTA, such as sections 47 – 49, 49C, 54, 55A – 55B.

Clause 19 Regulation-making power, New section 136 (2) (d)

This clause inserts a new power to make minimum standards for premises made available for occupation under a residential tenancy agreement.

Clause 54 of the Standard Terms states that the landlord has responsibility for ensuring that the premises (including furniture, fittings and appliances, unless excluded from the tenancy agreement) are fit for habitation, reasonably clean, in a reasonable state of repair, and reasonably secure. Through a regulation, the Executive will be able to prescribe minimum standards which detail these requirements.

The new section 136 (2) (d) provides a mechanism for the Executive to respond to changes in the rental market more quickly than setting standards in the RTA. Some of the minimum standards are likely to be extremely technical (for example, those related to sanitation) or will apply, adopt, or incorporate a law or instrument as in force from time to time,¹¹ as is the case with other property laws. These matters are best addressed in regulations.¹² As some of these instruments might not be appropriate for publication on the notification register (such as the Australian Standards), the requirements to notify the incorporated instruments under section 47(5) and (6) of the *Legislation Act 2001* do not apply

It is important to have a mechanism where minimum standards can be made and adapted through the incorporation of technical instruments, while still maintaining

¹¹ For example, an Australian Standard developed by Standards Australia, the Access Code for Buildings prepared by the Office of the Australian Building Codes Board, or the Disability (Access to Premises – Buildings) Standards 2010 (Cth).

¹² See, for example, Civil Law (Sale of Residential Property) Regulation 2004 [SL2004-25], Unit Titles Regulation 2001 [SL2001-15], and the Planning and Development Regulation 2008 [SL2008-2].

vital Legislative Assembly scrutiny. It is open for the Assembly to disallow any regulations made under the regulation-making power. The Standing Committee on Justice and Community Safety in its legislative scrutiny role would also review these regulations.

The minimum standards would need to be compatible with human rights and are expected to promote the right to privacy and home (section 12, HRA).

Clause 20 Standard residential tenancy terms, Schedule 1, clause 28

This clause reduces the maximum amount that the landlord may require for rent paid in advance to two weeks. Although a landlord must not require a greater amount than two weeks in advance, the clause clarifies that a tenant may nominate a greater period. For example, a tenant may wish to nominate a greater period if they are paid monthly.

This clause does not affect the calculation of the bond under section 20 of the RTA.

Clause 21 Schedule 1, clause 60 (j)

This clause includes 'cooling' in the list of urgent repairs. The failure or breakdown of any service on the premises essential for hot water, cooking, heating, or laundering has been considered an urgent repair under the RTA since it was first passed in 1997. Under the RTA, a landlord must attend to urgent repairs as soon as necessary having regard to the nature of the problem.

This clause does not create a new requirement for landlords to install air-conditioning units in properties.

Clause 22 Schedule 1, clause 70 (a)

This clause is consequential upon clause 6 above. This clause removes the requirement for a landlord to demonstrate a detriment to their interest when seeking to terminate a tenancy for illegal use.

This clause also introduces a note to direct readers to the section of the RTA which facilitates the Tribunal's discretionary powers to terminate a tenancy as a result of a breach of this clause.

Clause 23 Schedule 1, clause 81

This clause amends the Standard Terms which provide a right of access to the property for prospective purchasers. The right to quiet enjoyment of the property is a right conferred on the tenant under the residential tenancy agreement (clauses 52-53 of the Standard Terms) and at common law. For this reason, the landlord's access to the property is strictly limited. As a landlord is (and must be) permitted to sell their tenanted property, these limitations are relaxed when the landlord intends to sell the property so that prospective purchasers can inspect the property. This clause ensures better protection of the rights of tenants to privacy under section 12 of the HRA, and of the entitlement to quiet enjoyment for which the tenant is paying rent.

This clause increases the amount of notice a landlord must provide to a tenant when seeking to allow inspection of the property by prospective purchasers. It also limits the number of inspections to which a tenant is required to agree. A tenant may choose to permit a greater number of inspections, but they are not compelled to do so. The clause also specifies that the inspection must take place at a time that is mutually reasonable to the parties, with reasonable regard for the work and other commitments of the tenant and the landlord.

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

This clause increases the number of weeks' notice a landlord must give to a tenant if the landlord wishes to terminate a periodic tenancy to allow themselves, their immediate relatives, or a person with whom they have a close relationship to move into the property. This brings the RTA into alignment with similar provisions in Victoria and South Australia.

Clause 25 Dictionary, new definition

This clause inserts a definition of 'periodic tenancy' into the RTA to ensure that there are not multiple provisions dealing with the definition throughout the RTA.