

2008

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2008**

GOVERNMENT AMENDMENT

**SUPPLEMENTARY
EXPLANATORY STATEMENT**

Presented by
Mr Simon Corbell MLA
Attorney General

This explanatory statement supplements the revised explanatory statement to the Justice and Community Safety Legislation Amendment Bill 2008 (the Bill) as presented to the Legislative Assembly on 6 March 2008.

Overview of amendments

Amendment 1.27 of the Bill amends section 45(2)(c) of the *Human Rights Commission Act 2005* as a consequence of the inclusion of new subsections 45(3) and (4). The government amendment corrects a cross-reference contained in section 45(2)(c).

Amendment 1.52 of the Bill amends section 48 of the *Residential Tenancies Act 1997* so that the Residential Tenancies Tribunal (RTT) has an explicit power to make a termination and possession order should there be a breach of a specific performance order made under section 104(b) (an order that obliges a party to fulfil their contractual obligations under the lease). The government amendment requires the tribunal to be satisfied that the breach of the specific performance order justifies the termination of the tenancy.

Detail of amendments

Amendment 1

Schedule 1

Amendment 1.27

Page 11, line 8—

omit

section 45(3)

substitute

section 45(4)

Amendment 1.27 of the Justice and Community Safety Legislation Amendment Bill 2008 amends section 45(2)(c) of the *Human Rights Commission Act 2005* as a consequence of the inclusion of new subsections 45(3) and (4), which deal with circumstances in which the commission need not consider a complaint, and subsequently need not notify the person complained about. Government amendment one replaces an incorrect cross-reference to section 45(3) with a correct cross-reference to section 45(4).

Amendment 2

Schedule 1

Amendment 1.52

Proposed new section 48(1)(b)(iii)

Page 19, line 24-

insert

(iii) is satisfied that the breach justifies the termination of the tenancy.

Amendment 1.52 of the Bill amends section 48 of the *Residential Tenancies Act 1997* so that the Residential Tenancies Tribunal (RTT) has an explicit power to make a termination and possession order should there be a breach of a specific performance order made under section 104(b) (an order that obliges a party to fulfil their contractual obligations under the lease). The amendment to section 48 effectively creates a “second chance” for tenants in breach of their tenancy agreement to rectify the behaviour which led to the breach, and prevent an eviction order. This amendment provides parties and the RTT with additional options to an application for eviction. Where a tenant breaches an order for specific performance, the lessor would be obliged to return to court, but would only need to prove the breach in order to get relief, a lower standard of proof than if a standard eviction order was sought.

Government amendment two inserts into section 48(1)(b) another matter to be considered by the RTT where a termination and possession order is sought in response to a breach of a specific performance order. New paragraph 48(1)(b)(iii) requires the tribunal to be satisfied that the breach of the specific performance order justifies the termination of the tenancy. This requirement is consistent with other sections in the Act which deal with termination of a tenancy agreement (see paragraph 43(1)(c) and 48(1)(e)), and creates an additional threshold requirement that the landlord must meet before a termination and possession order is granted.