



Australian Capital Territory

# Residential Tenancies Amendment Act 2020 (No 2)

A2020-48

## Contents

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|               | Page   |
|---------------|--|
| <b>Part 1</b> | <b>Preliminary</b>   |
| 1             | Name of Act 2  |
| 2             | Commencement 2   |
| 3             | Legislation amended 2  |
| <b>Part 2</b> | <b>Residential Tenancies Act 1997</b>                                |
| 4             | New section 4A 3   |
| 5             | New section 6AA 4  |
| 6             | What is a <i>residential tenancy agreement</i> ?<br>Section 6A (1) 4 |

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## Contents

---

|    | Page  |    |
|----|---|----|
| 7  | Section 6A (4), third dot point   | 4  |
| 8  | Certain people given right of occupation not tenants<br>Section 6E (1) (b)    | 4  |
| 9  | Certain kinds of premises mean no residential tenancy agreement<br>Section 6F | 5  |
| 10 | Rent or a bond only<br>New section 15 (2) (aa) and (ab)                       | 5  |
| 11 | Bond release application—lessor’s obligations<br>New section 34 (3)           | 5  |
| 12 | Bond release application—joint application<br>Section 34A (1) (b)             | 5  |
| 13 | Section 34A (3) (a)   | 6  |
| 14 | Bond release application—application by tenant<br>Section 34B (1) (c)         | 6  |
| 15 | Section 34B (2) (a)   | 6  |
| 16 | New section 34F   | 7  |
| 17 | New part 3A   | 8  |
| 18 | Failure to pay rent—payment order<br>Section 49A (3) (b)                      | 17 |
| 19 | Section 54 heading  | 17 |
| 20 | Section 54 (1) (a)  | 17 |
| 21 | Section 54 (1) (b) and (c)  | 17 |
| 22 | Section 54 (2)  | 18 |
| 23 | What is an <i>occupancy agreement</i> ?<br>Section 71C (1)                    | 18 |
| 24 | Section 71C (4) and note  | 20 |
| 25 | New sections 71CA and 71CB  | 21 |
| 26 | Section 71D heading   | 22 |
| 27 | New section 71D (2)   | 22 |
| 28 | Section 71E   | 23 |
| 29 | Sections 71G and 71GA   | 36 |
| 30 | New part 5B   | 36 |
| 31 | Meaning of <i>tenancy dispute</i><br>Section 72 (1) (a)                       | 41 |
| 32 | Section 74  | 41 |

|                   | Page   |           |
|-------------------|--|-----------|
| 33                | Jurisdiction of ACAT under this Act etc<br>Section 76 (1) (c), except note                       | 41        |
| 34                | Extended jurisdiction of ACAT with agreement of parties<br>Section 78 (1) (a) (iii), except note | 41        |
| 35                | Orders by ACAT<br>Section 83 (d)   | 42        |
| 36                | Section 83 (e)   | 42        |
| 37                | Orders by ACAT<br>Section 83 (g)   | 42        |
| 38                | Section 83 (j)   | 43        |
| 39                | Section 127  | 43        |
| 40                | Section 128  | 44        |
| 41                | New part 17  | 44        |
| 42                | New part 18  | 46        |
| 43                | Standard residential tenancy terms<br>Schedule 1, new clause 24 (aa)                             | 47        |
| 44                | Schedule 1, new clauses 72A and 72B  | 47        |
| 45                | Dictionary, note 2   | 49        |
| 46                | Dictionary, new definitions  | 49        |
| 47                | Dictionary, definitions of <i>mobile home</i> and <i>occupancy principles</i>                    | 49        |
| 48                | Dictionary, new definitions  | 50        |
| 49                | Dictionary, definition of <i>standard occupancy terms</i>  | 50        |
| <b>Part 3</b>     | <b>Residential Tenancies Regulation 1998</b>   |           |
| 50                | Section 1B   | 51        |
| <b>Schedule 1</b> | <b>Other amendments</b>  | <b>53</b> |
| <b>Part 1.1</b>   | <b>Human Rights Commission Act 2005</b>  | <b>53</b> |
| <b>Part 1.2</b>   | <b>Uncollected Goods Act 1996</b>  | <b>60</b> |

Contents

---

|                   |   | Page |
|-------------------|---|------|
| <b>Schedule 2</b> | <b>Delayed amendments</b>               | 62   |
| <b>Part 2.1</b>   | <b>Human Rights Commission Act 2005</b> | 62   |
| <b>Part 2.2</b>   | <b>Residential Tenancies Act 1997</b>   | 62   |



Australian Capital Territory

# Residential Tenancies Amendment Act 2020 (No 2)

A2020-48

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An Act to amend the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998*, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Residential Tenancies Amendment Act 2020 (No 2)*.

### 2 Commencement

- (1) This Act (other than the following provisions) commences on a day fixed by the Minister by written notice:

- section 18
- section 42
- schedule 2.

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

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

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

- (2) Sections 18 and 42 commence on the day after this Act's notification day.
- (3) Schedule 2 commences on 30 January 2022.

### 3 Legislation amended

This Act amends the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998*.

*Note* This Act also amends other legislation (see sch 1 and sch 2).

## Part 2 Residential Tenancies Act 1997

### 4 New section 4A

*in part 1, insert*

#### 4A Objects of Act

In recognition of the importance of stable and secure housing for people in the ACT community, the main objects of this Act are to—

- (a) define the rights and obligations of tenants and lessors under residential tenancy agreements; and
- (b) set out minimum contractual requirements for occupancy agreements; and
- (c) enable prospective tenants and occupants to make informed choices; and
- (d) ensure that parties to residential tenancy agreements and occupancy agreements can easily access suitable, low cost, informal and timely ways to enforce their rights under those agreements; and
- (e) protect parties to residential tenancy agreements and occupancy agreements from unfair practices; and
- (f) facilitate the availability of stable and secure housing in the ACT.

**5 New section 6AA**

*after section 6, insert*

**6AA Who is a *co-tenant*?**

A person is a *co-tenant* under a residential tenancy agreement if the person is 1 of 2 or more tenants under the agreement.

*Note* Section 35C sets out how a person can become a new co-tenant under an existing residential tenancy agreement.

**6 What is a *residential tenancy agreement*?  
Section 6A (1)**

*substitute*

- (1) An agreement is a *residential tenancy agreement* if—
- (a) under the agreement—
    - (i) a person gives someone else (the *tenant*) a right to occupy stated premises; and
    - (ii) the premises are for the tenant to use as a home (whether or not together with other people); and
    - (iii) the right is given for value; and
  - (b) the agreement is not an occupancy agreement under section 71C.

**7 Section 6A (4), third dot point**

*omit*

**8 Certain people given right of occupation not tenants  
Section 6E (1) (b)**

*omit*



**9 Certain kinds of premises mean no residential tenancy agreement  
Section 6F**

*omit*

**10 Rent or a bond only  
New section 15 (2) (aa) and (ab)**

*insert*

- (aa) consenting to a co-tenant leaving a residential tenancy agreement under section 35A; or
- (ab) consenting to a person becoming a co-tenant under section 35C; or

**11 Bond release application—lessor's obligations  
New section 34 (3)**

*insert*

- (3) If there are 1 or more co-tenants, the lessor's obligation under subsection (1) is satisfied if the lessor gives the bond release application form to 1 of the co-tenants.

**12 Bond release application—joint application  
Section 34A (1) (b)**

*substitute*

- (b) the tenant or, if there are co-tenants, each co-tenant signs the form.

**13 Section 34A (3) (a)**

*omit*

if there is more than 1 tenant, the tenants

*substitute*

if there are co-tenants, the co-tenants

**14 Bond release application—application by tenant  
Section 34B (1) (c)**

*substitute*

(c) if there are co-tenants—

- (i) at least 1 of the co-tenants has received a bond release application form from the lessor under section 34; and
- (ii) the co-tenant making the application has signed the form; but
- (iii) at least 1 co-tenant has not signed the form.

**15 Section 34B (2) (a)**

*omit*

each tenant

*substitute*

each co-tenant

**16 New section 34F***insert***34F Bond release application—discrepancy in named tenant**

- (1) This section applies if—
  - (a) a lessor or tenant makes a bond release application to the Territory in relation to a residential tenancy agreement; and
  - (b) the name of a tenant in the bond release application does not match the name of the tenant that has been notified to the Territory under—
    - (i) section 23 (3) (b) (Deposit of bond by lessor); or
    - (ii) section 24 (1) (b) (Deposit of bond by tenant); or
    - (iii) section 35B (2) (b) (Repayment of bond to leaving co-tenant); or
    - (iv) section 35F (2) (b) (Payment of bond by new co-tenant).
- (2) The Territory may refer the bond release application to the ACAT.
- (3) If a bond release application is referred to the ACAT, the ACAT must—
  - (a) decide who is entitled to receive the released bond; and
  - (b) make an order directing the Territory to release the bond in accordance with the decision.

**17 New part 3A***insert***Part 3A Co-tenancies****35A Co-tenant may leave residential tenancy agreement**

- (1) A co-tenant (the *leaving co-tenant*) may stop being a party to a residential tenancy agreement only—
  - (a) with the consent of the lessor and each remaining co-tenant under the agreement; or
  - (b) by order of the ACAT under section 35G (1) (a) or (d).
- (2) For subsection (1) (a), the leaving co-tenant must seek the consent of the lessor and each remaining co-tenant—
  - (a) by notice in writing (the *consent application*); and
  - (b) at least 21 days before the day the leaving co-tenant intends to stop being a party to the residential tenancy agreement (the *proposed leaving day*).
- (3) The lessor and each remaining co-tenant—
  - (a) if the proposed leaving day is during the term of a fixed term agreement—may refuse consent whether or not it is reasonable to do so; but
  - (b) if the residential tenancy agreement is a periodic agreement on the proposed leaving day—must not unreasonably refuse consent.
- (4) For subsection (1) (a), the lessor and a remaining co-tenant is taken to consent if—
  - (a) they do not respond to the leaving co-tenant within 21 days after receiving the consent application; and

- (b) in the circumstances mentioned in subsection (3) (b)—they do not apply to the ACAT, within 21 days after receiving the consent application, for an order under section 35G (1) (b) or (2) (a) to refuse consent.
- (5) If consent is given to the leaving co-tenant stopping being a party to a residential tenancy agreement—
  - (a) the agreement continues between the lessor and the remaining co-tenants; and
  - (b) the leaving co-tenant's rights and obligations under the agreement end.
- (6) For subsection (5), a co-tenant stops being a party to a residential tenancy agreement on—
  - (a) the proposed leaving day or any other day agreed between the parties; or
  - (b) if the ACAT makes an order mentioned in subsection (1) (b)—the day stated in the order.

### **35B Repayment of bond to leaving co-tenant**

- (1) This section applies if—
  - (a) a co-tenant (the *leaving co-tenant*) stops being a party to a residential tenancy agreement—
    - (i) under section 35A; or
    - (ii) because of an ACAT order under section 35G (1) (a), (c) (ii) or (d); and
  - (b) a bond is held in relation to the agreement; and
  - (c) the leaving co-tenant paid some or all of the bond in relation to the agreement; and
  - (d) 1 or more of the remaining co-tenants continue to be a party to the agreement.

- (2) The remaining co-tenants must, not more than 14 days after the day the leaving co-tenant stops being a party to the residential tenancy agreement—
- (a) pay to the leaving co-tenant an amount equal to the bond paid by the leaving co-tenant under the agreement; and
  - (b) notify the Territory that the leaving co-tenant has been paid under paragraph (a).
- (3) The remaining co-tenants may deduct from that amount—
- (a) any portion of rent unpaid by the leaving co-tenant; and
  - (b) other reasonable costs in relation to the premises.
- Example—reasonable costs**  
for damage caused to the premises by the leaving co-tenant
- (4) A leaving co-tenant is not entitled to payment of any other amount of the bond under the residential tenancy agreement.
- (5) Subsection (2) does not apply if the amount that may be deducted under subsection (3) is more than the amount of the bond paid by the leaving co-tenant.
- (6) A leaving co-tenant may apply to the ACAT for resolution of a dispute in relation to subsection (2) or (3) as a tenancy dispute even if the leaving co-tenant has stopped being a party to the residential tenancy agreement.

*Note* The ACAT may make orders requiring the payment of an amount to a person—see s 83 (c).

### **35C Becoming a co-tenant under existing residential tenancy agreement—generally**

- (1) This section applies if—
- (a) a tenant under a residential tenancy agreement (an *existing tenant*) wants another person (a *new person*) to become a co-tenant under the agreement; and

- (b) the premises are not a social housing dwelling or crisis accommodation.
- (2) To remove any doubt, this section does not apply to the grant by an existing tenant of a sub-tenancy or a bare licence to occupy the premises.

**Example—bare licence**

Ollie is a tenant in a house under a residential tenancy agreement. Ollie's brother, Loki, is going overseas and needs a place to stay for 2 weeks. Ollie has said that Loki could stay in the spare room until he goes.

- (3) The new person may only become a co-tenant under the residential tenancy agreement—
- (a) if the existing tenant obtains the consent of the lessor and any other existing tenant; or
  - (b) if the existing tenant makes an application to the ACAT under section 35D.
- (4) For subsection (3) (a), the existing tenant must seek the consent of the lessor and any other existing tenant—
- (a) by notice in writing (the *consent application*); and
  - (b) at least 14 days before the day it is proposed the new person will become a co-tenant under the residential tenancy agreement (the *proposed joining day*).
- (5) The lessor must—
- (a) not unreasonably refuse consent; and
  - (b) if the lessor refuses consent—tell the existing tenant and the new person, in writing, the reason for refusing consent.
- (6) For subsection (3) (a), the lessor and any other existing tenant are taken to consent if they do not respond within 14 days after receiving the consent application.

- (7) If consent is given to the new person becoming a co-tenant under the residential tenancy agreement—
- (a) the agreement continues with the new person becoming a co-tenant with the existing tenants; and
  - (b) the existing tenants must give the new person a copy of the condition report for the premises not later than the day after they become a co-tenant.
- (8) For subsection (7), the new person becomes a co-tenant on the proposed joining day or any other day agreed between the parties.

### **35D Co-tenancy on application to ACAT**

- (1) This section applies if—
- (a) an existing tenant has made a consent application for a new person to become a co-tenant under a residential tenancy agreement; and
  - (b) the lessor has refused consent under section 35C; and
  - (c) no other existing tenant has refused consent under section 35C.
- (2) The existing tenant may apply to the ACAT for a declaration under section 35G (1) (c) (i) that the lessor's refusal to consent was unreasonable (a *declaration application*).
- (3) If the existing tenant makes a declaration application—
- (a) the new person becomes a co-tenant under the residential tenancy agreement on the day the application is made; and
  - (b) the agreement continues with the new person becoming a co-tenant with the existing tenants; and



- (c) the existing tenants must give the new person a copy of the condition report for the premises not later than the day after they become a co-tenant.

*Note* The ACAT may subsequently order that the new person stop being a co-tenant under the residential tenancy agreement (see s 35G (1) (c) (ii)).

- (4) The lessor may make an application to the ACAT for an order under section 35G (1) (c) (ii) that the new person stop being a co-tenant under the residential tenancy agreement if—
  - (a) the existing tenant has made a declaration application; and
  - (b) the declaration application is—
    - (i) discontinued by the applicant; or
    - (ii) otherwise not yet decided by the ACAT.
- (5) If the ACAT makes an order mentioned in section 35G (1) (c) (ii)—
  - (a) the new person—
    - (i) stops being a party to the residential tenancy agreement on the day the order is made; and
    - (ii) must leave the premises the subject of the residential tenancy agreement within 21 days after the order is made; and
  - (b) the agreement continues between the lessor and the remaining co-tenants; and
  - (c) the new person's rights and obligations under the agreement end; and
  - (d) section 35B applies to the new person as if the new person had stopped being a party to the agreement under section 35A.

(6) In this section:

*consent application*—see section 35C (4) (a).

*existing tenant*—see section 35C (1) (a).

*new person*—see section 35C (1) (a).

**35E      **Becoming a co-tenant under existing residential tenancy agreement—social housing dwelling and crisis accommodation****

- (1) This section applies if the lessor and each tenant (the *existing tenants*) under a residential tenancy agreement in relation to a social housing dwelling or crisis accommodation consent to another person becoming a co-tenant under the agreement.
- (2) The residential tenancy agreement continues with the other person becoming a co-tenant with the existing tenants.
- (3) The existing tenants must give the other person a copy of the condition report for the premises not later than the day after they become a co-tenant.
- (4) For subsections (2) and (3), a person becomes a co-tenant on the day agreed between the parties.

**35F      **Payment of bond by new co-tenant****

- (1) This section applies if—
  - (a) a person (the *new co-tenant*) becomes a new co-tenant under a residential tenancy agreement under section 35C, section 35D or section 35E; and
  - (b) a bond is held in relation to the agreement; and
  - (c) 1 or more of the other co-tenants (the *other co-tenants*) continue to be a tenant under the agreement.

- (2) The new co-tenant must, not more than 14 days after the day they become a co-tenant under the residential tenancy agreement—
  - (a) pay to the other co-tenants the new co-tenant's share of the bond under the agreement; and
  - (b) notify the Territory that the new co-tenant has paid their share of the bond.

### **35G ACAT orders—co-tenancy matters**

- (1) On application by a co-tenant under a residential tenancy agreement, the ACAT may—
  - (a) if consent required under section 35A (1) (a) is refused—order that a co-tenant may stop being a party to the agreement under section 35A; or
  - (b) order that the co-tenant may refuse consent for a co-tenant to stop being a party to the agreement under section 35A; or
  - (c) for an application made under section 35D—
    - (i) declare that the lessor's refusal to consent to the new person becoming a co-tenant under the residential tenancy agreement was unreasonable; or
    - (ii) order that the new person stop being a party to the residential tenancy agreement; or
  - (d) order that—
    - (i) a co-tenant must stop being a party to the agreement within a stated period (being a period not less than 3 weeks after the order is made); and
    - (ii) the agreement continues between the lessor and the remaining co-tenants; and
    - (iii) the co-tenant's rights and obligations under the agreement end; or

- (e) make any other order in relation to an order mentioned in paragraphs (a) to (d) that the ACAT considers appropriate.

**Examples—par (e)**

- 1 order for payment of a co-tenant's share of utility costs
  - 2 order for payment of reasonable costs for damage caused to premises by a co-tenant
- (2) On application by a lessor under a residential tenancy agreement, the ACAT may order that the lessor may refuse consent for a co-tenant to stop being a party to the agreement under section 35A (4) (b).
- (3) In making an order under subsection (1) (c), the ACAT must consider whether the lessor's refusal to consent to the new person becoming a co-tenant under the residential tenancy agreement is reasonable in the circumstances, including having regard to the following:
- (a) whether the premises would become overcrowded if the new person were to become a co-tenant under the residential tenancy agreement;
  - (b) whether the new person is included on a residential tenancy database;
  - (c) if the residential tenancy agreement is for a particular purpose—whether the new person meets the requirements of, or is suitable having regard to, the purpose of the residential tenancy agreement;
  - (d) if the residential tenancy agreement is an agreement mentioned in section 6C—whether the new person will not be occupying the premises under the terms and conditions of the person's employment.
- (4) In this section:
- existing tenant*—see section 35C (1) (a).
- new person*—see section 35C (1) (a).

**18 Failure to pay rent—payment order  
Section 49A (3) (b)**

*substitute*

- (b) if the payment order does not include a requirement to pay rent, or a stated part of rent, that has become payable as mentioned in subsection (2) (a)—
- (i) the lessor has made more than 2 applications for a termination and possession order under section 49 (2) in the 12-month period immediately before the day the ACAT makes the order; and
  - (ii) it is in the interests of justice to do so.

**19 Section 54 heading**

*substitute*

**54 Purported co-tenancy, assignment or subletting****20 Section 54 (1) (a)**

*substitute*

- (a) the tenant purported, in contravention of the standard residential tenancy terms, to—
- (i) consent to a person to become a co-tenant; or
  - (ii) assign or sublet the premises; and

**21 Section 54 (1) (b) and (c)**

*before*

assignment

*insert*

co-tenancy,

**22 Section 54 (2)**

*before*

assignee

*insert*

co-tenant,

**23 What is an *occupancy agreement*?  
Section 71C (1)**

*substitute*

- (1) An agreement is an *occupancy agreement* if—
- (a) under the agreement—
    - (i) a person (the *grantor*) gives someone else (the *occupant*) a right to occupy stated premises; and
    - (ii) the premises are for the occupant to use as a home (whether or not with other people); and
    - (iii) the right is given for value; and
  - (b) the agreement is 1 of the following:
    - (i) except if section 6B applies, an agreement to occupy premises in the grantor's principal place of residence;
    - (ii) an agreement—
      - (A) to exclusively occupy a sleeping space in a building with other sleeping spaces with related access to shared facilities or provision of domestic services; and
      - (B) that states it is an occupancy agreement;

- (iii) an agreement—
  - (A) for emergency accommodation for people in crisis; and
  - (B) that states it is an occupancy agreement for emergency accommodation for people in crisis;
- (iv) an agreement—
  - (A) to occupy premises provided under a housing support program; and
  - (B) that states it is an occupancy agreement for a housing support program;
- (v) an agreement—
  - (A) to occupy premises because of membership in a club or other entity; and
  - (B) that states it is an occupancy agreement;
- (vi) except if section 6B applies, an agreement to occupy—
  - (A) premises provided by the grantor in a residential park; or
  - (B) a site in a residential park, for the purpose of the occupant placing a manufactured home or a mobile home on the site;
- (vii) an agreement prescribed by regulation.

**Examples—par (b) (ii) (A)**

a bedroom in a boarding house, a bed in a dormitory-style room

*Note 1* This Act does not apply to nursing homes, hostels for aged or disabled people or other prescribed premises (see s 4).

*Note 2* This part and other provisions relating to occupancy agreements in this Act and the *Human Rights Commission Act 2005*, made by the *Residential Tenancies Amendment Act 2020 (No 2)* do not apply in relation to education provider occupancy agreements until 30 January 2022 (see pt 17).

## 24 Section 71C (4) and note

*substitute*

(4) In this section:

***housing support program*** means a program funded by the Territory under which accommodation is provided for people who—

- (a) are homeless or at risk of homelessness; or
- (b) will receive welfare or health support or services when using the accommodation.

**Examples—par (b)**

alcohol and drug addiction services

***shared facilities***, in relation to premises, means areas related to the premises, provided for shared use by people occupying those and other premises.

**Examples**

shared bathroom and toilet, laundry, kitchen

***sleeping space***, in a building, means—

- (a) a bedroom; or
- (b) a bed in a room with other beds.



**25 New sections 71CA and 71CB**

*insert*

**71CA Certain types of agreements not occupancy agreements**

An occupancy agreement does not include an agreement—

- (a) under which a tenant under a residential tenancy agreement gives a right to occupy the premises the subject of the residential tenancy agreement; or
- (b) arising under a mortgage entered into honestly in relation to the premises; or
- (c) arising under a scheme if—
  - (i) a group of adjacent premises is owned by a company; and
  - (ii) the people who have rights to occupy the adjacent premises jointly have a controlling interest in the company; or
- (d) entered into honestly to give a right to occupy the premises for a holiday; or
- (e) prescribed by regulation.

**71CB Occupancy agreement—smoke alarms**

- (1) A grantor must not enter into an occupancy agreement (other than a site-only residential park occupancy agreement) with an occupant in relation to premises unless—
  - (a) smoke alarms are installed for the premises; and
  - (b) the smoke alarms, and the installation of the smoke alarms, comply with the requirements prescribed by regulation under section 11B (1) (b).

*Note* Other requirements may apply in relation to the installation of smoke alarms, for example, requirements under the [Building Act 2004](#).

(2) For a site-only residential park occupancy agreement, the occupant must comply with the requirements in subsection (1) (a) and (b).

(3) In this section:

*site-only residential park occupancy agreement* means an occupancy agreement mentioned in section 71C (1) (b) (vi) (B).

## **26 Section 71D heading**

*substitute*

## **71D When does an occupancy start and end?**

## **27 New section 71D (2)**

*insert*

(2) An occupancy agreement ends on the following day:

(a) if the agreement is for a fixed term—

(i) the last day of the fixed term; or

(ii) if, with the grantor's consent, the occupant continues to occupy the premises after the fixed term ends—

(A) the day agreed by the grantor and occupant; or

(B) the day the agreement is terminated under section 71EK; or

(b) if the agreement is not for a fixed term—

(i) a day agreed by the grantor and occupant; or

(ii) the day the agreement is terminated under section 71EK.

**28 Section 71E**

*substitute*

**71E Application of occupancy principles**

- (1) An occupancy agreement for premises—
  - (a) is taken to contain the occupancy principles as in force from time to time; and
  - (b) may contain—
    - (i) rules about occupying the premises (the *occupancy rules*); and
    - (ii) additional terms.
- (2) An occupancy rule or additional term in an occupancy agreement is void if it is inconsistent with the occupancy principles, this Act or another territory law.

**71EA Occupancy principles**

- (1) The following principles (the *occupancy principles*) apply to an occupancy agreement in relation to premises:
  - (a) a grantor must provide premises that are—
    - (i) reasonably clean; and
    - (ii) in a reasonable state of repair; and
    - (iii) reasonably secure;
  - (b) a grantor must ensure that the occupancy agreement is in writing if—
    - (i) the agreement is for a fixed term of more than 6 weeks; or
    - (ii) if subparagraph (i) does not apply to the agreement—the total time the occupant occupies the premises under the agreement is more than 6 weeks;

- (c) a grantor may require an occupant to pay a security deposit only in accordance with section 71EC;

*Note* A security deposit payable under an occupancy agreement must be treated as if it were a rental bond lodged with the Territory (see s 71ED).

- (d) a grantor must give an occupant a written receipt for payments made under the occupancy agreement in accordance with section 71EF;

- (e) a grantor may only impose an occupancy rule, fee, charge or penalty on an occupant if the requirements in section 71EG are met;

- (f) an occupancy rule must be reasonable and proportionate to the outcome sought by the imposition of the rule;

- (g) any penalty or consequence (other than termination of the agreement) for breaching an occupancy rule—

(i) must be reasonable and proportionate to the seriousness of the breach of the rule; and

(ii) must not impose unreasonable hardship on the occupant;

- (h) a grantor must provide the occupant with quiet enjoyment of the premises including access to the premises as set out in section 71EH;

- (i) a grantor must give the occupant the information mentioned in section 71EI about the dispute resolution processes that apply to the occupancy agreement;

- (j) a grantor may enter the premises only in accordance with section 71EJ or section 71EM;

- (k) an occupant must not behave in a way that detracts from the rights of others (including another occupant) to live and work in the premises in a safe environment, free from harassment or intimidation;

- (l) a party to the occupancy agreement must not terminate the agreement otherwise than in accordance with section 71EK;
- (m) an occupant must vacate the premises when the agreement ends;
- (n) an occupant must, at the end of the occupancy agreement, leave the premises—
  - (i) in substantially the same state of cleanliness the premises were in at the start of the occupancy agreement; and
  - (ii) in substantially the same condition the premises were in at the start of the occupancy agreement (allowing for fair wear and tear); and
  - (iii) reasonably secure.
- (2) If subsection (1) (b) (i) does not apply to an occupancy agreement and the agreement is not in writing, the grantor may comply with any requirement in subsection (1) to include information in the agreement by giving the occupant the information, in writing, in any other appropriate way before the agreement starts.
- (3) For a site-only residential park occupancy agreement—
  - (a) ***premises*** means the land and any fixtures in the residential park provided by the grantor for the purpose of the occupant placing a manufactured home or a mobile home on the land; and
  - (b) the grantor is entitled to enter the occupant's manufactured home or a mobile home only with reasonable notice, at reasonable times, on reasonable grounds and for reasonable purposes.
- (4) In this section:  
***site-only residential park occupancy agreement*** means an occupancy agreement mentioned in section 71C (1) (b) (vi) (B).

**71EB Condition report**

- (1) A grantor must, not later than the day after the occupant takes possession of the premises, give the occupant a report about the state of repair or general condition of the premises of the following on the day the occupant is given the report:
  - (a) the premises;
  - (b) any facilities, furniture or goods provided with the premises.
- (2) The grantor must sign the report and give the occupant a reasonable opportunity to check the content of the condition report.
- (3) If the grantor does not give the occupant a condition report for the premises, unless there is evidence to the contrary, the state of repair or general condition of the premises is taken to be the same at the end of the occupancy agreement as they were at the start of the agreement.

**71EC Payment of security deposit**

- (1) A grantor must not require an occupant under an occupancy agreement for premises to pay a security deposit unless—
  - (a) the agreement is—
    - (i) in writing; and
    - (ii) for a fixed term of more than 14 days; and
  - (b) the grantor complies with section 71EB in relation to a condition report.
- (2) The maximum amount of a security deposit is—
  - (a) for an occupancy agreement with a fixed term of more than 14 days but less than 6 months—an amount of no more than the first 2 weeks of any occupancy fee payable under the agreement; or

- (b) for an occupancy agreement with a fixed term of 6 months or longer—an amount of no more than the first 4 weeks of any occupancy fee payable under the agreement.
- (3) The amount of the security deposit must be stated in the occupancy agreement.
- (4) A grantor must not require or accept—
  - (a) more than 1 security deposit in relation to an occupancy agreement; or
  - (b) a security deposit from an occupant under an occupancy agreement for premises (the *current agreement*) if—
    - (i) the occupant occupied the premises under an earlier occupancy agreement (the *prior agreement*); and
    - (ii) a security deposit is held in relation to the prior agreement; and
    - (iii) an application for the release of the deposit has not yet been made.

*Note* An application may be made under div 3.4 (as applied by s 71ED (4)).

### **71ED Security deposit must be lodged with Territory**

- (1) A security deposit payable under an occupancy agreement must be deposited with the Territory.
- (2) The deposit must be accompanied by a written notice that states—
  - (a) the names of, and addresses for service on, the occupant and the grantor; and
  - (b) the amount of security deposit being deposited.

- (3) If the Territory accepts the amount of the security deposit, the Territory must—
- (a) give the occupant a receipt for the amount; and
  - (b) give the occupant and grantor a copy of the notice under subsection (2).
- (4) If the Territory accepts the security deposit, the applied provisions apply in relation to the occupancy agreement as if—
- (a) the amount had been received by the Territory under part 3 (Bonds); and
  - (b) the occupancy agreement were a residential tenancy agreement; and
  - (c) the occupant were a tenant under the agreement; and
  - (d) the grantor were the lessor under the agreement; and
  - (e) any dispute between the occupant and the grantor about the security deposit were a tenancy dispute; and
  - (f) any other necessary changes, and any changes prescribed by regulation, were made.
- (5) In this section:
- applied provisions*** means the following provisions:
- (a) section 27 (Payment of bond money into trust account);
  - (b) section 28 (Interest on amounts in trust account);
  - (c) division 3.4 (Release of bond money).



**71EE Deductions from security deposit**

A grantor may deduct from a security deposit paid under an occupancy agreement—

- (a) the reasonable cost of repairs to, or the restoration of, the premises or any facilities, furniture or goods provided with the premises as a result of damage (other than fair wear and tear) caused by the occupant; and
- (b) the reasonable cost of securing the premises if the occupant fails to return the keys for the premises to the grantor at the end of the agreement; and
- (c) any occupancy fee or other amount owing and payable under the occupancy agreement at the time the agreement ends.

**71EF Receipts for certain payments**

- (1) If an occupant pays to a grantor an amount under an occupancy agreement for premises of—
  - (a) \$75 or more—the grantor must give the occupant a written receipt for the payment; or
  - (b) less than \$75—the grantor must give the occupant a written receipt for the payment if asked by the occupant.
- (2) The grantor must—
  - (a) keep a written record of all payments received from the occupant under the occupancy agreement; and
  - (b) if asked by the occupant—give the occupant a copy of the record.

**71EG Occupancy rules, fees, charges and penalties**

- (1) The grantor must include the following information in an occupancy agreement for premises:
- (a) any occupancy rule that applies to the premises;
  - (b) any penalty that may apply for a breach of an occupancy rule;
  - (c) any penalty, fee or charge that may apply if the occupant terminates the agreement before the end of the agreement;
  - (d) any other fee or charge payable under the agreement including—
    - (i) the frequency of the fee or charge; and
    - (ii) if relevant, how the fee or charge is worked out.

**Examples—par (d) (i)**

weekly occupancy fee, monthly electricity charge, quarterly water use fee, monthly wi-fi access fee

**Example—par (d) (ii)**

a stated share of a utilities bill

*Note* If an occupancy agreement is not in writing, the grantor may comply with a requirement to give information by giving the information, in writing, in any other appropriate way (see s 71EA (2)).

- (2) The grantor must give the occupant—
- (a) at least 8 weeks prior written notice (the *grantor's notice period*) before—
    - (i) changing an occupancy rule included in the occupancy agreement; or
    - (ii) increasing a fee, charge or penalty payable under the occupancy agreement; or
    - (iii) introducing a new fee, charge, occupancy rule or penalty payable under the occupancy agreement; and

- (b) reasonable notice about imposing a penalty for breach of an occupancy rule included in the occupancy agreement.
- (3) If the grantor gives notice under subsection (2) (a), the occupant may terminate the occupancy agreement by giving 2 weeks written notice to the grantor before the end of the grantor's notice period.

### **71EH Occupant's access to occupancy premises**

- (1) As far as reasonably practicable, the grantor must give the occupant—
  - (a) 24-hour access to—
    - (i) the occupant's part of the premises; and
    - (ii) a toilet and bathroom; and
  - (b) access at reasonable times to shared facilities having regard to the occupant's circumstances.

#### **Example—occupant's circumstances**

parents of a baby may need to use the kitchen to prepare baby formula

- (2) In this section:

*occupant's part*, of premises the subject of an occupancy agreement, means the part of the premises that is provided under the agreement for the occupant's primary use.

*shared facilities*, in relation to premises the subject of an occupancy agreement, means an area related to the premises that is provided for shared use by occupants.

#### **Examples**

shared laundry, kitchen, games room, outdoor BBQ area

**71EI Information about dispute resolution processes**

The grantor must include the following information in an occupancy agreement for premises:

- (a) any internal dispute resolution process that applies to the agreement;
- (b) the contact details for—
  - (i) the grantor; and
  - (ii) at least 1 community dispute resolution service provider; and
  - (iii) the human rights commission; and
  - (iv) the legal aid commission; and
  - (v) the ACAT.

*Note* If an occupancy agreement is not in writing, the grantor may comply with a requirement to give information by giving the information, in writing, in any other appropriate way (see s 71EA (2)).

**71EJ Entry by grantor to occupancy premises**

- (1) The grantor must ensure an occupancy agreement for premises states—
  - (a) under what circumstances the grantor may enter the premises; and
  - (b) for each circumstance—the kind of notice, and period of notice, that the grantor must give the occupant—
    - (i) before entering the premises; or

- (ii) if it is not practicable to give prior notice, after entering the premises.

**Examples—not practicable to give prior notice**

- 1 the grantor has reasonable concerns about an imminent risk to the welfare of the occupant or another person
  - 2 the grantor has reasonable concerns about an imminent risk of property damage and the occupant cannot be contacted
- (2) For subsection (1) (b), the kind of notice, and period of notice, must be reasonable and proportionate to the outcome sought by the grantor entering the premises.

**Examples**

- 1 The owner of a boarding house states in the occupancy agreement that the occupant's room will be cleaned every Monday morning.
  - 2 The operator of a residential park states in the occupancy agreement for a manufactured home provided by the operator that the operator will give 7 days' notice for routine maintenance.
- (3) A grantor may enter the premises if—
    - (a) the occupancy agreement allows the grantor to do so; and
    - (b) unless it is not practicable to do so—the grantor has given notice in accordance with the agreement.

**71EK Termination of occupancy agreement**

- (1) The grantor must ensure an occupancy agreement states—
  - (a) under what circumstances the occupancy agreement may be terminated; and
  - (b) a reasonable period of notice that must be given by a party before the agreement is terminated.

- (2) For subsection (1) (a), the occupancy agreement may only allow a party to terminate the agreement under circumstances that are reasonable having regard to the nature of the occupancy.

**Examples—nature of occupancy**

- 1 whether the occupancies of the premises are usually long-term or short-term
- 2 whether the agreement is for a fixed term or is periodic
- 3 whether the accommodation is provided by a commercial provider or is in someone's residence

- (3) A party may only terminate an occupancy agreement if—
- (a) all parties to the agreement agree; or
  - (b) the agreement allows the party to do so and the party has given notice in accordance with the agreement; or
  - (c) the other party has—
    - (i) breached an occupancy principle or the occupancy agreement; and
    - (ii) the breach justifies the termination of the agreement.

*Note* An occupant may also terminate the agreement if the grantor gives notice of a change to the occupancy rules, fees, charges or penalties (see s 71EG (3)).

- (4) A grantor must not terminate an occupancy agreement, or evict an occupant, only because the occupant—
- (a) applied to the ACAT for an order in relation to an occupancy agreement; or
  - (b) complained to a government entity in relation to an occupancy agreement; or
  - (c) took reasonable action to secure and enforce an occupancy agreement.

**71EL Warrant for eviction—vacant possession order**

- (1) On application by a grantor, the registrar must issue a warrant for the eviction of an occupant from premises if—
  - (a) the ACAT has ordered the occupant under section 83 (i) to vacate the premises; and
  - (b) the occupant fails to vacate the premises in accordance with the order.
- (2) A warrant under this section must comply with section 40 (Content of warrant).

**71EM Occupancy agreement—abandonment of premises**

- (1) This section applies if—
  - (a) the occupant under an occupancy agreement for premises has not paid the occupancy fee under the agreement for at least 3 consecutive periods; and
  - (b) the grantor has taken all reasonable steps to contact the occupier of the premises; and
  - (c) the grantor reasonably believes that the occupier has abandoned the premises.
- (2) The grantor may, without the occupier's consent, and without notice, enter the premises during the occupancy agreement to confirm whether the premises have been abandoned.
- (3) However, the grantor must not enter the premises under subsection (2)—
  - (a) on a Sunday; or
  - (b) on a public holiday; or

(c) before 8 am or after 6 pm.

*Note 1* A grantor may seek an order that premises are abandoned under s 83 (j).

*Note 2* A grantor may dispose of any abandoned goods found on the premises under the *Uncollected Goods Act 1996*.

## 29 Sections 71G and 71GA

*omit*

## 30 New part 5B

*insert*

# Part 5B Residential parks

## Division 5B.1 Definitions—pt 5B

### 71H Definitions—pt 5B

In this part:

***operator***, of a residential park, means the person who manages, controls or otherwise operates the residential park, including by granting rights of occupancy under a residential park agreement, whether or not the person is the owner of the residential park.

***residential park agreement*** means a residential tenancy agreement or an occupancy agreement in relation to a manufactured home or a mobile home that is located in a residential park and includes a site agreement.

***site agreement*** means an agreement under which an operator grants another person, for value, a right to occupy a site in the operator's residential park, for the purpose of placing a manufactured home or a mobile home on the site for use as a home.



## Division 5B.2 Shared park facilities

### 71I Access to shared park facilities

- (1) As far as reasonably practicable, an operator must give a tenant or occupant under a residential park agreement access at reasonable hours to shared park facilities.
- (2) In this section:

*shared park facilities*, in relation to a residential park, means areas in the park provided for shared use by tenants and occupants in the park.

**Examples**

showers, toilets, laundry, camp kitchen, pool, BBQ area

## Division 5B.3 Assignment of interests

### 71J Definitions—div 5B.3

In this division:

*assignee*, in relation to a residential park agreement—see section 71K (1).

*assignor*, in relation to a residential park agreement—see section 71K (1).

### 71K Assignment in residential park permitted with consent

- (1) A tenant or occupant (the *assignor*) may assign the assignor's interest in a residential park agreement to someone else (the *assignee*) only if the operator of the residential park—
  - (a) consents, in writing, to the assignment; or
  - (b) is taken under section 71L to have consented to the assignment.

- (2) In requesting the operator's consent for subsection (1), the assignor must give the operator the following information:
- (a) the name of the assignee;
  - (b) the same information in relation to the assignee that the assignee was requested to give to the operator in relation to the assignee's application to enter into the residential park agreement.

### **71L Consent to assignment**

- (1) Within 14 days after receiving the assignor's request for consent under section 71K (2), the operator may, in writing—
- (a) consent to the assignment; or
  - (b) refuse to consent to the assignment.
- (2) The operator is taken to consent to the assignment if the assignor makes a request under section 71K (2) and the operator does not take action under subsection (1) within 14 days after the request.

### **71M Effect of assignment**

- (1) This section applies if an assignor assigns their interest under a residential park agreement to an assignee.
- (2) The assignor's interest in any security deposit paid under the agreement is also assigned to the assignee.
- (3) From the day of the assignment—
- (a) the assignee is taken to be substituted for the assignor under the residential park agreement, including for the purposes of any security deposit; and
  - (b) the assignor remains liable for any liabilities incurred under the agreement before the day of the assignment.

## Division 5B.4      **Sale of manufactured homes and mobile homes**

### **71N      Sale of home located on residential park site**

- (1) This section applies if—
  - (a) a person owns a manufactured home or mobile home (the *occupant's premises*) that is located in a residential park under a site agreement; and
  - (b) the person intends to offer the premises for sale.
- (2) The person must not display a sign about the sale in or on the premises or in the residential park unless—
  - (a) the person has told the operator about their intention to sell the premises; and
  - (b) the sign is no larger than the maximum size prescribed by regulation.
- (3) The operator of a residential park must not take any action to hinder the person's sale of the premises in the park if the person has complied with subsection (2).
- (4) Without limiting subsection (3), an operator of a residential park hinders a person's sale of premises in the park if the operator—
  - (a) unreasonably stops potential buyers from inspecting the premises; or
  - (b) makes false or misleading statements about the park that affect or may affect the sale; or
  - (c) prevents the person from displaying a sign about the sale.

- (5) An operator of a residential park is not taken to hinder a person's sale of their premises only because the operator—
- (a) imposes conditions relating to potential buyers entering or remaining in the park that are reasonable in the circumstances; or
  - (b) has reasonably refused to consent to a proposed assignment of the person's interest in the site agreement.

**710 Home to be removed from park if no site agreement once sold**

- (1) This section applies if—
- (a) a person (the *seller*) owns a manufactured home or mobile home in a residential park under a site agreement; and
  - (b) the seller sells the manufactured home or mobile home to another person (the *buyer*).
- (2) The buyer must remove the manufactured home or mobile home from the residential park within 5 days after the sale is completed or within a longer period of time agreed by the operator unless—
- (a) the seller has assigned the site agreement to the buyer; or
  - (b) the buyer has entered into a new site agreement with the operator.
- (3) If asked by the buyer, the operator of the residential park must not unreasonably refuse to enter into a site agreement with the buyer for an appropriate site in the park for the manufactured home or mobile home.

**31**      **Meaning of *tenancy dispute***  
**Section 72 (1) (a)**

*after*

parties

*insert*

(including between co-tenants)

**32**      **Section 74**

*substitute*

**74**      **Other options for dispute resolution**

Nothing in this part requires an occupant to attempt to resolve an occupancy dispute under this Act before making a complaint under the [Human Rights Commission Act 2005](#).

**33**      **Jurisdiction of ACAT under this Act etc**  
**Section 76 (1) (c), except note**

*substitute*

(c) the occupancy principles.

**34**      **Extended jurisdiction of ACAT with agreement of parties**  
**Section 78 (1) (a) (iii), except note**

*substitute*

(iii) the occupancy principles; and

**35 Orders by ACAT  
Section 83 (d)**

*after*

loss of rent

*insert*

, occupancy fees

**36 Section 83 (e)**

*substitute*

- (e) an order stating that an amount (not more than the amount of bond or security deposit paid into the trust account in relation to the relevant residential tenancy agreement or occupancy agreement, as the case requires) be paid to the lessor or grantor from the trust account;

**37 Orders by ACAT  
Section 83 (g)**

*substitute*

- (g) an order requiring payment of all or part of the following into the ACAT until the ACAT orders otherwise:
- (i) the rent payable under the standard residential tenancy terms; or
  - (ii) an occupancy fee payable under the occupancy agreement;

**38 Section 83 (j)**

*substitute*

- (j) an order—
- (i) declaring the premises abandoned; and
  - (ii) if the abandoned premises are a manufactured home or mobile home in a residential park and the ACAT considers that the premises are not fit for human habitation—directing the operator of the park how the premises may be disposed of;

*Note* An operator of a residential park in which a manufactured home or mobile home is abandoned can only dispose of the home under the [Uncollected Goods Act 1996](#), s 24A if the ACAT has made an order under par (j).

**39 Section 127**

*substitute*

**127 Death of co-tenant**

If 1 of 2 or more co-tenants under a residential tenancy agreement dies, the agreement continues to operate—

- (a) with the remaining co-tenant as the sole tenant; or
- (b) if there are 2 or more remaining co-tenants—with the remaining co-tenants.

**40 Section 128***substitute***128 Purported co-tenancy, assignment or subletting**

- (1) This section applies if, in contravention of this Act, a tenant under a residential tenancy agreement for premises purports to—
  - (a) consent to a person becoming a co-tenant under the agreement; or
  - (b) assign the tenant's interest under the agreement; or
  - (c) sublet the premises.
- (2) The purported co-tenancy, assignment or subletting is unenforceable and the person living in premises under the purported co-tenancy, assignment or subletting, does so as a licensee only.
- (3) Subsection (2) does not apply to a co-tenancy, assignment or subletting of premises in accordance with a term of the residential tenancy agreement endorsed by the ACAT.

**41 New part 17***insert***Part 17 Transitional—Residential Tenancies Amendment Act 2020 (No 2)****158 Education provider occupancy agreements**

- (1) The occupancy agreement amendments do not apply in relation to an education provider occupancy agreement until 30 January 2022.



- (2) Until 30 January 2022, the existing occupancy agreement provisions continue to apply in relation to an education provider occupancy agreement.
- (3) However, a regulation may provide that—
  - (a) an occupancy agreement amendment applies to an education provider occupancy agreement; or
  - (b) an existing occupancy agreement provision does not apply to an education provider occupancy agreement.
- (4) To remove any doubt, an education provider occupancy agreement is taken not to be a residential tenancy agreement under the existing occupancy agreement provisions.
- (5) In this section:

*existing occupancy agreement provisions* means this Act, part 5A, and other provisions of the Act that relate to occupancy agreements, as in force immediately before the commencement of the *Residential Tenancies Amendment Act 2020 (No 2)*, section 3.

*occupancy agreement amendments* means the amendments of this Act, part 5A, and any other amendments relating to occupancy agreements, made by the *Residential Tenancies Amendment Act 2020 (No 2)*.

## 159 Expiry—pt 17

This part and section 71C (1), note 2 expire on 29 January 2022.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

**42 New part 18***insert***Part 18 Transitional—Residential  
Tenancies Amendment  
Act 2020 (No 2)****160 Meaning of *commencement day*—pt 18**

In this part:

*commencement day* means the day the *Residential Tenancies Amendment Act 2020 (No 2)*, section 42 commences.

**161 Payment orders in relation to applications for termination and possession orders undecided before commencement**

- (1) This section applies in relation to an application for a termination and possession order—
  - (a) made under section 49 (2) on or after 25 August 2020 but before the commencement day; and
  - (b) that is not decided before the commencement day.
- (2) Despite section 49A (3) (b) as in force immediately before the commencement day, the defined provision applies in relation to the application.
- (3) In this section:

*defined provision* means section 49A (3) (b) as in force on the commencement day.

**162 Expiry—pt 18**

This part expires 30 days after the commencement day.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

**43 Standard residential tenancy terms  
Schedule 1, new clause 24 (aa)**

*insert*

- (aa) consenting to—
  - (i) a person becoming a co-tenant; or
  - (ii) a co-tenant stopping being a party to the tenancy agreement;

**44 Schedule 1, new clauses 72A and 72B**

*insert*

**Co-tenant may leave tenancy agreement**

- 72A (1) A co-tenant may stop being a party to the tenancy agreement—
- (a) with the consent of the lessor and each remaining co-tenant under the agreement; or
  - (b) by order of the tribunal under the Residential Tenancies Act, section 35G (1) (a) or (d).
- (2) The co-tenant must seek the consent of the lessor and each remaining co-tenant—
- (a) by notice in writing; and
  - (b) at least 21 days before the day the co-tenant intends to stop being a party to the tenancy agreement (time limits for the lessor or each remaining co-tenant to refuse consent are set out in the Residential Tenancies Act).

- (3) If consent is given to the co-tenant to stop being a party to the tenancy agreement—
  - (a) the agreement continues between the lessor and the remaining co-tenants; and
  - (b) the tenant's rights and obligations under the agreement end.

### **Becoming a new co-tenant to existing tenancy agreement**

- 72B
- (1) Another person may become a co-tenant under the tenancy agreement—
    - (a) with the consent of the lessor and each other co-tenant; or
    - (b) under the Residential Tenancies Act, section 35D.
  - (2) An existing tenant must seek the consent of the lessor and any other co-tenant—
    - (a) by notice in writing; and
    - (b) at least 14 days before the day the person wants to become a co-tenant (time limits for the lessor or each other co-tenant to refuse consent are set out in the Residential Tenancies Act).
  - (3) If the person becomes a co-tenant—
    - (a) the agreement continues with the person becoming a co-tenant with the existing co-tenants; and
    - (b) the existing co-tenants must give the person a copy of the condition report for the premises not later than the day after the person becomes a co-tenant.
  - (4) This clause does not apply to a tenancy agreement in relation to a social housing dwelling or crisis accommodation.

**45 Dictionary, note 2**

*insert*

- human rights commission

**46 Dictionary, new definitions**

*insert*

***assignee***, in relation to a residential park agreement, for division 5B.3 (Assignment of interests)—see section 71K (1).

***assignor***, in relation to a residential park agreement, for division 5B.3 (Assignment of interests)—see section 71K (1).

***co-tenant***—see section 6AA.

***manufactured home*** means a structure, other than a caravan or tent, that—

- has the character of residential premises; and
- is designed, built or manufactured to be transported from 1 place to another for use as a home; and
- is not permanently attached to land.

**47 Dictionary, definitions of *mobile home* and *occupancy principles***

*substitute*

***mobile home*** means a motor vehicle, caravan or other trailer, or other registrable vehicle under the [Road Transport \(Vehicle Registration\) Act 1999](#) that is used as a home.

***occupancy principles***—see section 71EA.

**48 Dictionary, new definitions**

*insert*

**operator**, of a residential park, for part 5B (Residential parks)—see section 71H.

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

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

**residential park**—

- (a) means land that includes—
  - (i) sites for accommodating manufactured homes or mobile homes; and
  - (ii) common areas and facilities for the use of people occupying the manufactured homes or mobile homes; and
- (b) includes a caravan park or camping ground.

**residential park agreement**, for part 5B (Residential parks)—see section 71H.

**site agreement**, for part 5B (Residential parks)—see section 71H.

**social housing dwelling** means premises provided by the housing commissioner or a registered community housing provider under an approved housing assistance program under the *Housing Assistance Act 2007*.

**49 Dictionary, definition of *standard occupancy terms***

*omit*

## Part 3 Residential Tenancies Regulation 1998

### 50 Section 1B

*substitute*

#### 1B Smoke alarms and installation of smoke alarms— Act, s 11B and s 71CB

- (1) A smoke alarm installed in, or for, premises subject to a residential tenancy or an occupancy agreement—
- (a) must—
    - (i) comply with AS 3786; and
    - (ii) be functional; and
    - (iii) be installed on or near the ceiling; and
  - (b) may be—
    - (i) battery-operated; or
    - (ii) hard-wired.
- Note* AS 3786 requires a hard-wired smoke alarm to also have a secondary power source.
- (2) A smoke alarm must be installed in, or for, premises subject to a residential tenancy agreement or an occupancy agreement—
- (a) in each storey of the premises containing a bedroom—
    - (i) in every corridor or hallway associated with a bedroom; and
    - (ii) if there is no corridor or hallway—between each part of the premises containing a bedroom and the remainder of the premises; and

(b) in each storey of the premises not containing a bedroom.

*Note* Other requirements may apply in relation to the installation of smoke alarms, for example, requirements under the [Building Act 2004](#).

(3) If premises under an occupancy agreement is a bedroom or part of a bedroom, for subsection (2) (a) and (b), a reference to *premises* means the building in which the premises are located.

(4) In this section:

**AS 3786** means Australian Standard AS 3786 (Smoke alarms using scattered light, transmitted light or ionization) as in force from time to time.



## **Schedule 1      Other amendments**

(see s 3)

### **Part 1.1                      Human Rights Commission Act 2005**

#### **[1.1]      New section 41A**

*insert*

#### **41A      When may someone complain about an occupancy dispute?**

A person may complain to the commission about an occupancy dispute.

#### **[1.2]      New section 42 (1) (g)**

*before the notes, insert*

- (g) a complaint about an occupancy dispute (an *occupancy dispute complaint*).

#### **[1.3]      New section 43 (1) (h)**

*before the note, insert*

- (h) if the complaint is an occupancy dispute complaint—an occupant under the occupancy agreement.

**[1.4] New section 45 (2) (ea)**

*insert*

- (ea) if the complaint is an occupancy dispute complaint and the commission decides not to refer the complaint for conciliation—tell the complainant, in writing, that the complaint will not be referred for conciliation and include an occupancy dispute referral statement; and

**[1.5] New division 4.2C**

*insert*

**Division 4.2C Certain occupancy dispute complaints to ACAT**

**53P Definitions—div 4.2C**

- (1) In this division:

*occupancy dispute complaint*—see section 42 (1) (g).

*person complained about* means the grantor under an occupancy agreement under the [Residential Tenancies Act 1997](#).

- (2) In this section:

*grantor*—see the [Residential Tenancies Act 1997](#), section 71A.

**53Q Application—div 4.2C**

This division applies to an occupancy dispute complaint.

**53R Occupancy dispute complaints—referral**

- (1) This section applies if—
  - (a) either—
    - (i) a complainant is given an occupancy dispute referral statement under section 45 (2) (ea) (Commission’s obligation to be prompt and efficient); or
    - (ii) a statement under section 82B (1) (Closing occupancy dispute complaints) is included in a final report in relation to a complaint; and
  - (b) within 60 days after the statement is given, the complainant requires the commission to refer the complaint to the ACAT.
- (2) The commission must—
  - (a) refer the complaint to the ACAT; and
  - (b) tell the complainant and the person complained about, in writing, about the referral.

*Note* The commission must also close the complaint (see s 78 (2) (d)).

**53S Occupancy dispute complaints—late application in exceptional circumstances**

- (1) This section applies if—
  - (a) a complainant has been given a statement under section 45 (2) (ea) (Commission’s obligation to be prompt and efficient) or section 82B (1) (Closing occupancy dispute complaints); and
  - (b) the complainant has not required the commission to refer the complaint to the ACAT within 60 days after the statement is given to the complainant.

- (2) The complainant may apply to the ACAT for the complaint to be heard by the ACAT.
- (3) The ACAT may grant the application only if satisfied on reasonable grounds that exceptional circumstances prevented the complainant from requiring the complaint to be referred to the ACAT within the 60-day period.
- (4) If the ACAT grants the application, the complaint is, for this Act, taken to have been referred to the ACAT.

**53T Occupancy dispute complaints—parties to ACAT proceeding**

The following are parties to a complaint referred to the ACAT under this division:

- (a) the complainant;
- (b) the person complained about;
- (c) if, on application by the commission, the ACAT joins the commission as a party to the complaint—the commission.

**53U Occupancy dispute complaints—ACAT jurisdiction**

The ACAT has the same jurisdiction in relation to an occupancy dispute complaint referred to the ACAT under this division as that provided for in the *Residential Tenancies Act 1997*, section 76 (Jurisdiction of ACAT under this Act etc).

**53V Occupancy dispute complaints—commission to give information etc to ACAT**

The commission must give the ACAT (if asked by it) any information or copies of documents in relation to a complaint referred to the ACAT under this division, other than—

- (a) a communication or document to which section 66 (Admissibility of evidence) applies; or

(b) information, a document or something else relevant to a consideration in relation to a complaint given to the commission under section 73 (Power to ask for information, documents and other things); or

(c) information given to the commission under section 74 (Requiring attendance etc).

**53W      Occupancy dispute complaints—ACAT orders**

If the commission refers a complaint to the ACAT under this division, the ACAT may make 1 or more of the orders mentioned in the *Residential Tenancies Act 1997*, section 83 (Orders by ACAT).

**53X      Occupancy dispute complaints—monetary limit on jurisdiction of ACAT**

The ACAT is, in exercising the jurisdiction conferred on it by this division, limited in the amount of money that it may order to be paid by the *Residential Tenancies Act 1997*, section 76 (Jurisdiction of ACAT under this Act etc).

**53Y      Occupancy dispute complaints—other options for dispute resolution**

Nothing in this division requires a complainant to attempt to resolve a complaint under the *Residential Tenancies Act 1997* before making a complaint under this Act.

**[1.6]      Section 62 (3) (b)**

*after*

discrimination complaint

*insert*

, occupancy dispute complaint

**[1.7] Section 78 (2) (d)**

*after*

discrimination complaint

*insert*

, occupancy dispute complaint

**[1.8] New section 82B**

*insert*

**82B Closing occupancy dispute complaints**

- (1) The final report in relation to an occupancy dispute complaint must include an occupancy dispute referral statement.

*Note* **Occupancy dispute referral statement**—see s 88B.

- (2) However, subsection (1) does not apply if—
  - (a) the parties to the complaint have made a conciliation agreement in relation to the complaint; or
  - (b) the complainant has withdrawn the complaint.
- (3) This section is additional to the other requirements of this Act for a final report.

**[1.9] New section 88B**

*in part 4, insert*

**88B Occupancy dispute referral statements**

An **occupancy dispute referral statement** is a statement in a notice in relation to an occupancy dispute complaint to the effect that—

- (a) the commission has closed the complaint; and

- (b) the complainant may ask the commission to refer the complaint to the ACAT within 60 days after the day the notice is given to the complainant; and
- (c) after the 60-day period, the complainant may apply to the ACAT under section 53S (Occupancy dispute complaints—late application in exceptional circumstances) for the complaint to be heard.

*Note* The commission must refer the complaint to the ACAT if the complainant asks it to refer the complaint within the 60-day period (see s 53R).

#### **[1.10] Dictionary, new definitions**

*insert*

*occupancy agreement*—see the *Residential Tenancies Act 1997*, section 71C.

*occupancy dispute* means a dispute—

- (a) between the parties to an occupancy agreement; and
- (b) that is about, or relates to, the agreement.

*occupancy dispute complaint*—see section 42 (1) (g).

*occupancy dispute referral statement*—see section 88B.

#### **[1.11] Dictionary, definition of *person complained about***

*substitute*

*person complained about*—

- (a) for division 4.2B (Certain older people service complaints to ACAT)—see section 53F; and
- (b) for division 4.2C (Certain occupancy dispute complaints to ACAT)—see section 53P.

## Part 1.2                            Uncollected Goods Act 1996

### [1.12]    Section 22 (a)

*substitute*

- (a) for a vehicle that is abandoned (other than a mobile home abandoned in a residential park)—immediately; or

### [1.13]    Section 23 (a)

*substitute*

- (a) for a vehicle that is abandoned (other than a mobile home abandoned in a residential park)—immediately; or

### [1.14]    Section 24 (a)

*substitute*

- (a) for a vehicle that is abandoned (other than a mobile home abandoned in a residential park)—after 14 days; or

### [1.15]    New section 24A

*in division 3.1, insert*

#### **24A    Manufactured homes and mobile homes abandoned in residential parks**

- (1) This section applies if the ACAT—
- (a) has declared that a manufactured home or mobile home in a residential park is abandoned under the *Residential Tenancies Act 1997*, section 83 (j) (i); and
- (b) has not made an order under that *Act*, section 83 (j) (ii).

*Note*    Under the *Residential Tenancies Act 1997*, s 83 (j) (ii) the ACAT may order that an abandoned manufactured home or mobile home in a residential park that is not fit for human habitation may be disposed of other than by sale.



(2) The manufactured home or mobile home may be disposed of by public auction after 14 days from the date of the ACAT order.

(3) In this section:

*manufactured home*—see the [Residential Tenancies Act 1997](#), dictionary.

*mobile home*—see the [Residential Tenancies Act 1997](#), dictionary.

*residential park*—see the [Residential Tenancies Act 1997](#), dictionary.

**[1.16] Dictionary, new definition of *mobile home***

*insert*

*mobile home*—see the [Residential Tenancies Act 1997](#), dictionary.

## Schedule 2           Delayed amendments

(see s 3)

### Part 2.1             Human Rights Commission Act 2005

#### [2.1]           New section 53U (2) and (3)

*insert*

- (2) To remove any doubt, the *Residential Tenancies Act 1997*, section 73 (2) does not require a party to an occupancy agreement to attempt to resolve a dispute under a university dispute resolution procedure before the ACAT deals with a complaint referred to it under this division.
- (3) In this section:  
*university dispute resolution procedure*—see the *Residential Tenancies Act 1997*, section 73 (3).

### Part 2.2             Residential Tenancies Act 1997

#### [2.2]           New section 71C (1) (b) (ia)

*insert*

- (ia) except if section 6B applies, an agreement to occupy premises in a residential facility associated with, or on the campus of, or provided under an arrangement with, an education provider;

**[2.3] New section 71EA (1A)**

*insert*

- (1A) However, subsection (1) (g) does not apply to a penalty or consequence under a university requirement.

**[2.4] Section 71EA (5), new definition of *university requirement***

*insert*

***university requirement*** means a statute, rule or policy about student discipline or medical leave made under, or authorised by, the [Australian National University Act 1991](#) (Cwlth) or the [University of Canberra Act 1989](#).

**[2.5] Section 71ED (1)**

*after*

occupancy agreement

*insert*

, other than an education provider occupancy agreement,

**[2.6] Section 71ED (5), new definition of *education provider occupancy agreement***

*insert*

***education provider occupancy agreement*** means an occupancy agreement in relation to premises in a residential facility associated with, or on the campus of, or provided under an arrangement with, an education provider.

**[2.7] Section 71EJ (2), new example**

*insert*

- 3 A student accommodation provider states in an occupancy agreement that if the student welfare officer has reasonable concerns about the welfare of an occupant, the officer may give notice by knocking 3 times on the occupant's door and, if there is no answer, may enter the room to check on the occupant's welfare. If the occupant is not in the room, the agreement states the officer will leave a written note telling the occupant when and why the officer entered the room and the officer's contact details.

**[2.8] Section 71EK (2), new example**

*insert*

- 4 whether the accommodation is provided for a particular group of people such as students studying at a university

**[2.9] New section 71EK (3A)**

*insert*

- (3A) However, if an occupancy agreement may be terminated under a university requirement—
- (a) subsection (2) does not apply; and
  - (b) for subsection (3)—the parties may also terminate the agreement as permitted or required under the university requirement.

**[2.10] New section 71EK (6)**

*insert*

- (6) In this section:  
*university requirement*—see section 71EA (5).

**[2.11] New section 73 (2) and (3)**

*insert*

- (2) However, for an occupancy agreement to which a university dispute resolution procedure applies, a dispute is an occupancy dispute only if the parties have been unable to resolve the dispute within a reasonable time under the university dispute resolution procedure.

- (3) In this section:

*university dispute resolution procedure* means a dispute resolution procedure authorised under the [Australian National University Act 1991](#) (Cwlth) or the [University of Canberra Act 1989](#).

**[2.12] New section 74 (2) and (3)**

*insert*

- (2) To remove any doubt, section 73 (2) does not require an occupant to attempt to resolve an occupancy dispute under a university dispute resolution procedure before making a complaint under the [Human Rights Commission Act 2005](#).

- (3) In this section:

*university dispute resolution procedure*—see section 73 (3).

**[2.13] Dictionary, new definition of *education provider***

*insert*

*education provider*—means an entity mentioned in the [Education Act 2004](#), table 9A, column 3.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 13 February 2020.

**2 Notification**

Notified under the [Legislation Act](#) on 3 September 2020.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Residential Tenancies Amendment Bill 2020 (No 2), which originated in the Legislative Assembly as the Residential Tenancies Amendment Bill 2020 and was passed by the Legislative Assembly on 27 August 2020.

Clerk of the Legislative Assembly

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