

**1997**  
**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**AMENDMENTS TO THE RESIDENTIAL TENANCIES BILL 1997**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

**Circulated by authority of  
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## **Amendments to the Residential Tenancies Bill 1997**

### **Background**

These amendments have followed extensive consultation between major stakeholders (REI, ACT Housing, The Welfare Rights and Legal Centre, The ACT Law Society, the Owners Association and the Tenant's Union) and other members of the Assembly. For reasons of debating convenience, they have been grouped together, although members of the Assembly, including the Government, may choose to support any particular amendment.

The amendments deal with:

- technical matters;
- the introduction of a new structure for the Residential Tenancies Tribunal;
- the introduction of a new scheme dealing with the endorsement of terms that are inconsistent with the prescribed terms in the Schedule; and
- special transitional arrangements for ACT Housing.

### **1. Clause 3 Subclause (1), definition of "Chairperson" Page 2, line 9—**

#### *Alternative Residential Tenancies Tribunal provision.*

This is consequential upon the alternative Residential Tenancies Tribunal structure.

### **2. Clause 3 Subclause (1), definition of "member of the Tribunal" Page 2, line 24—**

#### *Alternative Residential Tenancies Tribunal provision.*

This is consequential upon the alternative Residential Tenancies Tribunal structure.

### **3. Clause 3 Subclause (1) Page 2, proposed definitions, line 26—**

This amendment insert new definitions for "mobile home" and "mobile home park". This is consequential upon amendment 11.

### **4. Clause 3 Subclause (1), proposed definition of "President" Page 3, line 3—**

#### *Alternative Residential Tenancies Tribunal provision.*

This is consequential upon the alternative Residential Tenancies Tribunal structure.

**5. Clause 3 Subclause (1), definition of "Registrar" Page 3, line 6—**

*Alternative Residential Tenancies Tribunal provision.*

This is consequential upon the alternative Residential Tenancies Tribunal structure.

**6. Clause 3 Subclause (1), definition of "Tribunal" Page 4, line 10—**

*Alternative Residential Tenancies Tribunal provision.*

This is consequential upon the alternative Residential Tenancies Tribunal structure.

**7. Clause 4 Subclause (1) Page 4, line 27—**

This amendment clarifies commencement arrangements concerning the Bill. It provides that, from the commencement date, various provisions of the Bill (except for a number dealing with the prescribed terms) apply to all tenancy agreements.

**8. Clause 4 Subclause (2) Page 4, line 29—**

As amendment 7.

**9. Clause 4 Subclause (3) Page 5, line 1—**

As amendment 7.

**10. Clause 4 Subclause (3) Page 5, line 3—**

As amendment 7.

**11. Clause 6 Paragraph (1)(a) Page 6, line 4—**

This amendment introduces clearer terminology into the paragraph and replaces "relocatable home" with "mobile home" and replaces "caravan park" with "mobile home park".

**12. Clause 6 Paragraphs (1)(g) and (h) Page 6, line 13—**

This amendment deletes paragraphs 6(1)(g) and (h). Temporary, medium-term and long-term accommodation for persons in need are to be addressed by a future Community Law Reform report. These matters may be addressed, after consultation with stakeholders, by regulations under paragraph 6(1)(j).

**13. Clause 7 Subparagraph (b) (ii) Page 6, line 28—***Alternative contracting out provision*

This amendment allows a party to contract out of a prescribed term in the Schedule as long as the inconsistent term has been endorsed by the Tribunal under clause 8B.

**14. Clause 8 Paragraph (b) Page 7, line 2—***Alternative contracting out provision*

This amendment is consequential upon amendment 13 and it makes void any inconsistent term that has not been endorsed by the Tribunal under clause 8B.

**15. Proposed clause 8A Page 7, line 4—***Alternative contracting out provision*

This amendment inserts new clauses 8A and 8B which deal with the endorsement process.

Under clause 8A parties to a residential tenancy agreement may apply to the Tribunal for endorsement of a term that is inconsistent with a prescribed term in the Schedule.

Under clause 8B the Tribunal must compare the inconsistent term against the determined criteria under proposed clause 128A (see amendment 54) before it makes an order under this clause. Further, the Tribunal must satisfy itself that the inclusion of the inconsistent term had not been the result of fraud or undue influence. After this process the Tribunal may make an order:

- endorsing the term;
- setting aside the term; or
- substituting the inconsistent term with an equivalent term from the prescribed terms in the Schedule.

The determined criteria is set by the Minister under clause 128A (see amendment 54) by way of a disallowable instrument.

**16. Clause 10 Subclause (2) Page 7, lines 19 and 21—**

This amendment clarifies subclause 10(2) by introducing consistent terminology.

**17. Clause 20 Page 10, line 19—**

This amendment clarifies clause 20.

**18. Clause 27 Subclause (5) Page 13, line 14—**

This amendment clarifies the administration of subclause 27(5).

**19. Clause 29 Paragraph (e) Page 14, line 9—***Alternative contracting out provision*

This amendment is consequential on the alternative contracting out provision.

**20. Clause 30 Subclause (3) Page 14, line 27—**

This amendment clarifies the administration of subclause 30(3).

**21. Clause 41 Paragraph (1) (b) Page 19, line 6—***Alternative contracting out provision*

This amendment is consequential on the alternative contracting out provision.

**22. Clause 46 Paragraph (1) (d) Page 21, line 34—***Alternative contracting out provision*

This amendment is consequential on the alternative contracting out provision.

**23. Clause 48 Page 23, line 24—***Alternative contracting out provision*

The protections in this clause are unnecessary if the alternative contracting out provision is agreed. (See also clause 98 of the prescribed terms.)

**24. Clause 50 Paragraph (a) Page 25, line 28—**

This amendment rectifies a typographical error in the Bill.

**25. Clause 52 Proposed subclause (1A) Page 26, line 5—**

This amendment clarifies the operation of clause 52 with respect to residential tenancy agreements entered into with a university by visiting academics, staff members, contract employees, post-graduate and undergraduate students and persons taking an approved course of study.

**26. Clause 52 Subclause (2) Page 26, line 6—**

This amendment is consequential to amendment 25.

**27. Clause 52 Subclause (3) Page 26, line 9—**

This amendment is consequential to amendment 25.

**28. Clause 53 Paragraph (1) (b) Page 26, line 24—***Alternative contracting out provision*

This amendment is consequential on the alternative contracting out provision.

**29. Clause 59 Subclause (2) Page 29, line 22—**

This amendment rectifies a typographical error in the Bill.

**30. Clause 61 Subclause (3) Page 30, line 9—**

This amendment removes the limits imposed on the amount of compensation that the Tribunal can award against a tenant who abandons their premises before the expiration of a fixed term resident tenancy agreement. This amendment removes any strategic advantage that a tenant might otherwise have had in abandoning a fixed-term tenancy as opposed to giving a notice to vacate.

**31. Clause 63 Paragraph (1)(b) Page 30, lines 33 and 34—**

This amendment changes a reference to 2 months to 8 weeks, for reasons of consistency.

**32. Clause 63 Subclause (2) Page 30, line 35—**

This amendment requires that a form (which may of a complex and technical nature) be prescribed by regulation rather than by the Director.

**33. Clause 63 Subclause (3) Page 31, line 3—**

This amendment changes a reference to 2 months to 8 weeks, for reasons of consistency.

**34. Clause 70 Subparagraph (1)(a)(ii) Page 33, line 33—**

This amendment clarifies the operation of subparagraph 70(1)(a)(ii).

**35. Clause 81 Page 38, line 2—**

This amendment gives a party to a preliminary conference a right to be represented at the conference by a legal practitioner or an agent. Under this

amendment the exercise of this right is not contingent on the discretion of the Registrar or referee.

**36. Clause 94 Page 40, line 7—**

This amendment gives a person who is appearing at a Tribunal hearing a right to be represented by a legal practitioner or an agent. Under this amendment the exercise of this right is not contingent on the discretion of the Tribunal.

**37. Clause 95 Subclause (2) Page 40, line 18—**

*Alternative Residential Tenancies Tribunal provision.*

This amendment is consequential on the new Residential Tenancies Tribunal structure.

**38. Clause 97 Page 41, line 11—**

Clause 97 requires a party to give incriminating evidence. Such a provision is not required in the legislation of this nature.

**39. Clause 100 Page 41, line 28—**

This amendment provides that the Tribunal may only make an order for costs in the limited circumstances in clause 102 (b).

**40. Clause 104 Paragraph (e) Page 43, line 28—**

This amendment clarifies the operation of paragraph 104(e) by confirming that the money must come from the trust fund.

**41. Clause 105 Page 44, line 10—**

This amendment introduces a new time period for the Tribunal to give parties written notice of the terms of an order made under clause 104. This new time period is 7 days.

**42. Clause 109 Page 45, line 34—**

*Alternative Residential Tenancies Tribunal provision.*

This amendment introduces a new structure for the Residential Tenancies Tribunal (see: clauses 109 - 109D). Under the new structure the Residential Tenancies Tribunal is comprised of a President appointed by the Minister and, where necessary, two other members of the Tribunal or one other member (see: clauses 109A and 109B).

Under subclauses 109B(1) and (2) the President is a Magistrate appointed for a period up to 5 years by the Minister. Subclauses 109B(3) and (4) ensure that members of the Tribunal appointed by the President will have the experience and expertise to deal with residential tenancy cases.

Subclause 109C provides for an Acting President where the President is unable to perform the functions of his or her office or there is a vacancy. Subclause 109D provides for the office of the Registrar of the Residential Tenancies Tribunal.

**43. Clause 110 Subclause (2) Page 46, line 15—**

This amendment changes the jurisdiction limits for the Tribunal in line with an increase in NSW (where the limit has recently been lifted from \$5,000 to \$10,000).

**44. Clause 110 Subclause (3) Page 46, line 17—**

As in amendment 43.

**45. Clause 111 Subclause (1) Page 46, line 26—**

*Alternative Residential Tenancies Tribunal provision.*

This amendment is necessary upon the introduction of the new Residential Tenancies Tribunal structure.

**46. Clause 111 Subclause (2) Page 46, line 28—**

*Alternative Residential Tenancies Tribunal provision.*

This amendment is consequential on the new Residential Tenancies Tribunal structure.

**47. Clause 111 Subclause (3) Page 46, line 33—**

*Alternative Residential Tenancies Tribunal provision.*

This amendment is consequential on the new Residential Tenancies Tribunal structure.

**48. Clause 111 Subclause (4) Page 46, line 35—**

*Alternative Residential Tenancies Tribunal provision.*

This amendment is consequential on the new Residential Tenancies Tribunal structure.



**49. Clause 112 Paragraph (1) (e) Page 47, line 26—***Alternative Residential Tenancies Tribunal provision.*

This amendment is consequential on the new Residential Tenancies Tribunal structure.

**50. Clause 113 Page 47, line 34—***Alternative Residential Tenancies Tribunal provision.*

This amendment is consequential on the new Residential Tenancies Tribunal structure.

**51. Clause 122 Page 50, line 20—**

This amendment substitutes a new clause 122 which expressly deals with situations where the death of one tenant leaves either a single tenant or more than one tenant. It provides that, in both cases, the tenancy agreement continues. Note that the significant hardship which might be occasioned to a surviving tenant may be grounds for the Tribunal to make an order under section 42 of the Act.

**52. Clause 123 Subclause (1) Page 50, line 27—**

This amendment modifies the operation of subclause 123(1). As cast, the purported assignment or subletting would be void from inception. This might have had an impact on the operation of clause 53 (which provided that the Tribunal could terminate a tenancy on the basis of certain purported assignments or sublettings). The use of the word 'unenforceable' rather than 'void' in clause 123 may preclude unmeritorious argument about the effect of clause 53.

**53. Clause 123 Subclause (2) Page 50, line 30—***Alternative contracting out provision*

This amendment is consequential on the alternative contracting out provision. Under this amendment an assignment or subletting of premises in accordance with a term endorsed by the Tribunal will not be void.

**54. Proposed clause 128A Page 52, line 4—***Alternative contracting out provision*

This amendment introduces clause 128A which allows the Minister to determine by way of disallowable instrument the criteria that a Tribunal must refer to when deciding whether or not to endorse a term under clause 8B.

**55. Clause 129 Proposed subclause (5) Page 52, line 24—**

This amendment ensures that the determinations of the Minister are reviewable for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**Schedule of the Residential Tenancies Bill****56. Schedule Clause 13 Page 54, lines 4, 7 and 9—**

This amendment corrects the operation of clause 13 by making it mandatory to provide information to a tenant.

**57. Schedule Clause 31 Page 56, line 32—**

This amendment is of a technical nature and changes the time period in clause 31 from 21 days to 28 days (viz, 2 fortnightly rental periods). This change is in accordance with the wishes of owner and tenant groups and will help reduce the postal and administration costs of providing information to tenants.

**58. Schedule Clause 35 Page 57, line 12—**

This amendment rectifies a typographical error in the Bill.

**59. Schedule Proposed clause 35A Page 57, line 12—**

This amendment, in accordance with the recommendations of the Community Law Reform Committee in Report No. 16 of 1997, makes provision for the manner in which ACT Housing reviews rental changes.

Under the Bill, rent can only be increased at 12 month intervals. However, due to the large number of tenants, ACT Housing undertakes its review of rent on a block by block (block of premises) basis on an annual basis in accordance with the *Housing Assistance Act 1987*.

Note that, because ACT Housing reviews rent on a premise by premise basis (rather than on a tenant by tenant basis), there will be occasions where rent increases will be imposed on a tenant who has been at their premises for less than 12 months.

**60. Schedule Clause 41 Paragraph (b) Page 57, line 32—**

This amendment rectifies a typographical error in the Bill.

**61. Schedule Clause 46 Page 58, line 18—**

This amendment is of a technical nature.

**62. Schedule Clause 53 Page 59, line 19**

This amendment rectifies a typographical error in the Bill.

**63. Schedule Clause 54 Page 59, line 28—**

This amendment is of a technical nature.

**64. Schedule Clause 54 Page 59, line 28—**

This amendment, in general accordance with the recommendations of the Community Law Reform Committee in Report No. 16 of 1997, makes provision for the manner in which ACT Housing will become subject to the obligation to make repairs under clause 54 and 56 of the prescribed terms.

Because of the operation of the commencement provisions in clause 4(5) of the Bill and the amendment proposed above at 59 (dealing with clause 35A of the prescribed terms), ACT Housing rental properties will become subject to the prescribed terms *in one group* in late 1998. Private rental properties will become subject to the prescribed terms in a staggered manner between the commencement day and 1st July 2000 in accordance with clause 4 of the Bill.

This clause puts ACT Housing properties into a similar position as private owners, allowing a staggered application of the obligations in clause 54 and 56 until 1st July 2000.

New ACT Housing tenancies during this time will become subject to the repair obligations under clauses 54 and 56. It is not intended that this exemption have any effect other than in relation to clauses 54 and 56 of the prescribed terms; it not intended to alter obligations concerning urgent repairs under clauses 58-61.

**65. Schedule Clause 58 Page 60, line 10—**

This amendment is of a technical nature and imposes on the lessor an obligation under clause 81 to give reasonable notice before entering the tenant's premises to effect urgent repairs.

**66. Schedule Clause 60 Page 61, line 2—**

This amendment is of a technical nature to ensure that the provision is consistent with clause 58.

**67. Schedule Clause 60 Page 61, lines 2 and 3—**

This amendment rectifies a typographical error in the Bill.

**68. Schedule Clause 72 Heading Page 63, line 2—**

This amendment rectifies a typographical error in the Bill.

**69. Schedule Clause 75 Paragraph (d) Page 63, line 29—**

This amendment rectifies a typographical error in the Bill.

**70. Schedule Clause 80 Paragraph (a) Page 64, line 23—**

This amendment rectifies a typographical error in the Bill.

**71. Schedule Clause 81 Heading Page 64, line 26—**

This amendment clarifies the heading of clause 81 to encompass changes made by amendment 72 below.

**72. Schedule Clause 81 Page 64, line 29—**

This amendment gives the lessor the ability to inspect repairs that have been made. This is a useful addition to the present power under clause 81 to enter premises to effect repairs.

**73. Schedule Clauses 82 and 83 Page 65, line 2—**

This amendment deletes clauses that merely restate the law in the actual Residential Tenancies Bill itself. This information can be better disseminated by other means, in particular information brochures prepared by the ACT Consumer Affairs Bureau. This method also avoids any possible problems that may arise in interpreting conflicting provisions in the Schedule and the Bill itself.

**74. Schedule Clause 89 Page 66, line 25—**

This amendment is of a technical nature and clarifies the operation of the clause.

**75. Schedule Clause 90 Page 66, line 28—**

This amendment is of a technical nature and clarifies the operation of the clause.

**76. Schedule Clause 91 Paragraph (b) Page 66, line 36—**

This amendment is of a technical nature and clarifies the operation of the clause.

**77. Schedule Clause 93 Page 67, line 19—**

As amendment 73.

**78. Schedule Clause 94 Paragraph (a) Page 67, line 26—**

This amendment is of a technical nature and deletes an unnecessary word.

**79. Schedule Clause 94 Paragraph (b) Page 67, line 29—**

This amendment is of a technical nature and clarifies the operation of the clause by splitting the elements of paragraph (b) into subparagraphs (b)(i) and (ii). This makes paragraph (b) easier to read and understand.

**80. Schedule Clause 97 Page 69, line 4—**

This amendment rectifies a typographical error in the Bill.

**81. Schedule Clause 97 Page 69, line 6—**

This amendment rectifies a typographical error in the Bill.

**82. Schedule Clause 98 Page 69, line 23—**

This amendment improves the provision by adding a definition of "immediate relative".

**83. Schedule Clause 99 Page 69, line 25—**

This amendment rectifies a typographical error in the Bill.

**84. Schedule Clause 99 Page 69, line 27—**

This amendment rectifies a typographical error in the Bill.

**85. Schedule Clause 100 Page 69, line 30—**

As amendment 73.