

2020

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

RESIDENTIAL TENANCIES AMENDMENT BILL 2020

SUPPLEMENTARY EXPLANATORY STATEMENT

SET B - Relating to sheet J2020-1063 D07

**Presented by
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Attorney-General**

RESIDENTIAL TENANCIES AMENDMENT BILL 2020

This Bill is a significant bill.

This additional supplementary explanatory statement relates to the Government amendment to the Residential Tenancies Amendment Bill 2020 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill and Government amendments. It is not, and is not meant to be, a comprehensive description of the Bill or Government amendments.

OVERVIEW OF THE GOVERNMENT AMENDMENTS

This Government amendment will amend the *Residential Tenancies Act 1997* (RTA). The amendment is a minor and technical amendment to clarify the intended operation of payment orders after they were amended by the *Residential Tenancies Amendment Act 2020* (the Amendment Act).

CONSULTATION ON THE PROPOSED APPROACH

In preparing the proposed approach to these Government amendments, the ACT Civil and Administrative Tribunal (ACAT) were consulted. This consultation was in addition to the consultation process that occurred in relation to development of the *Residential Tenancies Amendment Act 2020* which introduced the provision which is now being further amended by this Government amendment to the *Residential Tenancies Amendment Bill 2020*.

CONSISTENCY WITH HUMAN RIGHTS

Compatibility of the amendment with the right to privacy, family and home

Section 12 of the *Human Rights Act 2004* (HRA) protects the right to privacy, family, home or correspondence from arbitrary or unlawful interference. Having access to accommodation provides a space for individual tenants to develop their identity and to have personal security and mental stability. Section 49A of the RTA which provides for payment orders is intended to promote the right to privacy and home by providing ACAT with an alternative option to terminating a tenancy agreement in circumstances where the tenant has failed to comply with their obligation to pay rent under the agreement. Payment orders allow ACAT to keep a tenancy on foot and make orders that the tenant pay rent owing and future rent as it falls payable. However, it is also noted that breach of a payment order provides grounds for termination of a tenancy agreement which may also engage and limit the right to privacy and home.

In amending section 49A of the RTA the Amendment Act sought to increase the circumstances in which a payment order may be made. It did this by allowing ACAT to make an order in relation to the payment of future rent even in circumstances where there is no rent owing at the time that the order is made (subject to certain conditions).

The current amendment seeks to clarify that the requirement that a lessor must have made 2 previous applications for a termination and possession order in the previous 12-month period, only applies in circumstances where an order is being made solely in relation to future rent when there are no rent arrears owing. That is, the requirement does not apply in relation to an order that is made for both future rent and rent already payable. The amendment also reduces the number of previous applications required for an order to be made solely in relation to future rent from 'more than 3' to 'more than 2'. This amendment is to ensure that the provision is more workable in practice as it may be difficult for a lessor to make 4 termination and possession order applications in a 12-month period.

These technical amendments do not adversely affect the compatibility of the underlying payment order provisions with the right to privacy and home and are compatible with this right.

GOVERNMENT AMENDMENTS

CLAUSE NOTES

Amendment 1

Clause 2

Page 2, line 4 –

This is an amendment consequential to the introduction of new clause 17A.

This amendment provides that all other provisions of the Residential Tenancies Amendment Bill 2020 will commence on a day fixed by the Minister by written notice, except for clause 17A and schedule 2.

This amendment provides that clause 17A commences immediately after the commencement of the Residential Tenancies Amendment Act 2020, section 10.

It also continues to provide consistently with other amendments that Schedule 2 will commence on 30 January 2022.

Amendment 2

Proposed new clause 17A

Page 17, line 3 –

This amendment inserts an amendment to section 49A(3)(b) of the *Residential Tenancies Act 1997* (RTA).

Payment orders under section 49A of the RTA are an order that the ACT Civil and Administrative Tribunal (ACAT) can make instead of a termination and possession order when a tenant has fallen into rent arrears. Payment orders allow ACAT to keep the tenancy in place but to instead make orders that the tenant pay a specified amount towards any rent arrears as well as future rent as it becomes payable.

The *Residential Tenancies Amendment Act 2020* (notified on 25 February 2020) amended the operation of payment orders to allow orders to be made in relation to future rent in circumstances where the lessor has made more than 3 applications for a termination order under section 49 (2) RTA in the 12-month period immediately before the day the ACAT makes the order. The purpose of that amendment was to create the option for ACAT to make orders in a situation where a tenant repeatedly falls into rent arrears but clears the outstanding arrears before ACAT hears the application for a termination and possession order. Where this occurred repeatedly the amendment allows ACAT to make orders in relation to the payment of future rent, even in circumstances where there is no rent owing at the time ACAT considers the termination and possession order application.

New clause 17A reduces the number of times that a lessor must have previously applied for a termination and possession order before a payment order which is solely in relation to future rent can be made from 3 to 2. This amendment has been made in acknowledgement that, from a practical perspective, it may be difficult for a lessor to make 4 termination and possession order applications in a 12-month period.

New clause 17A also clarifies that the requirement that the lessor must have made more than 2 applications for a termination order under section 49 (2) RTA in the previous 12-months applies only in circumstances where ACAT is making an order solely in relation to future rent and not in circumstances where ACAT is making an order in relation to rent owing or rent owing and future rent. That is, it clarifies that ACAT can make these orders from an initial application.