

2020

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

RESIDENTIAL TENANCIES AMENDMENT BILL 2020

SUPPLEMENTARY EXPLANATORY STATEMENT

SET A – Relating to sheet J2020-274 D09

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RESIDENTIAL TENANCIES AMENDMENT BILL 2020

This Bill is a significant bill.

This supplementary explanatory statement relates to the Government amendments to the Residential Tenancies Amendment Bill 2020 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

The Government amendments will amend the *Residential Tenancies Act 1997* (the RTA) and the *Human Rights Commission Act 2005* (the HRCA). The amendments:

- introduce delayed commencement and transitional arrangements in respect of the provisions relating to occupancy agreements for education providers (including universities). This allows education providers further time for the implementation of changes to their occupancy agreements and standards, if required, noting the majority of such agreements commence at similar times before the start of a semester;
- clarify that the ACT Civil and Administrative Tribunal (the Tribunal) has jurisdiction to hear an education provider occupancy dispute referred to it by the ACT Human Rights Commission (HRC) without the student having to first exhaust internal dispute resolution processes;
- clarify the scope of the grantor's entitlement to access the premises in cases where the premises are believed to be abandoned;
- clarify the application and scope of certain occupancy principles in respect of university Medical Leave Rules and University Disciplinary Requirements;
- clarify the timing for the grantor to provide a condition report; and
- make other minor and technical amendments.

CONSULTATION ON THE PROPOSED APPROACH

In preparing the proposed approach to these Government amendments, universities, student representative organisations, tenant and occupant advocacy bodies and the ACT Human Rights Commission (HRC) were consulted. This consultation was in addition to the significant public consultation process, including release of a Public Exposure Draft and Draft Explanatory Statement, that occurred in relation to development of the Bill itself.

CONSISTENCY WITH HUMAN RIGHTS

The proposed amendments engage a number of human rights under the *Human Rights Act 2004* (HRA) including:

- a) the right to equality and non-discrimination (sections 8 (2)-(3), HRA); and
- b) the right not to have one's privacy, family, home or correspondence interfered with unlawfully or arbitrarily - section 12 (a), HRA.

Compatibility of the bill with the right to equality and non-discrimination

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

Equality and non-discrimination – Definitions of occupancy and tenancy agreements

The amendments will provide greater clarity in relation to the distinction between a residential tenancy and an occupancy agreement, including in relation to education provider occupancy agreements. The effect of this is that some residents in the ACT have the protections of a tenancy agreement, while others will have the lesser protections of an occupancy agreement. This distinction between residential tenancies and occupancy agreements is already drawn under the RTA. The fact that not all residents in the ACT benefit from this proposed amendment does not amount to discrimination on a prohibited ground. If the distinction were linked to a ground of discrimination such as 'other status,' either directly or indirectly, the treatment is nevertheless compatible with the right to equality and non-discrimination. In particular, section 28 of the HRA, sets out the criteria for when human rights including the right to equality and non-discrimination may be reasonably limited such that they are compatible with the HRA. Applying the criteria, the purpose of the distinction between occupancy agreements and residential tenancies is to facilitate a wider range of housing options where a tenancy agreement may either be ill-suited or inappropriate. The measure is of importance as, without this measure, residential tenancy agreements may create an obstacle to the provision of flexible housing and related support services in appropriate circumstances. The current measure, by more clearly defining the distinction between an occupancy agreement and a

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

² The grounds of discrimination are not specifically or exhaustively defined under the HRA. However, the following examples of discrimination are provided in the HRA: 'race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.'

residential tenancy agreement, will assist to achieve the stated purpose of the measure. The proposed amendments will improve the proportionality of any distinction overall, by increasing the protections contained in occupancy agreements.

Under the amendments, a presumption will remain in favour of a residential tenancy agreement in a range of circumstances. Under the proposed definitions, occupancy agreements arise where the agreement seeks to achieve a clearly defined outcome such that any differential treatment between occupants and residential tenants will be based on reasonable and objective criteria. Further relevant to the proportionality of the measure, is that parties to an agreement that purports to be an occupancy agreement, but appears to be more in the nature of a residential tenancy agreement, will be able to challenge its status in the Tribunal.

Equality and non-discrimination – exemptions of universities from certain provisions

The Government amendments include a number of provisions that apply specifically to occupancy agreements provided by universities. These include:

- an exemption from the requirement to lodge any security deposit taken in respect of occupancy premises with the Territory;
- clarifying that the currently existing university disciplinary requirements and medical leave rules established under statute will not be displaced by the occupancy principles in the event of any inconsistency between the disciplinary requirements or medical leave rules and the occupancy principles;
- requiring parties to occupancy agreements who have a dispute to which to which a university dispute resolution procedure applies to exhaust internal dispute resolution procedures (within a reasonable time) prior to making an application to the Tribunal;
- a clarification that occupancy agreements can be terminated under university disciplinary requirements and medical leave rules and that agreements terminated in these circumstances are not subject to the requirement that the termination is reasonable having regard to the nature of the occupancy agreement; and
- delayed commencement and transitional provisions that apply to education provider occupancy agreements (including universities).

It is noted that the effect of the above outlined provisions is that students living in university accommodation will be subject to different arrangements under the Bill. However, not every differential treatment will amount to discrimination, as the measure must be linked either, directly or indirectly, to a prohibited ground of discrimination. The status of university students living in university student accommodation is not a prohibited ground or protected attribute for the purposes of the HRA. While discrimination may occur on the grounds of 'other status', students in student accommodation are also unlikely to be considered as an 'other status' ground of discrimination. Under international human rights law 'other status' has been held to include age, nationality, marital status, disability place of residence within a country and sexual orientation. Although this is a non-exhaustive list, international jurisprudence indicates that 'other status' often relates more to an inherent personal attribute rather than one that is purely circumstantial – it should

generally relate more to who the person is not what they do³ or, in this case, the type of accommodation in which they choose to live. There are exceptions to this approach taking into account the entire circumstances. However, based on this analysis, differential treatment for students living in student accommodation does not engage the right to equality and non-discrimination for the purposes of the HRA. Even, if the right is engaged in relation to a particular group, directly or indirectly, resulting in a potential limitation on the right to equality and non-discrimination, any limits are demonstrably justified as outlined below.

Grounds and purpose for drawing a distinction between occupancies and tenancies - university student accommodation

The standard residential tenancy terms, which apply to all tenancies, are designed to grant a tenant exclusive possession of the premises by limiting the degree of access and control a landlord has over the property and the actions of the tenant. In contrast, the occupancy principles are designed to create greater flexibility, including greater access and control on the part of the grantor to reflect the particular circumstances in which they are being used, or to achieve a particular purpose in the provision of accommodation.

In the case of university student accommodation, there are strong policy reasons for the provision of occupancy agreements rather than tenancy agreements. University student accommodation exists for the purposes of accommodating students while they are studying and, in this context, university accommodation occupancy agreements are inherently connected to the student's enrolment in the university.

University student accommodation is also generally characterised by large multi-user premises that provide a room for the individual resident as well as access to common shared facilities. In addition to providing accommodation facilities, university residences often offer support services such as pastoral care provided by live-in senior residents, social and sporting activities and, in some cases, they also offer academic tutoring. These support services aid in achieving the overarching goal of university accommodation, which is to support a student in their educational and personal development. As such, university accommodation is unlike a residential tenancy in that it is not characterised by exclusive possession and control of the premises, and it also entails the provision of on-site services offered by the grantor which require access by the grantor to deliver.

In providing accommodation which includes many people living in close proximity who utilise common shared facilities, universities (or their contracted providers) also need to be able to have a higher degree of control of the actions of occupants (unlike in a tenancy) in order to manage situations where one student's behaviour impacts on others.

³ See, for example, *Swift v Secretary of State for Justice* [2012] EWHC 2000 (QB) [45]-[46] per Eady J. 'Other status' has in some cases been found to be broader than innate, inherent, personal characteristics or identity taking all of the circumstances into account: see *Clift v United Kingdom* [2010] ECHR 1106 (13 July 2010) where the European Court of Human Rights considered the situation of different categories of prisoners.

Due to the provision of on-site services, the need to regulate the use of common spaces, as well as the need for a higher degree of control in relation to how individuals within the accommodation interact with each other, university student accommodation is not well suited to a residential tenancy agreement. It is an acknowledgement of all the above factors that this unique form of accommodation offering has been included in the definition of occupancy agreements, rather than requiring that this accommodation be offered under residential tenancy agreements. In other words, for the reasons outlined above, the distinction pursues the legitimate purpose of allowing for suitable accommodation options and associated services which are tailored to the specific environment. The distinction is based on reasonable and objective criteria.

Education Provider Specific Provisions

The education provider specific provisions also serve to ensure that occupancy agreements are able to operate effectively and meet the purpose for which they are used. Occupancy agreements in other contexts can also be drafted to include provisions that reflect the purpose for which they are being used.

The Bill also introduces an additional dispute resolution option for all occupants, including students, in the form of the ability to make an occupancy dispute complaint to the Human Rights Commission (HRC). Students will be able to make an occupancy dispute complaint to the HRC without having first exhausted internal dispute resolution options under university dispute resolution procedures. This provides an additional rights enforcement pathway for occupants.

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

Section 12 of the HRA protects the right to privacy, family, home or correspondence. Almost all the proposed amendments, whether taken together or in isolation, engage and promote the right not to have one's privacy, family, home or correspondence interfered with unlawfully or arbitrarily. Having access to accommodation provides a space for individual tenants and occupants to develop their identity and to have personal security and mental stability.

Right to privacy, family and home – occupancy dispute complaints

The right to privacy and home will be engaged and promoted by providing occupants with the ability to make an occupancy dispute complaint to the HRC (Schedule 1, Part 1.1). In conjunction with the mandating of the occupancy principles, providing direct access to this dispute resolution option will provide occupants with an additional avenue to seek the enforcement of their rights. Government amendment 21 [2.1] clarifies that an occupant does not need to attempt to resolve a dispute under a university dispute resolution procedure before applying to the HRC or before having a dispute referred on from the HRC to the Tribunal.

Right to privacy, family and home – grantor's access to premises

Proposed section 71EA (1) (j) provides that a grantor may only enter the premises in accordance with proposed section 71EJ or, under amendment 7, with proposed section 71EM. Accordingly, the measure engages and promotes the right to privacy

by restricting the grantor's access to the premises. Proposed section 71EJ requires that an occupancy agreement must state when the grantor may enter the premises and the kind of notice and the period of notice the grantor must give the occupant. Section 71EM clarifies that a grantor may enter the premises without consent or notice to confirm if the premises are abandoned, but only after: the occupancy fee has not been paid for three consecutive periods; the grantor has taken all reasonable steps to contact the occupant; and the grantor reasonably believes the occupant has abandoned the premises. Further, a grantor cannot enter premises to confirm abandonment on Sundays, public holidays, or before 8am or after 6pm. By allowing access to the premises in accordance with sections 71EJ or 71EM, the provision of 71EA (1) (j) therefore engages and may limit the right to privacy. However, these are reasonable limitations applying the criteria under section 28 of the HRA. The purpose of the provision is to allow grantors to perform their obligations towards the occupant and other occupants and to protect the legitimate interests of grantors in respect of the premises. Depending on the nature of the occupancy agreement, a grantor's obligations may include, for example, providing services, undertaking inspections or repairs or ensuring safety. That is, performing actions that are important for the purposes of the agreement. Noting that access to the premises may be required to perform such functions, the provision is rationally connected (that is, effective to achieve) this objective. The provision contains a range of safeguards to protect the occupant and to ensure the provision is a proportionate limitation on the right to privacy, including requiring:

- that the kind and period of notice must be reasonable and proportionate to the outcome sought by the grantor in entering the premises; and
- that the grantor may only enter the premises if the occupancy agreement allows the person to do so and the grantor has given notice in accordance with the agreement (unless it is not practicable to do so.)

Accordingly, the measure constitutes a reasonable limitation on the right to privacy and home under section 28 and, as such, is compatible with this right.

Right to privacy, family and home – university rule breach consequence and termination provisions

The right to privacy and home is engaged and may be limited by:

- providing that where a penalty or consequence for breach of an occupancy agreement is imposed under a university discipline or medical leave requirement universities that penalty or consequence can be imposed without being subject to the requirement that it be reasonable and proportionate to the nature of the breach or that it not impose unreasonable hardship on the occupant; and providing that university agreements may be terminated under a university disciplinary requirement or medical leave rule (to which the requirement that the termination be reasonable having regard to the nature of the occupancy agreement does not apply).

As noted above, under the HRA, the right to privacy may be subject to permissible limitations provided that the criteria in section 28 of the HRA are met:

Legitimate purpose (section 28(2)(b))

The university disciplinary rules and medical leave rules are important to the overall functioning and academic and reputational integrity of the universities. They apply to the university's entire student body, not just to students in student accommodation.

The purpose of allowing for the imposition of penalties or consequences under an occupancy agreement or for termination of that agreement where that penalty, consequence or termination arises under a university disciplinary requirement or medical leave rule (regardless of reasonableness or hardship) is to allow for the continued and effective operation of the universities' rules and to avoid inconsistency between statutory provisions. This is more than a measure designed to achieve administrative convenience, it is a measure to support the overall effective functioning of universities.

Rational connection - (section 28(2)(d))

As noted above, the university disciplinary and medical leave rules apply to the entire student body within the university. The exemption from the occupancy principle requirements with respect to termination has been created to ensure the continuing effective operation of the university as well as to ensure that the rules may be applied across the entire student body equally and without interference from occupancy laws. By providing greater clarity about the scope and limits of occupancy law, the measure is rationally connected to (this is, effective to achieve) the legitimate purpose of supporting the overall effective functioning of universities.

Proportionality (sections 28(2)(c) and 28(2)-(e))

The exemption from the requirement that the termination of an occupancy agreement be reasonable having regard to the nature of the occupancy agreement for universities, is not a general exemption for universities and is limited only to circumstances in which termination of the occupancy agreement is required under the university disciplinary or medical leave rules.

This Bill introduces significant protections for university students beyond those that currently exist. These protections apply to students in student accommodation, except where they are inconsistent with university disciplinary or medical leave requirements. It is noted that students in university student accommodation are already subject to university disciplinary requirements and medical leave rules and this Bill does not displace that. Rather, the Bill clarifies the interaction with the existing framework operating for universities.

It is also noted that the above exemption in relation to university disciplinary requirements and medical leave rules is limited to the Australian National University and the University of Canberra who house 6000 and 2500 students in their accommodation facilities respectively. While there are some other education providers in the ACT and in respect of which the carve out does not currently apply, these education providers have comparatively small accommodation facilities or do not offer accommodation at all. In this way, the exemptions have been circumscribed to apply as necessary. Other operators would still be able to use their applicable

rules to impose penalties or consequences so long as they were reasonable and proportionate and do not impose undue hardship on the student.

The exemption is also the least rights restrictive means of ensuring the continued effective operation of the university disciplinary and medical leave rules. This is because there are significant safeguards imbedded in the rules themselves. These safeguards ensure that any interference with the right to privacy (including termination of an occupancy agreement) based on those rules and procedures constitute a proportionate limitation. It follows that the measure itself is also compatible with the right to privacy and home.

Right to privacy, family and home – abandonment of premises

The right to privacy and home will also be engaged by the amendment providing that a grantor may enter premises during the residential occupancy agreement where the grantor believes on reasonable grounds that the premises have been abandoned by the occupant (clause 27, proposed new section 71EM). However, this right may be subject to reasonable limitations under section 28 of the HRA. Applying the criteria under section 28, the overarching purpose of the measure is to protect the legitimate interests of grantors in circumstances where they reasonably believe that the premises have been abandoned. In order to ensure that this entry without consent is proportionate and not arbitrary in nature, the amendment will require a grantor to satisfy certain requirements in order to enter the premises to ascertain if it has been abandoned. These requirements are that the grantor must be aware of the occupants not having had paid the occupancy fee for at least three consecutive periods, that the grantor has taken all reasonable steps to contact the occupant, and that the grantor reasonably believes that the occupant has abandoned the premises. Further, as an additional safeguard, the amendments will forbid the grantor entry to the premises, notwithstanding the above conditions, on Sundays, public holidays, and before 8am or after 6pm. These amendments represent a proportionate measure to allow grantors to mitigate loss and minimise the potential compensation liability of occupants who abandon premises by ensuring that the entry only occurs in circumstances where there is a clear indication that the premises have in fact been abandoned. Accordingly, the measure constitutes a reasonable limitation on the right to privacy and home under section 28 and, as such, is compatible with this right.

GOVERNMENT AMENDMENTS

CLAUSE NOTES

Amendment 1

Clause 2

Page 2, line 4

This amendment provides for the delayed commencement of provisions of the Bill which apply to education providers, including universities.

Other amendments (see below) remove sections of the Bill which pertain to universities from the body of the bill and place them in schedule 2. This amendment provides for commencement of schedule 2 on 30 January 2022. The remainder of the Bill commences on a day fixed by the Minister by written notice, or automatically after 6 months.

Amendment 2

Clause 3, note

Page 2, line 17

Amendment 21 (see below) creates new schedule 2. Schedule 2 amends both the *Human Rights Commission Act 2005* and the *Residential tenancies Act 1997*.

This amendment omits the previous note which referred only to schedule 1 and substitutes a new note which indicates that both schedule 1 and schedule 2 amend other legislation.

Amendment 3

Clause 17

Proposed new section 35G (2)

Page 16, line 7

This is a minor and technical amendment which removes a drafting error. The drafting error referred to a section that was removed from the Bill before it was introduced to the Legislative Assembly.

Amendment 4

Clause 22

Proposed new section 71C (1) (b) (ii)

Page 18, line 14

This amendment omits proposed new section 71C (1) (b) (ii) which provided a definition of occupancy agreements that would apply to education providers, including universities.

This provision is later re-inserted by amendment 21, schedule 2 at [2.2] as New section 71C (1) (b) (ia) and will commence on 30 January 2022.

Amendment 5

Clause 22

Proposed new section 71C (1), new note

Page 19, line 20

This amendment inserts a new note at section 71C (1) (which defines what an occupancy agreement is) to clarify that 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.

The note also refers to Part 17 (inserted by amendment 19) which creates transitional provisions for education provider occupancy agreements.

Amendment 6

Clause 27

Proposed new section 71E (1) (a)

Page 22, line 18

This amendment clarifies that the occupancy principles that are currently in force from time to time will apply to all existing occupancy agreements. This means that if the occupancy principles are updated in future, they will apply to all existing occupancies from the time that the updated provisions commence.

Amendment 7

Clause 27

Section 71EA (1) (j)

Page 24, line 13

Proposed section 71EA (1) (j) creates an occupancy principle which provides that a grantor can only enter an occupancy premises in accordance with 71EJ.

This amendment clarifies that a grantor can *also* access the premises in accordance with 71EM. It does this by adding a reference to 71EM to proposed section 71EA (1) (j).

Amendment 8

Clause 27

Proposed new section 71EA (2)

Page 25, line 1

This amendment omits proposed new section 71EA (2) which disapplied 71EA (1) (g) to a penalty or consequence under a university disciplinary requirement. This provision is re-inserted (in a slightly amended format) as new Section 71EA (1A) by Government amendment 21, schedule 2 [2.3] which commences on 30 January 2022.

Amendment 9

Clause 27

Proposed new section 71EA (5), definition of *university disciplinary requirement*

Page 25, line 19

This amendment omits the definition of university disciplinary requirement. An amended form of this definition - a 'university requirement' is re-inserted by amendment 21 schedule 2 [2.6] which commences on 30 January 2022.

Amendment 10

Clause 27

Proposed new section 71EB (1)

Page 25, line 24

This amendment changes the timing of when a condition report must be provided from '*not later than the day after an occupancy agreement starts*' to '*not later than the day after the occupant takes possession of the premises.*'

This means that a grantor can accept a security deposit in advance of an occupant taking possession of the premises, even in circumstances where there is currently another occupant in the premises (because the current occupant is under a separate occupancy agreement to the prospective incoming occupant).

Amendment 11

Clause 27

Proposed new section 71ED (1)

Page 27, line 12

New s 71ED (1) currently provides that a security deposit payable under an occupancy agreement, *other than an exempt agreement*, must be deposited with the Territory. Education providers (as defined by section 71C (1) (b) (ii)) are defined to be exempt agreements.

This amendment omits the words 'other than an exempt agreement' from proposed new s 71ED (1). An amended version of this provision (which refers to '**education provider occupancy agreements**', rather than exempt agreements) is re-inserted by Government amendment 21 schedule 2 [2.5] which commences on 30 January 2022.

Amendment 12

Clause 27

Proposed new section 71ED (5), definition of *exempt agreement* and note

Page 28, line 13

This amendment omits the definition of *exempt agreement* (this defined who was exempt from lodging security deposits with the Territory as being occupancy agreement defined under 71C (1) (b) (ii)). This amendment also omits the note at proposed new s 71ED (5) (which provided the definition of occupancy agreement at 71C (1) (b) (ii)).

An amended version of this provision and note (which instead defines ***education provider occupancy agreements***, rather than exempt agreements) is re-inserted by amendment 21 schedule 2 [2.6] which commences on 30 January 2022.

Amendment 13

Clause 27

Proposed new section 71EJ (2), example 1

Page 33, line 5

This amendment omits example 1 at proposed new section 71EJ (2) (the example relates to student accommodation).

This example is re-inserted as new example 3 by amendment 21 schedule 2 [2.7] which commences on 30 January 2022.

Amendment 14

Clause 27

Proposed new section 71EJ (3)

Page 33, line 17

This section currently provides that a grantor may only enter the premises in the circumstances it outlines. This amendment removes the word *only* as grantors will now also be able to access the premises both in accordance with 71EJ and in accordance with 71EM (which permits access in cases of suspected abandonment). see amendment 7.

Amendment 15

Clause 27

Proposed new section 71EK (4)

Page 34, line 20

This amendment omits proposed new section 71EK (4). This provision is re-inserted in a slightly amended form as section 71EK (3A) by amendment 21 schedule 2 [2.9] which commences on 30 January 2022.

Amendment 16

Clause 27

Proposed new section 71EK (6)

Page 35, line 5

This amendment omits proposed new section 71EK (6) (which refers to section 71EA (5) for a definition of university disciplinary requirement). This provision is re-inserted in a slightly amended form by amendment 21 schedule 2 [2.10] which commences on 30 January 2022.

Amendment 17

Clause 31

Page 41, line 7

This amendment opposes clause 31 which introduced proposed new sections 73 (2) and (3) which amended the meaning of *occupancy dispute*.

These provisions are re-inserted in a simplified format as new section 73 (2) and (3) by amendment 21 schedule 2 [2.11] which commences on 30 January 2022.

Amendment 18

Proposed new clause 34A and 34B

Page 42, line 14

Clause 34A

This clause updates the language in section 83 (d) so that it applies to occupancies as well as tenancies and clarifies that the Tribunal can make orders in relation to the payment of occupancy fees as well as in relation to rent.

Clause 34B

This clause updates the language in section 83 (e) so that it applies to occupancies as well as tenancies and clarifies that the Tribunal can make orders in relation to security deposits taken by grantors in relation to occupancy agreements as well as bonds taken by lessors in relation to tenancies.

Amendment 19

Proposed new clause 38A

Page 44, line 15

38A - New part 17

This amendment creates transitional provisions so that education provider occupancy agreements continue to be captured by existing occupancy law until the provisions applying to education provider occupancy agreements commence on 30 January 2022.

New section 158 provides that the occupancy agreement amendments do not apply in relation to education provider occupancy agreements until 30 January 2022. Until that date, the existing occupancy provisions will continue to apply to education provider occupancy agreements.

To remove any doubt, section 158 (4) clarifies that an education provider occupancy agreement is taken not to be a residential tenancy agreement under the existing occupancy agreement provisions.

Noting the length of the delayed commencement provision, this section also creates a regulation making power which creates the flexibility to bring forward the commencement of the provisions applying to education provider occupancy agreements should it be considered necessary or desirable to do so.

New section 159 then states that this part and note 2 to section 71C (1) will both expire on 29 January 2022.

This delayed commencement is included to allow time for the universities to undertake necessary implementation work and to ensure that these new provisions commence in alignment with the timeframes of education providers' standard occupancy agreement, which typically commence at the start of the academic year.

Amendment 20

Clause 42

Proposed new dictionary definition of *education provider*

Page 47, line 1

The amendment omits the definition of ***education provider***. This definition is later reinserted by Government amendment 21, schedule 2, [2.13].

Amendment 21

Proposed new schedule 2

Page 59, line 10

Schedule 2 contains the delayed amendments relating to education providers due to come into effect on 30 January 2022.

Part [2.1] *Human Rights Commission Act 2005*

Clause [2.1] New section 53U (2) and (3) in Human Rights Commission Act

Section 53U (2) is inserted into the *Human Rights Commission Act 2005* (the HRCA) to remove any doubt regarding occupancy dispute complaints and their interaction with the Tribunal. It provides that section 73 (2) of the *Residential Tenancies Act* does not require a party to an occupancy agreement to attempt to resolve a dispute under a university dispute resolution procedure before the Tribunal can deal with a complaint referred to it under this division.

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

This clause defines an occupancy agreement to include 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. This section nevertheless still permits an agreement to become a residential tenancy agreement if section 6B applies (where it expressly states it is a residential tenancy agreement).

Clause [2.3] New Section 71EA (1A)

Section 71EA outlines the occupancy principles. Subsection (1) (g) states that any penalty or consequence for breaching the occupancy rules must be reasonable and proportionate and not impose unreasonable hardship on the occupant.

This clause inserts new section 71EA (1A) which provides that subsection (1) (g) does not apply to a penalty or consequence under a university requirement.

This exemption avoids potential inconsistencies between the two statutory regimes where a penalty or consequence arises from the university statutes but could be prevented by the RTA. However, university students will enjoy protection under section 71EA where the penalty or consequence does not arise under a university

requirement. This section ensures that the operation of occupancy agreements in relation to student accommodation does not interfere with the university's need to comply with its own statutes and to ensure the integrity of the student disciplinary processes and medical leave rules.

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

This clause is consequential to clause [2.3] and inserts the definition of university requirement.

A university requirement is defined in section 71EA (5) to mean a statute, rule, or policy about student discipline or medical leave made under, or authorised by, the *Australian National University Act 1991* (Cwth) or the *University of Canberra Act 1989*.

Clause [2.5] new section 71ED (1)

This clause amends new section 71ED (1), which requires security deposits payable with respect to an occupancy agreement to be lodged with the Territory.

It provides that security deposits payable under 'education provider occupancy agreements,' are exempt from the requirement to deposit security deposits with the Territory.

Education providers have been exempted from this requirement in acknowledgement that they currently manage thousands of occupancy agreements, many of which commence in the same week, prior to the commencement of a term. Complying with the requirement to lodge security deposits would present a significant administrative burden for these accommodation providers. It is also provided in acknowledgement that interest from the security deposits contributes to the funding of student services and so continues to be of benefit to the occupants who have made those deposits.

However, if there is a dispute about deductions from the security deposit at the end of an exempt agreement, an occupant is still able to make an application for the resolution of the dispute to the Tribunal.

Clause [2.6] new section 71ED (5) of education provider occupancy agreement

This clause is consequential to clause [2.7] and inserts the definition ***of education provider occupancy agreement***. This is defined to mean 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.

Clause [2.7] new section 71EJ (2) new example 3

This clause inserts an example of permitted entry by a grantor into occupancy premises, related to occupancy agreements with education providers into new section 71EJ (2).

Clause [2.8] section 71EK (2), new example

This clause inserts a fourth example into section 71EK (2), of circumstances in which the termination of an occupancy agreement must have regard to the nature of the occupancy.

Clause [2.9] new section 71EK (3A)

Under this section, the requirement that an occupancy agreement may only be terminated under circumstances that are reasonable having regard to the nature of the occupancy does not apply to a termination made under a university requirement.

This section also indicates that an occupancy agreement may also be terminated as permitted or required under a university requirement. That is, university requirements provide additional termination grounds.

This new section avoids potential inconsistencies between the two statutory regimes where the termination of the occupancy agreement arises from the university statutes but could be prevented by the RTA. However, university students will enjoy protection under section 71EK where the termination does not arise under a university requirement.

Clause [2.10] New section 71EK (6)

This clause inserts a new section 71EK (6) which indicates that a definition of university requirement is provided at 71EA (5).

Section 71EA (5) provides that a 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* (Cwth) or the *University of Canberra Act 1989*.

Clause [2.11] New Section 73 (2) and (3)

This clause amends the definition of an occupancy dispute. The Tribunal has the jurisdiction to hear occupancy disputes. This clause states that an occupancy dispute does not arise for occupancy agreements to which a university dispute resolution procedure applies until the parties have been unable to resolve the dispute within a reasonable time under the university dispute resolution procedure.

The intention of this provision is that students in university accommodation will need to exhaust the university dispute resolution procedure before being able to take the matter to the Tribunal. This is in acknowledgement that universities already have extensive internal dispute resolution processes in place, as required under their statutes. This is subject to the safeguard that a student will not be barred from bringing a matter to the Tribunal if the internal dispute resolution processes are not finalised within a reasonable time.

University students will also have access to conciliation processes under the HRCA (discussed above).

Clause [2.12] New Section 74(2) and (3)

This clause provides further clarification regarding occupancy disputes under section 73. It means that occupants under an occupancy dispute provided by a university education provider will not need to exhaust internal dispute resolution mechanisms prior to making an occupancy dispute complaint to the HRC.

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

This clause inserts a new definition of 'education provider' as per the *Education Act 2004*, section 9A, table 9A, column 3.