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

**GOVERNMENT AMENDMENTS
TO THE
RESIDENTIAL TENANCIES LEGISLATION AMENDMENT BILL 2022**

SUPPLEMENTARY EXPLANATORY STATEMENT

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RESIDENTIAL TENANCIES LEGISLATION AMENDMENT BILL 2022

This supplementary explanatory statement relates to the Government amendments (**the amendments**) to the Residential Tenancies Legislation Amendment Bill 2022 (**the Bill**). It has been prepared in order to assist the reader of the Bill and the amendments and to help inform debate. It does not form part of the Bill or the amendments.

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

OVERVIEW OF THE GOVERNMENT AMENDMENTS

The amendments amend the [Residential Tenancies Act 1997](#) (RTA) to:

- insert a **transitional provision** which would confirm the validity of any ‘without cause’ notices to vacate (**NTV**) issued under clause 94 of the Standard Residential Tenancy Terms (**SRTTs**) contained in Schedule 1 of the RTA before the commencement of clause 43 of the Bill (which omits clause 94 of the SRTTs), in circumstances where the vacate date in the NTV falls after commencement of clause 43; and
- amend the commencement provisions at clause 2 of the Bill to provide for the transitional provision to commence by way of Ministerial notice, consistently with clause 43 of the Bill which will also commence by way of Ministerial notice.

The transitional provision reflects the general principle that laws should not be retrospectively applied, and so lessors who served valid ‘without cause’ NTVs prior to the commencement of the Bill will be able to rely on those notices.

CONSULTATION ON THE PROPOSED APPROACH

The ACT Civil and Administrative Tribunal, the ACT Human Rights Commission and ACT Government Directorates were consulted in relation to the amendments. Significant public consultation was undertaken in relation to the Bill itself and this consultation is addressed in the explanatory statement accompanying the Bill.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill engages the right to privacy and reputation under the HRA (section 12).

Rights Promoted

The amendments do not promote a particular human right.

Rights Limited

The preamble to the HRA notes that few rights are absolute and that they may be subject to reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

Section 28 of the HRA requires that any limitation on a human right be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate. Proportionality can be understood and assessed as explained in *R. v. Oakes*, [1986] 1 S.C.R. 103 at 70:

“... [f]irst, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”.

The amendment engages and may limit the right to privacy and reputation (Section 12 of the HRA). The ways in which the amendment does this is set out below.

Right to privacy and home

Nature of the right and the limitation (ss 28 (2) (a) and (c))

Section 12 (a) of the HRA provides for the right to privacy and the right not to have one’s home interfered with unlawfully or arbitrarily. Currently, the RTA allows lessors to terminate a tenancy without cause by giving the tenant 26 weeks’ notice of the termination. The transitional provision will engage and may limit the right to privacy and home for tenants by preserving the operation of ‘without cause’ NTVs issued prior to the commencement of the Bill where the vacate date in the notice falls after commencement. As noted in the explanatory statement for the Bill, the ability to terminate a tenancy without providing the tenant with a reason for the termination, may be considered an arbitrary interference with a person’s home.

Legitimate purpose (s 28 (2) (b))

The transitional provision is intended to preserve the operation of ‘without cause’ NTVs issued prior to the removal of the ‘without cause’ termination provision from legislation where the vacate date listed in the NTV falls after the removal of the ‘without cause’ termination provision. The purpose of this provision is to avoid the retrospective invalidation of NTVs that were legally valid at the time of issue. This is a legitimate purpose: members of the public are entitled to rely on the law, and exercise their rights under it, until such time as it changes. It is also intended to create certainty and clarity for parties to a tenancy agreement as to the status of the NTV.

Rational connection between the limitation and the purpose (s 28 (2) (d))

The limitation on the right to privacy arising from the transitional provision is rationally connected to the purpose of providing clarity and certainty to both parties to a tenancy agreement, as the transitional provision clarifies the legal status of NTVs issued prior to commencement that have not yet taken effect. It is also rationally connected to the purpose of avoiding retrospective laws, as it ensures ‘without cause’ NTVs issued prior to commencement will remain valid even after the ‘without cause’ termination ground is removed from legislation.

Proportionality (s 28 (2) (e))

The transitional provision is intended to give parties to a tenancy agreement certainty as to the continued validity of ‘without cause’ NTVs that were issued prior to the commencement of clause 43 of the Bill. It is a time-limited measure that serves to meet sound legal policy outcomes, namely, the well-accepted principle that (absent exceptional circumstances) laws should not apply retrospectively. After the ‘without cause’ termination provision has been removed from the RTA, lessors will no longer be able to end a tenancy without giving the tenant a reason for doing so.

There is no less rights-restrictive means of achieving this policy outcome. Any other approach risks inconsistency and unfairness across individual cases. For example, if the Government were to make a transitional provision invalidating NTVs issued before commencement day, there is a risk that some tenants who received an NTV prior to this amendment being made may vacate the property believing the NTV to be enforceable, while others who don’t vacate may then receive the benefit of a provision invalidating the NTV.

The limitation on the right to privacy is therefore considered proportionate to the aim of the measure.

CLAUSE NOTES

Amendment 1

Clause 2

Amendment 1 is a consequential amendment to Amendment 2. It amends clause 2 (3) of the Residential Tenancies Legislation Amendment Bill 2022 (**the Bill**) to provide that proposed new clause 37A (at Amendment 2) will commence on a day fixed by the Minister by written notice.

Amendment 2

Proposed new clause 37A

Page 29, line 19—

Clause 37A New part 19

Amendment 2 proposes to insert new clause 37A in the Bill.

Clause 37A inserts new Part 19 into the *Residential Tenancies Act 1997 (RTA)*. New Part 19 deals with transitional arrangements for the Residential Tenancies Legislation Amendment Act 2023 (**the Amendment Act**) (as the Bill will be known if passed).

New Section 163 creates a transitional arrangement for ‘without cause’ notices to vacate (NTVs) issued under clause 94 of the Standard Residential Tenancy Terms (**SRTTs**) in circumstances where the NTV is issued prior to the removal of the ‘without cause’ termination provision from the RTA (see clause 43 of the Bill) where the vacate date specified in the notice falls after commencement of clause 43.

Section 163 will apply if:

- the lessor has served a ‘without cause’ NTV under clause 94 of the SRTTs; and
- the tenant has not moved out in accordance with the notice.

In these circumstances the ‘without cause’ NTV will continue to have effect after the repeal of the ‘without cause’ termination provision.

Section 163 also provides that clauses 94 and 95 of the SRTTs will continue to apply to the NTV despite their repeal. Clauses 94 and 95 of the SRTTs allow a tenant to vacate the rental premises after receiving a ‘without cause’ NTV where the tenant provide the lessor the required period of notice as to their intention to vacate.

The intention of this section is to create clarity for all parties to a tenancy agreement that a ‘without cause’ NTV issued prior to the repeal of the ‘without cause’ termination provision will continue to have effect after the repeal. It is intended that a lessor will still be able to rely on a ‘without cause’ termination notice to apply to the ACAT for a termination and possession order under section 47 of the RTA if the tenant has not vacated the premises in accordance with the ‘without cause’ notice that was validly issued before the repeal of the ‘without cause’ provision. This is so as to avoid the retrospective invalidation of NTVs that were issued prior to the repeal of the ‘without cause’ termination provision.

Section 164 provides for the expiry of the transitional provision 2 years after section 43 of the Amendment Act commences as the transitional provision will no longer be required at that time.