

2024

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

RESIDENTIAL TENANCIES AMENDMENT BILL 2024

EXPLANATORY STATEMENT

**Presented by
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Residential Tenancies Amendment Bill 2024

This explanatory statement relates to the Residential Tenancies Amendment Bill 2024 (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 must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The purpose of the Residential Tenancies Amendment Bill 2024 is to provide Canberra renters with assistance in meeting cost of living and housing pressures. This includes introducing a two-year rent freeze, capping the maximum annual rent increase at a flat 2 per cent relative to the rate the tenant is currently paying, banning all forms of rent bidding and removing the provision that allows higher rent increases to be prescribed through a residential tenancy agreement. The ability of the ACT Civil and Administrative Tribunal to permit a rent increase at a higher rate is still retained.

As home ownership becomes less affordable more and more people are becoming renters, and for longer periods of time, with some 8 million Australians now being part of the rental sector. Addressing the issue of supply is important. But as more people are renting and for longer periods of time, addressing the issue of strengthening renters' security of tenure and renters' rights is critical, because a rental property is a renter's home. The rental market is characterised by instability, insecurity and a lack of adequate protection for renters. Market rents can be unaffordable for many, and people find it hard to rent properties. It historically played a role in the housing continuum as one of transition for people moving from rental into home ownership. This role is being eroded and many expect to rent long-term or permanently. Renters in Australia are seen as being among the least secure when compared with tenants in like jurisdictions.

31 per cent of Canberrans are renters and according to the 2021 Census, one quarter of renters were in rental stress. Rents have been increasing at such a rate and scale that renters are finding it a challenge to find affordable accommodation – rents have increased by 14 per cent since 2019. PropTrack reports that the median weekly rent for houses was down 2.2 per cent to \$680, compared to \$695 the year before. Units saw a marginal increase of 1.8 per cent to \$560. But ACT's rent continues to remain high and is second only to Sydney. This impacts on the ability of renters to afford other necessities, such as food and health care and remain in their communities, maintaining access to their social networks. Unexpected rental increases mean renters don't feel secure and can't plan for their future, such as saving money for a deposit on a home.

Anglicare's 2023 Rental Affordability Snapshot found that the rental crisis in Australia is systemic and that it will be made worse by band-aid solutions. The 'Priced Out' report by Everybody's Home found severe rental stress amongst Canberrans, particularly for essential workers such as aged-care workers who pay up to 76 per cent of their income on rent.

The ACT has already capped rent increases relative to 110 per cent of CPI (Consumer Price Index). However, CPI has been consistently high in recent years. In some instances, CPI is below 2 per cent, but in others, such as during and after COVID, CPI has been above 3 per cent. Introducing a set figure helps smooth out the unpredictability of CPI and will assist landlords and renters plan their costs and income ahead of time and prevent volatility,

especially in times of rising cost pressures and in the current housing crisis. Further, rent increases should be based on an individuals' ability to pay rent rather than the broader consumer market in which CPI is based. Calculating the current rent increase threshold is also complex for both tenants and lessors, meaning that the current law may not be translated into practice. A flat 2 per cent would make it much easier for tenants and lessors to understand the law and hence for it to be applied in practice.

The Bill would strengthen the ACT Government's measures to support renters. The Attorney-General led a suite of changes to the *Residential Tenancies Act 1997* which were passed by the ACT Legislative Assembly in March 2023, including the removal of 'no-cause' evictions, combined with the re-establishment of the Rent Relief Fund, among other measures. In April 2023 private landlords were also required to make sure that properties they owned were fitted with ceiling insulation to the same standard as new dwellings.

Climate impact analysis

A qualitative self-assessment of the climate impacts of the proposed legislation was carried out. The intent was to identify possible greenhouse emissions and climate impacts whether positive or negative. The 'Climate Impact Analysis – Guidance and Checklist' was tabled with this bill.

If rent is frozen for a period of 2 years and after that, rent increases are limited to 2%, tenants may have more money available to spend on heating and cooling, transport food, goods and other consumables. This could lead to increased climate impacts if more consumables are bought. Alternatively, it could lead to decreased climate impacts if different consumables are bought or if services are purchased in place of goods (particularly if preventative health services are purchased). It is therefore not possible to predict the climate impacts of different purchasing choices from this bill, but net impacts are likely to be very low.

There may be some sales of properties by property owners as a result of the proposed legislation, but academic studies suggest impact is not likely to be great and properties are likely to stay within the rental market. Impacts are likely to be very low.

Overall, the possible greenhouse emission and climate impacts are considered to be very low.

Consultation

Input was sought and received from various stakeholders and academics in the development of the legislation. There was media coverage when the leader of the ACT Greens, Shane Rattenbury MLA, announced last year that the ACT Greens were seeking to introduce legislation that would place a freeze on rent and cap the rate of rent increases for existing tenancies.

This bill has been subject to an 8-month consultation period so far. The ACT Greens announced its position on the amendments to the *Residential Tenancies Act 1997* last year and made public a draft version of the bill in July 2023 to allow interested parties the opportunity to provide feedback. We have spoken to members of the public at stalls and doorknocking about this bill. There have been community events and forums to discuss the changes and what impact they will have. Groups such as Better Rent, ACT Council of Social Services and Everybody's Home have been consulted.

The legislation will be referred to a Legislative Assembly Committee for consideration. If the Committee decides to conduct an inquiry into the Bill the public and interested organisations will have further opportunities to provide input on the bill.

Consistency with Human Rights

The Bill has very limited engagement with the *Human Rights Act 2004*.

Rights that might be limited

The Bill amends an existing strict liability offence to ensure that rental rates are charged and accepted at the advertised rate. This strengthens the current 11AD(1) and (2) which aim to stop rent bidding. The amended offence will continue to be a strict liability offence. Applying strict liability to any offence may limit the human right to be presumed innocent until proven guilty.

As noted in the preamble to the *Human Rights Act 2004*, few rights are absolute and rights may be subject to reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 of the *Human Rights Act 2004* contains the framework that sets out whether a limitation is reasonable, which includes considering the purpose of the limitation and whether it is a proportionate response. Amending a strict liability offence and retaining strict liability on that amended offence is considered a reasonable and proportionate step given the extent of the housing crisis, the vulnerability of renters and the power imbalance that exists between renters and landlords in the current market.

CLAUSE NOTES

Clause 1 Name of Act

This clause states names the Act as the *Residential Tenancies Amendment Act 2024*.

Clause 2 Commencement

This clause states the Act will commence the day after it is notified.

Clause 3 Legislation amended

This clause provides that the legislation being amended is the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998*.

Clause 4 Section 11AD heading

This clause changes the heading of section 11AD to 'Lessor or agent must not accept rent bids'.

Clause 5 Section 11AD(1) and (2)

This clause inserts a new section which makes it an offence if a lessor, or an agent of the lessor, accepts a rental rate for a premises that is higher than the advertised rate for the premises.

Clause 6 Sections 64A and 64B

Clause 6 of the Bill removes section 64A. The ability to include 'non-standard clauses' in tenancy agreements for fixing rents is removed.

Clause 6 of the Bill substitutes Section 64B. Section 64B as substituted allows a lessor to increase the rental rate for rental premises. The rental rate may be increased but only by an amount that is not more than the amount prescribed by legislation. The first increase can only occur at least 12 months after the day the premises are first rented and later increases, the day the rental rate for the premises was last increased.

The lessor can apply to the ACT Civil and Administrative Tribunal for a rental increase that is more than the amount prescribed by regulation, but only where regulations do not prescribe a 'nil' increase. The regulations in clause 11 provide that for the first two years of the new system, the prescribed increase is 'nil', so for two years rents cannot be increased. After that two-year period has ended, the regulations allow increases of up to 2%, at which point the ACT Civil and Administrative Tribunal could authorise higher increases if they choose to.

The lessor is also required to give the tenant notice of the rent increase which will specify the amount of the increase, when it takes effect and that the ACT Civil and Administrative Tribunal has given approval, if the rate of increase is above that prescribed by regulation.

A definition of the term 'rental premises' for section 64B is provided. With the removal of section 64A an increase in the rental rate is applied to rental premises which includes a property that has had a residential tenancy agreement in place in the 6 months prior to a proposed rent increase.

Clause 7 Guideline for orders Section 68(1)

Clause 7 makes a consequential amendment as a result of Clause 5 to update cross-referencing.

Clause 8 Section 68(2)

Clause 8 makes a consequential amendment to remove reference to rental increases under a residential tenancy agreement, as Clause 5 does not allow rental increases under a residential tenancy agreement.

Clause 9 Section 68(4)(g)

When the ACT Civil and Administrative Tribunal considers whether a proposed rental rate increase is excessive or not Section 68(4) specifies what matters should be considered. Clause 9 removes rental rates of comparable premises as a consideration.

Clause 10 Standard residential tenancy terms Schedule 1, clause 35

Clause 10 aligns standard residential tenancy term 35, which is about timing for rental increases, with the requirement at new Section 64B (1) (b).

Residential Tenancies Regulation 1998

Clause 11 Section 5A

Clause 11 specifies the new methodology for determining rental rates increases. The new methodology is that the prescribed amount is the current rental rate times 2 per cent (0.02). It also specifies that for a 2-year period, beginning when the *Residential Tenancies Amendment Act 2024* commences, the prescribed amount for rental increases is nil.