

2024

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

TENTH ASSEMBLY

Housing and Consumer Affairs Legislation Amendment Bill 2024

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

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April 2024**

HOUSING AND CONSUMER AFFAIRS LEGISLATION AMENDMENT BILL 2024

The Housing and Consumer Affairs Legislation Amendment Bill 2024 (**the Bill**) is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004 (HRA)*.

OVERVIEW OF THE BILL

The Bill amends the following laws:

- *Agents Act 2003 (Agents Act)*;
- *Charitable Collections Act 2003 (CC Act)* (with consequential amendments to the *Magistrates Court (Charitable Collections Infringement Notices) Regulation 2003*);
- *Fair Trading (Australian Consumer Law) Act 1992 (FT (ACL) Act)* (and consequentially, new infringement notice regulations under the *Magistrates Court Act 1930*);
- *Land Titles Act 1925 (LTA)*;
- *Residential Tenancies Act 1997 (RTA)*; and
- *Unit Titles (Management) Act 2011 (UTMA)*.

Protecting people's homes – tenancy and unit titles management reforms

The Bill seeks to increase protections and simplify processes in relation to people's homes by amending the RTA and the UTMA.

The amendments to the RTA will:

- implement several reforms from the '[Better Deal for Renters](#)'¹ reform package agreed by National Cabinet in August 2023. The reforms will:
 - ensure that rent cannot be increased at intervals of less than 12 months in any circumstances;

¹ See Prime Minister Anthony Albanese's media release "Meeting of National Cabinet - Working together to deliver better housing outcomes – Attachment 2: A Better Deal for Renters", 16 August 2023, available at <https://www.pm.gov.au/media/meeting-national-cabinet-working-together-deliver-better-housing-outcomes>.

- make it easier for tenants who are victim-survivors of domestic and family violence (**DFV**) to end their tenancy early (without penalty) with supporting documentation from an appropriate professional; and
- make the currently optional “break lease fee clause” a mandatory standard tenancy term, as an additional protection for tenants in fixed-term tenancies; and
- make minor additional reforms to streamline rental processes for tenants and landlords including:
 - making the legal requirements for condition reports more flexible, so that final inspections and new condition reports are not required each time a new fixed term agreement (with at least one continuing tenant) is entered into over the same property;
 - amending the defective termination notice provision to allow ACAT to correct errors in other types of notices (such as rent increase notices or notices to remedy); and
 - introducing a power to make regulations prescribing matters that must be disclosed by landlords when advertising a rental property or entering into a tenancy agreement.

The amendments to the UTMA will:

- ensure that landlords who intend to rent their unit can request information from their owners corporation, where they are required by law to provide this information to prospective tenants; and
- clarify that owners corporations can sublease common property in appropriate circumstances without breaching the legislative prohibition on operating a business.

Deregulatory reforms for charities, employment agents and land titles

The Bill will also make deregulation changes to support the efficient operations of Government, charities and businesses in the ACT by amending the:

- CC Act – to implement the [National Fundraising Principles](#) agreed by the Council on Federal Financial Relations,² which will remove red tape for charities;

² See Joint Media Release the Hon Dr. Andrew Leigh MP, Assistant Minister for competition, Charities and Treasury, Assistant Minister for Employment with the Hon Danny Pearson, Victorian Minister for Consumer Affairs, “*Agreement reached on charitable fundraising laws*” 16 February 2023. Available at: [Agreement](#)

- Agents Act – to remove the requirement for employment agents (recruitment companies) to be licenced, to reduce unnecessary regulatory burden for the industry, implementing a commitment under the Government’s [Better Regulation Agenda](#);³ and
- LTA – to correct an error which has prevented the Registrar for Land Titles from sharing identification document information with the Commissioner for Revenue for the purpose of administering taxation laws.

Enhancing consumer protections

Finally, the Bill will enhance consumer protections by amending the FT (ACL) Act to give the Commissioner for Fair Trading strengthened enforcement powers, by implementing a criminal offence (with an infringement notices scheme) where businesses fail to attend conciliations for low value consumer claims.

CONSULTATION ON THE PROPOSED APPROACH

The ACT Government conducted targeted consultation with key stakeholders between December 2023 and February 2024. Organisations consulted included Canberra Community Law; Women’s Legal Centre ACT; the ACT Law Society; Domestic Violence Crisis Service; Canberra Rape Crisis Centre; Toora; the Master Builders Association of the ACT, the Owners Corporation Network; the Real Estate Institute of the ACT (**REIACT**); Better Renting; ACT Shelter; the Housing Industry Association; and the Strata Community Association.

CLIMATE IMPACT

This Bill does not have climate impacts.

CONSISTENCY WITH HUMAN RIGHTS

Rights Engaged

The Bill engages the following rights under the HRA:

- Right to recognition and equality before the law (section 8) (engaged);
- Right to life (section 9) (promoted);
- Right to protection from cruel, inhuman or degrading treatment (section 10) (promoted);
- Right to protection of the family and children (section 11) (promoted);

[reached on reform of charitable fundraising laws | Treasury Ministers](#)

³ See Chief Minister, Treasury and Economic Development Directorate, Better Regulation Agenda, Stream 1: Policy and Legislation. Available at <https://www.cmtedd.act.gov.au/policystrategic/better-regulation-taskforce/better-regulation-agenda>

- Right to privacy and reputation (section 12) (limited);
- Right to liberty and security of person (section 18) (promoted and limited);
- Right to fair trial (section 21) (limited);
- Rights in criminal proceedings (section 22) (limited); and
- Right to work (section 27B) (promoted).

Right to equality before the law – availability of DFV termination provision in certain circumstances

Section 8 of the HRA entitles everyone to equal protection of the law and enjoyment of their human rights without discrimination. This may include discrimination on the basis of accommodation status.

The Bill allows tenants who are victim-survivors of domestic violence to end their interest under a tenancy agreement at short notice without penalty. The Bill does not create the same protection for occupants. The Bill also allows some tenants to make use of the provision but does not allow other tenants to do so (specifically, those who have a sub-tenant living at the property). This differential access to the tenancy termination right engages the right to equality before the law.

Occupancy and tenancy agreements operate under different legal frameworks which give parties to the agreement different rights and obligations. The same procedures for ending an agreement are not always able to apply to both types of agreements. Occupancy agreements are also used in different contexts to tenancy agreements and are most commonly used in congregate living arrangements with shared services. In the ACT, they are most commonly used in crisis accommodation or university student accommodation, both of which are usually provided with additional support services, including the provision of pastoral care. Typically, procedures for bringing occupancies to end are more flexible than tenancies.

Additional consultation with occupancy accommodation providers would be required before family violence termination provisions could be incorporated into the occupancy agreement framework. Noting the different legal framework in which occupancies and tenancies operate, providing an additional protection for tenants but not occupants engages but does not limit the rights of occupants.

In relation to head tenants who have sub-tenants living at the premises, the Bill prevents them from utilising the termination provision because termination of a head tenancy results in the automatic termination at law of any sub-tenancy sitting beneath it. If a victim-survivor who is a head tenant were to end their agreement using the family violence termination provision, this could mean any sub-tenants could be made homeless, effective immediately, without any prior notice.

Given the significant potential impacts on the rights of sub-tenants, it is considered reasonable to exclude head tenants from use of the family violence termination provision. A head tenant who experiences family violence may still be able to end

their tenancy using the existing provisions under the RTA (sections 85A-85B) which permit a tenant to end their tenancy by application to the ACT Civil and Administrative Tribunal (**ACAT**).

Rights Promoted

The Bill engages and promotes the following rights:

- Right to recognition and equality before the law (section 8);
- Right to life (section 9);
- Right to protection from cruel, inhuman or degrading treatment (section 10);
- Right to protection of the family and children (section 11);
- Right to liberty and security of person (section 18); and
- Right to work (section 27B).

This Bill will make it easier for tenants who are victim-survivors of DFV to leave their tenancy early (without penalty) with supporting documentation from an appropriate professional. This amendment will promote several rights including:

- Right to recognition and equality before the law (section 8);
- Right to life (section 9);
- Right to protection from cruel, inhuman or degrading treatment (section 10);
- Right to protection of the family and children (section 11); and
- Right to liberty and security of person (section 18).⁴

Right to recognition and equality before the law – DFV provisions

Section 8 of the HRA entitles everyone to equal protection of the law and enjoyment of their human rights without discrimination, which is defined to include sex.

While anyone can experience violence, women are overwhelmingly more likely to experience DFV.⁵ In Australia, one in 3 women has experienced gender-based violence in their lifetime.⁶ One in 5 women since the age of 15 has experienced sexual violence,⁷ and one in four women report experiencing violence from an intimate partner or family member since age 15.⁸

⁴ The analysis of how this reform promotes these rights contained in this Explanatory Statement draws significantly from the human rights analysis in the Explanatory Statement in relation to the *Domestic Violence Agencies (Information Sharing) Amendment Bill 2023* which also analysed how reforms to support victim-survivors of DFV can promote rights. This is available at: https://www.legislation.act.gov.au/b/db_68843/.

⁵ ABS, Personal Safety Survey 2021-22.

⁶ ABS, Personal Safety Survey 2016.

⁷ ABS, Personal Safety Survey 2021-22.

⁸ ABS, Personal Safety Survey 2021-22.

their families by supporting them to leave situations of violence quickly and without penalty.

Right to protection from cruel, inhuman or degrading treatment – DFV provisions

Section 10 of the HRA protects an individual from cruel, inhuman or degrading treatment. This absolute right seeks to protect individuals from behaviour that causes bodily injury, mental or physical suffering, or that shocks the community conscience. DFV takes many forms, and according to the International Committee on the Elimination of Discrimination against Women, ‘gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices.’¹⁷ Similarly, the UN Special Rapporteur on Torture considers that the threat and risk of DFV also amounts to a breach of human rights, because ‘fear of further assaults can be sufficiently severe as to cause suffering and anxiety amounting to inhuman treatment’.¹⁸

The State plays an important role in preventing cruel, inhuman or degrading treatment, which includes protecting women and other people from DFV.¹⁹ This Bill promotes this right by supporting victim-survivors of DFV to escape violence by leaving a tenancy quickly and without penalty.

Right to protection of family and children – DFV provisions

Section 11 of the HRA recognises that families are entitled to be protected by society and that every child has the right to the protection they need because of being a child, without distinction or discrimination of any kind. DFV can seriously harm a child or young person’s emotional, psychological and physical wellbeing. Exposure to DFV can lead to homelessness, poor mental and psychological wellbeing, poorer educational outcomes, behavioural issues, physical health problems, and significant trauma symptoms. This may have long lasting effects on children and young people’s development, behaviour and wellbeing.²⁰

¹⁷ Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017, CEDAW/C/GC/35).

¹⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2016, A/HRC/31/57).

¹⁹ *Opuz v Turkey* [2009] ECHR 33401/02 (9 June 2009).

²⁰ Children’s exposure to domestic and family violence: Key issues and responses. Monica Ocampo, December 2015.

This Bill promotes the protection of children by allowing a tenant to escape violence by leaving a tenancy where they or their dependent child are experiencing DFV, thereby removing themselves and their child from a violent or harmful situation.

Right to liberty and security of person – DFV provisions

Sections 18 (1) and 18 (2) of the HRA recognise that all persons have a right to liberty and security of person, and this liberty cannot be deprived (except in accordance with the law). This right protects all people from the deliberate infliction of injury, whether physical or psychological. A victim-survivor's right to liberty and security of person is breached by DFV. By making it easier for victim-survivors to leave situations of DFV, the Bill promotes their agency, liberty and security of person.

Right to work – removal of licensing requirements for employment agents

Section 27B of the HRA provides that everyone has the right to work, including the right to choose their occupation or profession freely. The amendments to the *Agents Act 2003* remove restrictions requiring an individual to be licensed to work as employment agent. By making it easier for these individuals to practice their chosen profession, this Bill will promote the right to work.

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. A party must show:

“... [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 Bill engages and may limit the:

- Right to privacy and reputation (section 12);

- Right to fair trial (section 21);
- Right to liberty and security of person (section 18); and
- Rights in criminal proceedings (section 22).

The ways in which the Bill does this are set out below.

Right to Privacy – Disclosure of personal information in relation to land transactions

1. Nature of the right and the limitation (section 28 (a) and (c))

The right to privacy incorporates the right to keep one’s personal information private. This Bill aims to address an unintended consequence arising out of a previous reform that removed the ability of the Land Titles Office (**LTO**) to share identity document details (e.g. passport number) of a buyer in a land transaction with the ACT Revenue Office (**ACTRO**). Previously, this information was shared with ACTRO to support verification of the person’s identify for tax administration purposes.

The Bill will reinstate the LTO’s former role in collecting buyer identity information and passing it to ACTRO. In doing this, the Bill will engage and may limit the right to privacy by requiring the disclosure of personal information, including identity document details. This limitation arises from amendments to both the LTA and to the *Land Titles Regulation 2015 (the LT Regulation)*. Section 178B of the LTA provides the authority for the Registrar-General to collect specified information and requires the Registrar-General to give information collected to the Commissioner for Revenue. The Regulation prescribes some of the types of information that may be collected (and must then be shared) under section 178B of the LTA.

2. Legitimate purpose (section 28 (b))

The legitimate purpose is to support the effectiveness and integrity of the administration of taxation laws, for the ultimate benefit of the community.

3. Rational connection between the limitation and the purpose (section 28 (d))

Requesting personal information in the form of identity document details is rationally connected to the legitimate purpose as it enables the relevant authority to confirm and cross-check a person’s identity in order to assess their tax liability.

The background to this change is as follows.

In 2017, the ACT Government introduced the Barrier Free Model for conveyance duty which allowed buyers to purchase property without having to pay the duty first. Under this model, buyer identity information is collected by the LTO when the land transaction is registered. This registration then triggers their tax assessment by ACTRO. The buyer’s information was previously passed from the LTO to the ACTRO. ACTRO used the information to cross-check their databases to send out tax

notices such as conveyance duty (stamp duty). This simplified the land transaction process for Government and buyers alike, as the internal government information sharing mechanisms meant the buyer only needed to engage with a single Government agency in relation to their land transaction.

In April 2023, an omnibus Bill (the *Justice and Community Safety Legislation Amendment Act 2023*) made a minor and technical amendment to the LTA. The amendment was to update and provide consistency in the information collected with that required under *Land Titles (Verification of Identity) Rules 2020* (the **Verification Rules**).

However, this change inadvertently limited the identity attribute information previously collected for and provided to ACTRO. It is important for ACTRO to accurately identify taxpayers so that tax laws can be correctly administered. The amendments proposed in this Bill address this error by prescribing the buyer identity information under the Verification Rules to be collected.

Accordingly, the purpose of proposed amendments is to restore the effectiveness and integrity of the administration of taxation laws, for the ultimate benefit of the community. The amendments support the Barrier Free Model and will ensure that land buyers only need to engage with the LTO to complete a land transaction, rather than having to engage separately with ACTRO for tax purposes.

4. *Proportionality (section 28 (e))*

As highlighted above, the purpose of the Barrier Free Model (which relies on the LTO sharing personal identity information with ACTRO) is to streamline the process of engaging with Government in relation to a land transaction. If LTO were not able to collect and share this information with ACTRO, the property buyer may need to engage with the LTO to register their land transaction and then engage separately with ACTRO for tax administration purposes. These amendments allow the verification of identity to occur through a single transaction rather than on two separate occasions, thereby ensuring that the impact on the right to privacy is as limited as possible.

It is necessary to prescribe some of the types of information collected in a regulation, rather than under the primary legislation, as potential changes to the Verification Rules in the future (or potential changes in the administration of taxes) may require the ability to readily adjust information-sharing requirements.

The management of taxpayer information is subject to strict secrecy provisions. Division 9.4 of the *Taxation Administration Act* prohibits the disclosure of information about an individual taxpayer's affairs. Failure to respect confidentiality may result in maximum penalties of 50 penalty units and/or imprisonment for six months, as outlined in section 95 of the *Taxation Administration Act*.

Further, any personal information collected by the LTO and shared with ACTRO is subject to the Territory Privacy Principles (TPPs) as set out in the *Information Privacy Act 2014*. The TPPs set out standards, rights and obligations relating to the collection, use, disclosure, storage, accessing and correction of personal information (including sensitive information). These principles ensure there are appropriate safeguards for any personal information collected in connection with a land transaction or tax assessment. This also ensures that the limitation on the right to privacy is proportionate to the aim of the reforms.

Right to Privacy – Disclosure of personal information in relation to experiencing DFV when seeking to leave a tenancy early

1. Nature of the right and the limitation (section 28 (a) and (c))

As noted above, the right to privacy incorporates the right to keep one's personal information private. Amendments to the RTA included in this Bill permit a victim-survivor of DFV to leave a tenancy quickly and without penalty by providing notice to their lessor. When this notice is provided, the leaving tenant will need to provide supporting documentation to their lessor that indicates that they have experienced DFV.

If the victim survivor has co-tenants under the agreement, they are not required to seek permission from their remaining co-tenants before departing (as would usually be required when a single co-tenant leaves an existing tenancy agreement). However, where there are remaining co-tenants, the lessor will be required to notify any remaining co-tenants that the leaving tenant has ended their interest under the tenancy due to DFV after the victim-survivor has left.

Once the leaving co-tenant has ended their rights and obligations under the tenancy agreement, the remaining co-tenants will be required to pay the departing co-tenant their share of the bond (less any deductions for arrears or property damage), and to notify the Bond Office of the change of interest in the bond. To ensure that the Bond Office is aware that there may be sensitivities associated with the bond and to ensure that communications in relation to bond can be managed appropriately, the lessor is also required to notify the Bond Office that the leaving tenant has terminated the tenancy due to DFV before they notify the remaining tenants.

These amendments engage and may limit a victim-survivor's right to privacy by requiring them to disclose to their lessor (and then have the lessor inform remaining co-tenants and Bond Office) that they have experienced DFV, where the victim-survivor chooses to exercise their right to leave early under these provisions.

2. Legitimate purpose (section 28 (b))

The purpose of introducing a new right for a person to end their interest under the tenancy agreement at short notice is to support the safety of the victim-survivor at

the point at which they are escaping DFV by allowing them to end their interest under the tenancy agreement at short notice and without penalty. As noted above, this will support a range of human rights of the victim-survivor and support them to live a life free from violence.

3. *Rational connection between the limitation and the purpose (section 28 (d))*

The amendments to the *Residential Tenancies Act* will make it easier for tenants who are victim-survivors of DFV to leave their tenancy early (without penalty) with supporting documentation from an appropriate professional.

The Bill requires that the victim-survivor of DFV disclose their experience of DFV (along with supporting evidence) when utilising this mechanism. This requirement will protect the lessor's and any remaining co-tenant's interests in the tenancy agreement and ensure that the victim-survivor only uses this mechanism to leave the tenancy in circumstances of genuine need.

Where there are co-tenants to the tenancy agreement, the effect of the amendments will be that the leaving co-tenant is no longer a party to the agreement and the remaining co-tenants hold all rights and responsibilities under the agreement (including responsibility for the full rent under the agreement). The Bill requires the lessor to disclose to any remaining co-tenants that the leaving co-tenant has ended their interest under the tenancy agreement at short notice due to DFV. This is necessary to allow any remaining co-tenants to decide if they wish to remain in the tenancy or if they wish to end the tenancy agreement.

The Bill also requires the lessor to disclose to the Bonds Office that the leaving co-tenant has ended their interest under the tenancy agreement using the family violence termination notice provision before they notify the co-tenants that the leaving tenant has left. This is necessary to ensure the Bonds Office can flag the rental bond record as requiring sensitive handling. This will ensure that communications in relation to that bond are managed with sensitivity and to prevent the inadvertent disclosure of the leaving tenants contact details to other parties (for example, by sending separate, rather than joint emails to the parties).

4. *Proportionality (section 28 (e))*

The provisions contain safeguards to ensure the proportionality of any limitations on the right to privacy which flow from requirements on victim-survivors to disclose DFV.

Firstly, use of the provision (and therefore the obligation to disclose the experience of DFV) is optional and at the election of the tenant seeking to leave the tenancy. There may be other avenues available to a victim-survivor who wants to leave a tenancy but who does not wish to disclose they are experiencing DFV. However, these alternative pathways may involve additional time (longer notice periods) or

cost (such as paying break lease fees). The provisions in this bill support a victim survivor to leave quickly and without additional cost.

Second, while the provisions are designed to ensure that the tenancy can only be ended on legitimate grounds (where DFV has occurred), they also contain protections to limit, as far as possible, the amount of information that a victim-survivor is required to disclose. The victim-survivor will be required to indicate that they are experiencing DFV (given that this the ground on which they are relying to end the tenancy) and provide one form of supporting documentation to substantiate their reliance on the provision. The acceptable forms of supporting documentation include:

- a family violence order protecting the tenant or a dependent child of the tenant
- an injunction made under the *Family Law Act 1975* (Cwlth) in relation to the tenant or a dependent child of the tenant;
- a “competent person declaration” (see further below) relating to the tenant, or a dependent child of the tenant; or
- any other document prescribed by regulation.

Where one of these forms of supporting documentation is provided, the lessor is prevented from requesting additional information (such as police incident reports) to substantiate that DFV has occurred. The supporting documentation (either court orders or a declaration) will not contain significant details of the DFV that has occurred, thereby limiting the extent of the required disclosure. The Government intends to provide a template form for a competent person declaration, which can indicate what information is to be provided whilst also indicating the sorts of information that is not required. This is intended to limit the amount of information disclosed to only that which is necessary.

Further, while a notice to the lessor may be considered defective if it does not contain the required information or is not accompanied by supporting documentation, the Bill prevents ACAT from considering whether the tenant or their dependent child experienced domestic violence or whether they can safely remain living at the premises. This means that where one of these forms of supporting documentation is provided, neither the lessor nor ACAT can question whether the victim-survivor has experienced DFV.

Third, the Bill introduces the concept of a “competent person declaration.” This is a declaration by a person (who has consulted with the victim-survivor in the course of their professional practice) that, in their opinion, the victim-survivor has experienced DFV. The Bill creates the ability for a person or class of persons to be prescribed as a competent person. The intention is that competent persons will include health care professionals, social workers and employees of organisations who work with

victim-survivors of domestic violence. This means that if a victim-survivor feels unable or unwilling to go through the court process to obtain a family violence order or an injunction under the *Family Law Act 1975 (Cth)*, they will instead be able to consult with a trusted professional, who is experienced at dealing with victim-survivors of domestic violence. This limits the extent to which a victim-survivor will be required to disclose their experience of DFV to other people to obtain the necessary supporting documentation to leave their tenancy.

Fourth, the victim-survivor is only required to provide supporting documentation to their lessor (not any remaining co-tenants) and it will be an offence for a person (which could include the competent person, the lessor or their agent) to disclose that information to other parties (unless the disclosure occurs in the context of the agent / lessor informing each other about the notice or disclosure is authorised under a Territory law). This prevents the onward disclosure of any information contained in the supporting documentation, thereby ensuring any limitation on the right to privacy is circumscribed.

Finally, although the lessor is required to inform any remaining co-tenants and the Bonds Office that the leaving co-tenant has ended their interest under the tenancy agreement due to DFV, the lessor is prevented from doing so until after the victim-survivor has vacated the tenancy in accordance with their notice. This means, that although the remaining tenants are informed of the departure of the victim-survivor, the disclosure does not create a safety risk for the victim-survivor as they will have already left the rental premises by the time the remaining parties are notified. Additionally, as a public sector agency, the Bonds Office is required to comply with the Territory Privacy Principles, ensuring that the information they receive in relation to a DFV situation is handled with due consideration of the privacy of the individuals concerned.

Right to Privacy – impacts on remaining co-tenants when a person ends their interest under a tenancy due to DFV

1. Nature of the right and the limitation (section 28 (a) and (c))

The right to privacy includes the right not to have one's home interfered with unlawfully or arbitrarily. The Bill will engage and may limit this right for any remaining co-tenants. Given that the Bill supports victim-survivors to end their rights and obligations under a tenancy at short notice, the rights and obligations of other co-tenants may therefore also be impacted at short notice.

The provisions allow a victim-survivor to end their interest in the tenancy effective from the day they issue the notice to the lessor (or a later date if they choose) (unless there are sub-tenants at the property). The tenancy will then continue for any remaining co-tenants. However, where the leaving co-tenant has contributed to the bond for the premises, the remaining co-tenants will need to pay the leaving

co-tenant their share of the bond (less any deductions for rent arrears or property damage which are attributable to the leaving tenant) within a 14-day period of the leaving tenant's departure.

This means that the remaining co-tenants will assume full liability for all obligations under the tenancy agreement (including payment of all the rent) from the date the leaving tenant's notice takes effect. Further, the lessor is not permitted to inform any remaining co-tenants of the leaving tenant's departure until *after* the vacate date specified in the leaving tenant's notice. This means that the remaining co-tenants will have assumed all liabilities under the tenancy agreement before they are even made aware that this has occurred. This may limit the remaining co-tenant's right to privacy as it may place them in a position where they face an increase in rent without prior notice by virtue of having assumed liability for the leaving co-tenant's share of the rent. This may create additional financial pressures which could place the individual's tenancy at risk where the rent becomes unaffordable for them, potentially limiting their right to privacy.

2. Legitimate purpose (section 28 (b))

The purpose of introducing a new right for a person to end their interest under the tenancy agreement at short notice is to support the safety of the victim-survivor at the point at which they are escaping DFV by allowing them to end their interest under the tenancy agreement at short notice and without penalty. As noted above, this will support a range of human rights of the victim-survivor and support them to live a life free from violence.

3. Rational connection between the limitation and the purpose (section 28 (d))

Impacting the rights and obligations of co-tenants under a tenancy agreement at short notice is rationally connected to supporting a victim-survivor to escape circumstances of domestic violence quickly and with minimal procedural requirements.

4. Proportionality (section 28 (e))

As discussed above, DFV impacts victim-survivors in profound ways. These impacts can be wide ranging, affecting their education, employment, financial security, their physical safety, health and social and emotional well-being. These impacts affect the victim-survivor most directly, however there may also be substantial flow-on impacts in both direct and indirect ways to other individuals and families and to the community as a whole. This is to say, DFV has society-wide impacts and the community as a whole shares the burden.

These reforms in effect place an additional burden on remaining co-tenants and on landlords, who may have their tenancy agreement and, for remaining co-tenants, their living arrangements significantly impacted at short notice. However, this is

necessary to support the victim-survivor, who ultimately bears the most profound impacts of DFV, to escape the violence they are experiencing quickly and at minimal cost.

Nevertheless, to limit the impacts on the remaining co-tenants' right to privacy as much as possible, the new ground for ending a victim-survivor's interest under a tenancy agreement contains safeguards to ensure any potential limitations on the right to privacy of co-tenants are reasonable and justified.

Where there are co-tenants remaining after the departure of the victim-survivor, the tenancy will continue for those tenants. The lessor is required to notify them within 7 days of the vacate date given in the victim-survivor's notice that the leaving co-tenant has ended their liabilities under the agreement but that the tenancy will continue. This ensures remaining tenants are made aware of the changes to their tenancy arrangements as soon as practicable after the victim-survivor's departure.

If the remaining tenants form the view that the tenancy will be unaffordable for them after the departure of the victim-survivor, the amendments also give the remaining co-tenants the ability to terminate the tenancy at short notice and without penalty. Where there is a fixed term tenancy, the remaining co-tenants will have a 4-week period in which to decide to end the tenancy early by way of notice. If they do so within that timeframe, no break lease fee will be payable. If the tenancy is periodic, the remaining co-tenants can end the tenancy in the usual manner by giving the lessor 3 weeks' notice of their intention to vacate.

Further, the notice the lessor gives to the remaining co-tenants is required to tell them about their right to end the tenancy without penalty if they choose to do so.

If some, but not all, of the remaining co-tenants wish to leave the premises, they will be able to end the tenancy. This will have the effect of ending the agreement for all parties. However, this would not prevent any remaining co-tenants negotiating with the lessor to enter into a new tenancy agreement with any remaining co-tenants who wish to remain. Alternatively, a leaving co-tenant could use the existing co-tenancy provisions to seek the agreement from their lessor and co-tenants to leave the agreement while the agreement continues with any remaining tenants. This means that there is flexibility in terms of possible arrangements if required.

Further, if the remaining tenants wish to remain at the property but are finding it difficult to afford the rent without an additional co-tenant, then existing co-tenancy provisions under the RTA also permit the existing co-tenants to seek the lessor's permission to add an additional co-tenant to the agreement. Where this happens, the lessor cannot unreasonably refuse consent to the addition of a new co-tenant.

These measures ensure that the limitation on the right to privacy of remaining co-tenants is reasonable and proportionate to the purpose of the measure – supporting victim-survivors to live their lives free from violence.

Right to fair trial – charitable fundraising reforms – new condition on licence

1. Nature of the right and the limitation (section 28 (a) and (c))

Section 21 (1) of the HRA provides that everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The right to a fair trial includes the right to a fair hearing and procedural fairness. The Bill may limit this right for individuals as it expands the existing ability for the director-general to make administrative decisions by creating a new ground upon which a licence may be amended, suspended or cancelled. This new ground is where the director-general is satisfied, on reasonable grounds, that a breach of the Principles has occurred.

In circumstances where the director-general proposes taking enforcement action, under existing provisions in the CC Act the director-general must give notice to the licence holder of this and provide an opportunity for the licence holder to respond to the allegations. There is also a mechanism to enable the review, by ACAT, of any decision to amend, suspend or cancel a licence.

The Bill will only have human rights implications for those individuals who hold a licence to conduct collections. This is expected to be a small number of ACT-licence holders, as most charities are legal entities (non-natural persons) to which human rights do not apply. Charities registered with the ACNC cannot be individuals.

2. Legitimate purpose (section 28 (b))

The legitimate objective of the amendments to the CC Act is to implement the National Fundraising Principles which will make the charitable sector more efficient, ultimately benefiting the communities and causes for which members of the public make donations. The Principles also contain rules that are designed to ensure that charitable fundraising is conducted without exploitation, fraud or undue pressure or interference with potential donors.

3. Rational connection between the limitation and the purpose (section 28 (d))

In February 2023, the Council on Federal Financial Relations (**CFFR**) agreed to a set of fundraising conduct requirements called the National Fundraising Principles (**the Principles**). The Principles are to be implemented by each state and territory. The Principles include rules, for example, about when and where a fundraiser can solicit donations, what disclosures must be made to potential donors, and what identification a fundraiser must display.

At present, charities that operate in more than one jurisdiction must ensure they comply with applicable local laws, which may differ. The realities of modern fundraising are that much of it occurs across jurisdictional boundaries (particularly online). The purpose of the Principles is to harmonise fundraising conduct requirements nationally and provide charities with a clearer understanding of how they can achieve compliance. Nationally consistent fundraising regulation has been recommended by several reviews over the past decade, including the 2020 Royal Commission into National Natural Disaster Arrangements. Reducing red-tape for the charitable sector is anticipated to minimise compliance burdens for the sector, which in turn should allow a greater proportion of donations to be directed to those in need.

Generally, the Bill will implement the Principles in the ACT by amending the *Charitable Collections Act 2003 (CC Act)* to empower the Minister to make a disallowable instrument giving effect to the Principles. The Bill will also make compliance with the Principles an automatic condition on a licence to conduct collections in the ACT. However, immediately prior to the commencement of this Bill, charities who are registered with the Australian Charities and Not-for-Profits Commission (**ACNC**) were exempt from the licencing requirements by virtue of changes which were made in 2017 to reduce red tape for charities. To ensure the Principles apply to all charities conducting collections in the ACT, this Bill creates a deemed licence regime for ACNC registered charities. Charities registered with the ACNC are deemed to hold a licence in the ACT to conduct collections from the date they became an ACNC registered charity. They are therefore also subject to the condition that they comply with the Principles.

A breach of a condition on a licence (deemed or actual) may result in the amendment, suspension or cancellation of a licence where the director-general is satisfied on reasonable grounds that a breach has occurred.

There is a rational connection between limiting the right to a fair trial (by creating a new ground to amend, suspend or cancel a licence) and the purpose of implementing the Principles. The connection is that there will be a regulatory lever for the director-general to take enforcement action if a breach of the Principles occurs, which is necessary to ensure their effectiveness. Expanding the grounds on which the director-general can take enforcement action will act as an incentive to licence holders to understand and comply with their obligations under the Principles. It will also provide assurance to the community that a breach of the Principles will be taken seriously.

4. *Proportionality (section 28 (e))*

To the extent to which creating a new ground to amend, suspend or cancel a licence limits the right to a fair trial, it is proportionate because of the safeguards which already exist in the CC Act. These safeguards include a requirement to notify the individual that enforcement action is proposed, providing the individual with an

opportunity to respond to the allegation, and appeal rights of decisions in ACAT. This approach strikes the right balance between needing an enforcement mechanism to ensure compliance with the Principles and ensuring they are not being enforced arbitrarily without proper oversight.

Should the Principles be updated in the future, they may only be amended in the ACT through a disallowable instrument (**DI**). This means that any changes that are made must be tabled in the Legislative Assembly and accompanied by an explanatory statement. This is an added safeguard as it means the Principles are subject to additional level of scrutiny and public transparency through the disallowance process. The preparation of an explanatory statement will mean that any human rights limitations created by the instrument will need to be explained and justified at the time the instrument is made.

Individuals subject to the requirements of the Principles (i.e. natural persons holding ACT licences) will be made aware of their obligations through public communications materials including information on the Access Canberra website in relation to charitable collections (<https://www.accesscanberra.act.gov.au/business-and-work/associations-co-ops-and-charities/charitable-collection-licences>). Finally, it is noted that HRA protections only apply to natural persons, rather than corporations. While the limitation may apply to some individuals, it will only apply to individuals who hold an actual ACT licence to fundraise. Currently there are 17 entities who hold actual ACT licences and only three are registered as individuals. Further, deemed licences only apply to ACNC registered entities, and ACNC registered entities cannot be individuals. As such, most charities will be entities which do not have human rights.

Rights to be innocent until proven guilty – strict liability offence for unlawfully conducting charitable collections

1. Nature of the right and the limitation (section 28 (a) and (c))

Section 22(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

The Bill re-makes (in part) the offence for unlawfully conducting collections (section 14 CC Act). Specifically, the Bill provides that the offence does not apply if a person is authorised to conduct a collection by a licence holder. References to ACNC-registered entities in section 14 (2) have been omitted, as these entities will now fall under the category of licence holders (due to the new deemed licence regime).

The offence under section 14 is a strict liability offence. Strict liability offences engage and may limit the right to be presumed innocent until proven guilty as they impose guilt without the need to prove a person's fault.

The provision limits this right for individuals as individuals may hold actual licences under the ACT charitable collections scheme and are therefore subject to the strict liability offence for conducting a collection in the ACT without a licence.

2. Legitimate purpose (section 28 (b))

The legitimate objective of the offence is to ensure that entities do not fundraise without holding a licence. This offence supports the effective operation of the licencing regime for charitable collections in the ACT by requiring those who wish to fundraise in the ACT to hold a licence (and by extension comply with the Principles as a condition of that licence). This ensures the public can be comfortable that only legitimate charities can conduct collections lawfully and that those charities are bound by the Principles. The requirement for a licence is justified because fundraising is an activity where there is potential for exploitation, especially of vulnerable members of the community, if unregulated.

3. Rational connection between the limitation and the purpose (section 28 (d))

The intention behind re-making the strict liability offence for unlawfully conducting a collection is to make clear that the offence applies to an actual and deemed licence. In doing this, it ensures both actual and deemed licence holders are obligated to comply with the Principles as a condition of their licence. The purpose of the specific penalties attributable to this offence is to provide an appropriate disincentive for failing to hold a licence.

4. Proportionality (section 28 (e))

Under the HRA, the presumption of innocence may be subject to reasonable and justifiable limitations in accordance with section 28 of the HRA. This means that limitations imposed by strict liability offences can be justified where they are reasonable, necessary and proportionate in pursuit of a legitimate objective.

The legitimate objective of this offence is to ensure charities who wish to fundraise in the ACT hold a licence to do so. Obtaining a licence ensures that the charity has met threshold requirements and places certain ongoing obligations on them, including obligations to comply with the Principles. Making it a strict liability offence is considered necessary as it incentivises charities to obtain the appropriate licence and acts as safeguard to donors from potentially fraudulent or otherwise exploitative behaviours.

Strict liability offences typically arise in a regulatory context where, to ensure regulatory schemes are complied with, criminal penalties are required. The defendant can reasonably be expected, because of their involvement with the regulated activity, to understand the requirements of the law, and as such, the mental or fault element can justifiably be excluded.

Individuals who wish to conduct charitable collections in the ACT will be made aware of the requirement that they hold an ACT licence through publicly available information on the Access Canberra website (<https://www.accesscanberra.act.gov.au/business-and-work/associations-co-ops-and-charities/charitable-collection-licences#Apply-for-a-licence>). Following a licence being obtained, any changes to obligations under the licence will be communicated in writing to the licence holder accordingly.

As noted above, human rights protections only apply to natural persons, rather than corporations. While this offence may apply to some individuals, it will only apply to individuals who hold an actual ACT licence to fundraise. As such, the majority of charities fundraising in the ACT will be entities which do not have human rights.

Right to liberty – unlawfully conducting / unlawfully taking part in collections

1. Nature of the right and the limitation (section 28 (a) and (c))

Section 18 of the HRA prohibits the arbitrary and unlawful deprivation of liberty. Deprivation of liberty, through arrest or detention, must not only be lawful, in accordance with pre-established legal procedures, but must not be arbitrary. Arrest or detention may be arbitrary if it is unreasonable, unjust, inappropriate or disproportionate in all the circumstances of the case or not in accordance with due process.

This Bill may limit the right to liberty through remaking the offences in the CC Act for unlawfully conducting collections (section 14) and unlawfully taking part in collections (section 15). These offences carry with them a maximum penalty of 200 penalty units, imprisonment for 2 years, or both. As these offences carry with them a term of imprisonment, the right to liberty may be limited for individuals who are found to be unlawfully conducting or unlawfully taking part in collections.

2. Legitimate purpose (section 28 (b))

The legitimate objective of the amendments to the CC Act is to implement the Principles, which will make the charitable sector more efficient, ultimately benefiting the communities and causes for which members of the public make donations. The Principles also contain rules that are designed to ensure that charitable fundraising is conducted without exploitation, fraud or undue pressure or interference with potential donors. The Principles will be attached as a condition of all licences to conduct collections in the ACT.

3. Rational connection between the limitation and the purpose (section 28 (d))

Requiring individuals to hold a licence to conduct, or take part in, a charitable collection is important in ensuring only individuals who are authorised to conduct charitable collections in the ACT are doing so and that they are subject to any

conditions of that licence (including the Principles). This promotes better consumer outcomes as it acts as a safeguard against behaviours in breach of the Principles (such as exploitation and fraud).

The limitation on the right to liberty is rationally connected to the legitimate purpose as it provides a measure to enhance consumer protection outcomes for the community by ensuring all individuals conducting and taking part in charitable fundraising are authorised to do so by a licence and are by extension subject to the conduct obligations imposed by the Principles.

In some cases, a breach of the Principles could involve quite serious issues. For instance, some of the Principles are intended to protect donors from exploitation (e.g. by requiring clear explanations of whether a financial commitment is one-off or ongoing and by prohibiting fundraisers from taking advantage of a donor's vulnerability). The purpose of the specific penalties attributable to these offences is to provide an appropriate disincentive for conducting or taking part in a collection without proper authority. In some instances, the breach may be so egregious or systemic in scale that it may be appropriate to impose a penalty of imprisonment. In these more serious cases, having the penalty in place encourages compliance and provides assurance to the community that if an individual fundraises without a licence, or represents themselves as being authorised to conduct or participate in a collection when they are not, there is an appropriate penalty.

4. *Proportionality (section 28 (e))*

This approach is proportionate to the overall aim of the changes as it ensures all those who are conducting or taking part in a collection are authorised by a licence to do so. A penalty of imprisonment would only be applied by a court after due consideration of all the circumstances of the offence. The offence is subject to usual protections afforded in criminal proceedings.

Rights in criminal proceedings – amendments to create an offence for non-attendance at compulsory conciliation

Strict liability offences for failing to attend a compulsory conciliation conference and reverse evidential burden

1. *Nature of the right and the limitation (section 28 (a) and (c))*

Section 22(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

Strict liability offence: The Bill replaces the current civil penalty regime for failing to attend a scheduled conciliation conference without reasonable excuse with an infringement notice scheme, and as such, creates a strict liability offence. Strict liability offences engage and may limit the right to be presumed innocent until proven

guilty as they impose guilt without the need to prove a person's fault. The new *Magistrates Court (Fair Trading Australian Consumer Law Infringement Notices) Regulation 2024* establishes an infringement notice scheme for this strict liability offence.

Reverse evidential burden: The presumption of innocence also means that the prosecution has the burden of proving 'beyond reasonable doubt' that the accused committed the offence. A reverse evidential burden will engage and limit the presumption of innocence, as it requires the defendant to disprove a fact or provide evidence sufficient to raise a reasonable possibility that a matter exists or does not exist.

The Bill includes a reverse evidential burden by placing the evidential burden on the defendant in proving that they had a reasonable excuse for not attending the compulsory conciliation.

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

The legitimate objective of the amendments to the *Fair Trading (Australian Consumer Law) Act 1992* is to promote good consumer outcomes, namely the efficient resolution of disputes concerning the ACT's consumer legislation, and the protection of consumers from problematic business practices.

3. *Rational connection between the limitation and the purpose (section 28 (d))*

The amendments will ensure that the Commissioner for Fair Trading has the necessary regulatory tools to take action where a business fails to comply with the scheme, without reasonable excuse.

The intention behind the strict liability offence introduced by this Bill for failing to attend a compulsory conciliation is to ensure compliance with the scheme. The purpose of the specific penalties attributable to this offence is to provide an appropriate disincentive for failing to attend conciliation. The creation of an infringement notice scheme is required to further encourage compliance, and provide for effective enforcement.

The reverse evidential burden regarding whether the business has a reasonable excuse is necessary to ensure the effectiveness of the regulatory scheme, as the knowledge and the evidence of the matters the defendant is required to prove are matters that are uniquely within the knowledge of the defendant, and it would be unreasonable for the prosecution to be required to establish those matters.

4. *Proportionality (section 28 (e))*

Under the HRA, the presumption of innocence may be subject to reasonable and justifiable limitations in accordance with section 28 of the HRA. This means that

limitations imposed by strict liability offences and reverse burdens can be justified where they are reasonable, necessary and proportionate in pursuit of a legitimate objective.

Strict liability offence: Other less restrictive measures have been considered, and tested, through the current civil penalty regime. The challenges with this regime, and in particular, the repeated non-attendance of businesses to scheduled conciliation conferences indicates that less restrictive methods will not achieve the legitimate purpose of promoting good consumer outcomes, encouraging the resolution of disputes, and protecting consumers from problematic business practices. As such, the inclusion of the strict liability offence in the Bill is necessary to incentivise individuals to attend compulsory conciliation conferences.

Strict liability offences typically arise in a regulatory context where, to ensure regulatory schemes are complied with, criminal penalties are required. The defendant can reasonably be expected, because of their involvement with the regulated activity, to understand the requirements of the law, and as such, the mental or fault element can justifiably be excluded. The Commissioner for Fair Trading will notify individuals of their legal obligation to attend consumer conciliation conferences (and the associated criminal offence for failure to comply) when informing them that the conference is being scheduled. Accordingly, individuals will be on notice of the offence.

Reverse evidential burden: It is not considered there are any less restrictive means reasonably available to achieve the purpose of the Bill. The burden of proof remains on the prosecution to prove the other elements of the offence. The reverse onus is limited to evidentiary matters that are specifically within the knowledge of the defendant and for which it would be unreasonable for the prosecution to establish.

Further, it is noted that HRA protections only apply to natural persons, rather than corporations. While this offence may apply to some individuals, for example sole traders, most businesses that the offence applies to will be corporate entities, and human rights will not be engaged.

Rights in criminal proceedings – RTA amendments – Strict liability offences for failing to disclose information when advertising a property for lease

1. Nature of the right and the limitation (section 28 (a) and (c))

Section 22(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

Strict liability offences: The Bill restructures a number of existing strict liability offences that are already in the RTA into a single provision. These offences relate to a failure to disclose certain required information when advertising a property for rent. The restructured provision also creates the ability for the Government to

prescribe additional advertising disclosure requirements by regulation. This will allow Government to add to the matters that landlords must disclose to tenants as the need arises in future.

Strict liability offences engage and may limit the right to be presumed innocent until proven guilty as they impose guilt without the need to prove a person's fault.

Reverse evidential burden: The presumption of innocence also means that the prosecution has the burden of proving 'beyond reasonable doubt' that the accused committed the offence. A reverse evidential burden will engage and limit the presumption of innocence, as it requires the defendant to disprove a fact or provide evidence sufficient to raise a reasonable possibility that a matter exists or does not exist.

The Bill includes a reverse evidential burden by placing the evidential burden on the defendant in proving that they had a reasonable excuse for not including the required information when advertising a property for lease.

2. Legitimate purpose (section 28 (b))

The purpose of the strict liability offences related to advertising requirements in the RTA is to ensure that tenants are provided with correct and transparent information about properties they are seeking to rent.

Information asymmetry between tenants and lessors or agents when entering into a lease for a rental property can disadvantage tenants, who must rely on the information provided to them by lessors or agents when deciding to rent a property. Knowing certain information about the features of a rental property may be an important factor for a tenant to consider when deciding whether to apply to rent a particular rental property. To address this power and information imbalance, disclosure of certain matters by lessors and agents when advertising a property for rent has been mandated. To encourage compliance with this requirement, non-compliance by lessors or their agents has been penalised.

The purpose of the specific penalties attributable to these offences is to provide an appropriate disincentive to individuals from undertaking the actions subject to the offence provisions.

3. Rational connection between the limitation and the purpose (section 28 (d))

Making non-compliance with these legislative requirements a strict liability criminal offence demonstrates the seriousness of the conduct and is an effective means of deterring non-compliance. It is intended that this will provide enhanced consumer protection outcomes for tenants by facilitating transparency in the rental market.

The limitation on the right to the presumption of innocence imposed by the strict liability offences is rationally connected to the legitimate purpose as it provides a measure to enhance consumer protection outcomes for the community by ensuring lessors and their agents must disclose certain information when advertising the property for rent.

It is necessary for Government to have the capacity to add to the matters that landlords must disclose to tenants as the need arises in future, as additional requirements are added over time to respond to community and regulatory need. For example, recent reforms to the requirements for swimming pool fences in the ACT (aimed at preventing unnecessary death or injury by drowning) identified the need to introduce disclosure requirements about the standard of pool fencing when leasing a property. The Explanatory Statement for the *Building (Swimming Pool Safety) Legislation Amendment Act 2023* indicated that the Government in future regulation would set disclosure requirements in relation to pool fencing when leasing a property.²¹ This amendment will support that introduction of that disclosure requirement and others, as needed, in future.

4. *Proportionality (section 28 (e))*

The strict liability offences are necessary to deter lessors and agents from excluding information or providing false or misleading information when advertising a property for rent.

Strict liability offences typically arise in a regulatory context where, to ensure regulatory schemes are complied with, criminal penalties are required. The defendant can reasonably be expected, because of their involvement with the regulated activity, to understand the requirements of the law, and as such, the mental or fault element can justifiably be excluded.

It is appropriate for these provisions to be strict liability offences as the RTA places obligations on lessors and agents with respect to renting properties to tenants, and although it does not provide a licensing scheme, it does regulate their behaviour when renting to tenants. To ensure lessors and agents are aware of the new offences, the Government will prepare targeted communications to notify them of any new disclosure requirements as they are prescribed by regulation.

The strict liability offences re-structured in this Bill are framed with clear criteria as to whether the offence has occurred. This means individuals can reasonably be aware

²¹ Available at https://www.legislation.act.gov.au/View/es/db_68330/20231101-82189/html/db_68330.html

they have an obligation under the law, and it will be clear what conduct constitutes an offence.

In addition, the strict liability offences for failing to disclose or for providing false or misleading disclosure have been framed to provide safeguards for individuals. Specifically, the advertising offence provisions do not apply if the individual has a reasonable excuse. Further, the offence provision for providing false or misleading disclosure provides an additional safeguard for individuals, in that the provision does not apply if the disclosure statement is not false or misleading in a material particular. These safeguards minimise the limitation on human rights and ensure the offence provisions are proportionate and carefully targeted.

The penalty amount for these offences have been designed to ensure they are proportionate to the seriousness of the conduct and align with the ACT Government Guide for Framing Offences.

The strict liability offences for failing to disclose, or providing false or misleading disclosure when advertising a property are subject to a maximum penalty unit of 5 penalty units. This is also consistent with the framing of existing offence provisions in the RTA that penalise a failure to disclose required information to tenants.

Rights in criminal proceedings – Agents Act amendments – Strict liability offence – employment agents must only take fee from employer

1. Nature of the right and the limitation (section 28 (a) and (c))

Section 22(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. New section 98B of the Agents Act creates a strict liability offence if an employment agent accepts a fee from a person who is not seeking to have work carried out (i.e. an employer) or a person who is a model or a performer. This offence exists in section 96 of the Agents Act but it will be moved within the Act (with no changes to its terms in substance) in this Bill.

Strict liability offences engage and may limit the right to be presumed innocent until proven guilty as they impose guilt without the need to prove a person's fault.

2. Legitimate purpose (section 28 (b))

The purpose of the strict liability offence is to protect job seekers from the risk of exploitation, if employment agents were to charge the job seeker for their services. Employment agent services involve finding persons to carry out work for a principal. The principal typically pays fees to the employment agent for this service. The strict liability offence ensures that there is no financial relationship between the job seeker and the employment agent. This is important as there may be a power imbalance

between a job seeker and an employment agent, and the offence prevents the agent from requesting any reward in return for placing the job seeker in work.

3. Rational connection between the limitation and the purpose (section 28 (d))

Making non-compliance with the prohibition on taking fees from job seekers a strict liability criminal offence demonstrates the seriousness of the conduct. The limitation on the right to the presumption of innocence imposed by the strict liability offence is rationally connected to the legitimate purpose, because it is intended to be an effective means of deterring non-compliance and to provide enhanced consumer protection outcomes for job seekers. With the removal of the licensing regime for employment agents, which is one regulatory lever available to Governments, it is important to ensure that the law continues to regulate any potential harms arising from the industry. The strict liability offence sends a strong signal to protect job seekers from being charged for employment agent services.

4. Proportionality (section 28 (e))

Strict liability offences typically arise in a regulatory context where, to ensure regulatory schemes are complied with, criminal penalties are required. The defendant can reasonably be expected, because of their involvement with the regulated activity, to understand the requirements of the law, and as such, the mental or fault element can justifiably be excluded.

As the offence is an existing offence, licence holders will be aware of their obligations. The Government will prepare targeted communications to confirm that this offence will remain in force, after the licensing requirement has been removed. For new entrants to the employment agent market in future, it will be incumbent on them to understand their obligations under ACT law, in the same manner as other unlicensed industries. Those obligations will include this offence and applicable provisions of the Australian Consumer Law. For those entities that operate across jurisdictions, it is noted that NSW law provides an equivalent prohibition.^[1]

The penalty amount for this offence (maximum of 50 penalty units) is designed to be proportionate to the potential seriousness of the conduct and aligns with the ACT Government Guide for Framing Offences.

^[1] Fair Trading Act 1987 (NSW), sections 48-49.

HOUSING AND CONSUMER AFFAIRS LEGISLATION AMENDMENT BILL 2024

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the ***Housing and Consumer Affairs Legislation Amendment Bill 2024***. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

.....

Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Housing and Consumer Affairs Legislation Amendment Act 2024* (**the Act**).

Clause 2 Commencement

This clause sets out the scheme of commencement for the provisions of the Act. It provides that the Act (other than Part 8) commences 7 days after the Act's notification day.

Part 8 (the RTA amendments) commences upon Ministerial notice (with automatic commencement at 6 months if a Ministerial notice does not commence the provisions sooner). This additional time for commencement of the RTA amendments is to allow for necessary subordinate legislation to be prepared to support the new family violence termination provisions (see further clause 67).

Clause 3 Legislation amended

This clause provides that the Act amends the following legislation:

- *Agents Act 2003*
- *Charitable Collections Act 2003*
- *Charitable Collections Regulation 2003*
- *Fair Trading (Australian Consumer Law) Act 1992*
- *Land Titles Act 1925*
- *Land Titles Regulation 2015*
- *Residential Tenancies Act 1997*
- *Unit Titles (Management) Act 2011*.

The note clarifies that the Act amends other legislation under Schedule 1.

The legislation amended by Schedule 1 includes the following:

- *Agents Act 2003*
- *Charitable Collections Act 2003*
- *Civil Law (Sale of Residential Property) Act 2003*
- *Fair Trading (Australian Consumer Law) Act 2003*
- *Magistrates Court (Charitable Collections Infringement Notices) Regulation 2003*.

Clause 4 Legislation repealed

This clause provides that the Act repeals the following instruments:

- *Unit Titles (Management) Certificate Determination 2023* (DI2023-3)

- *Unit Titles (Management (Fees) Determination 2023 (DI2023-179)*.

The Government intends to remake these Determinations consistently with the amendments in Part 9 of the Act, which create a new category of certificate under the UTMA (the unit titles (rental) certificate).

Clause 5 New Magistrates Court (Fair Trading Australian Consumer Law Infringement Notices Regulation – sch 2

This clause provides that the provisions set out in Schedule 2 are taken to be a regulation made under the *Magistrates Court Act 1930*, section 321.

The regulation is taken to be notified under the *Legislation Act 2001* on the day this Act is notified, commences 7 days after notification, is not required to be presented to the Legislative Assembly under section 64(1) of the Legislation Act, and may be amended or repealed as if it had been made under section 321 of the *Magistrates Court Act 1930*.

Part 2 Agents Act 2003

**Clause 6 Carrying on business as an employment agent
Section 12**

This clause removes section 12, the contents of which have been moved into the new section 98A (see clause 10).

**Clause 7 Employees not taken to carry on business as agents
Section 13 (d)**

This clause omits section 13 (d). Section 13 outlines that a person will not carry on business as an agent only because they, in the course of employment by another person, perform an agent service. The Bill removes employment agents from the definition of an agent (see Clause 11), rendering section 13 (d) unnecessary.

**Clause 8 Employment agents must be licensed
Section 22**

This clause omits section 22, which requires an employment agent to be licensed.

**Clause 9 Employment agents - further provisions
Division 5.8**

This clause omits Division 5.8, which contains a single section providing that an employment agent commits an offence if they accept a fee from a person who is not seeking to have work carried out (i.e. an employer) or a person who is a model or a performer. This section has been moved into the new Part 5A (see Clause 10).

Clause 10 New part 5A

This clause inserts a new part - Part 5A. The new part contains two sections, both moved into the new part from prior locations within the Act (see clauses 6 and 9 above). These two sections define the meaning of 'carries on business as an employment agent' and make it an offence for a person to accept a fee from a person who is not seeking to have work carried out (i.e. an employer) or a person who is a model or a performer. This offence is being retained in legislation as an important consumer protection to minimise the risk of exploitation of job seekers.

Clause 11 Receipts Section 130(1)

This clause omits the words '(or, for an employment agent, any money) from section 130(1). In doing so, the clause removes the requirement for an employment agent to give a receipt for any money they receive. This is because the clause applies to licensed agents, and the Bill removes the requirement for employment agents to be licensed.

Clause 12 Dictionary, definition of *agent*, paragraph (a) (iii)

This clause omits an employment agent from the definition of an *agent*. In doing so, the clause removes obligations on employment agents to act in accordance with requirements which apply to agents.

Clause 13 Dictionary, definition of *agents licence*, paragraph (c)

This clause omits an employment agent licence from the definition of an *agent licence*.

Clause 14 Dictionary, definition of *carries on business as*, paragraph (b)

This clause amends the definition of *carries on business as* an employment agent to refer to the new section 98A, instead of the now-omitted section 12.

Clause 15 Dictionary, definitions of *employment agent service* and *licensed employment agent*

This clause omits the unnecessary definitions of *employment agent service* and *licensed employment agent*.

Part 3 Charitable Collections Act 2003

Clause 16 New section 12A

This clause inserts a new definition of *licence* as new section 12A of the CC Act. The new definition captures the introduction of the deemed licence regime into the

CC Act. It clarifies that a licence for the purposes of the CC Act includes both an actual and deemed licence.

The new deemed licence regime is necessary to ensure that the Principles can apply as a condition of lawful fundraising operations in the ACT. It replaces the current regime under the CC Act where ACNC registered entities are exempted from holding a licence.

New section 5A also confirms that part 4 (other than sections 34 to 38) and part 5 of the CC Act do not apply to deemed licences.

Generally, part 4 creates a framework for applying for an ACT licence to conduct collections. As mentioned above, ACNC registered entities do not need to apply for a licence to conduct collections in the ACT as their licence is deemed by virtue of being an ACNC registered entity. As such, most of the provisions in this Part do not need to apply.

Part 5 creates obligations in relation to the proceeds of collections. The ACNC (under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (the **ACNC Act**) places ongoing obligations on ACNC registered charities in relation to proceeds of collections. These obligations include duties about retaining financial records and annual reporting. As such, it is not necessary for Part 5 of the CC Act to apply to ACNC registered charities.

Clause 17 Section 13

This clause inserts a new definition of *licensee* in section 13. It clarifies for the purposes of the CC Act who the licensee is in specific circumstances. This is necessary where the licence holder is not a distinct legal entity (e.g. an individual or an incorporated association).

In circumstances where the licensee is an unincorporated body that holds an ACT licence, the licensee is the nominated person for the body or (if no nominated person exists) an executive officer of the body.

Where the unincorporated body holds a deemed licence, then the licensee is any nominated person for the unincorporated body (see clause 25, new section 42D on who is a nominated person for an unincorporated deemed licence holder).

In any other case, the licensee is the licence holder (e.g. the person or incorporated entity).

Notes 1 and 2 direct the reader to specific sections of the CC Act for further guidance on who the licensee is for unincorporated bodies.

The purpose of this change is to support the new deemed licence regime under the CC Act by making it clear who the licensee will be in different circumstances.

Clause 18 Unlawfully conducting collections

Section 14 (2)

This clause substitutes section 14 (2) and redrafts the existing strict liability offence. The change supports the introduction of the deemed licence regime for ACNC registered charities by disapplying the offence of unlawfully conducting a collection in circumstances where either a deemed or an actual licence is held in relation to the collection. New section 14 (2) provides that the offence does not apply if the person is authorised by the licensee for the licence to conduct a collection.

The purpose of this offence is to act as a deterrent to ensure that only those who hold actual or deemed licences are conducting collections in the ACT. It acts as a safeguard to donors to protect them from potentially fraudulent or otherwise exploitative behaviours and ensures only licensed entities are lawfully able to conduct charitable collections.

The note under this section provides that the defendant has an evidential burden in relation to the matters mentioned in section 14 (2).

Clause 19 Unlawfully taking part in collections

Section 15 (1)

This clause substitutes section 15 (1) and redrafts the existing offence to reflect the new deemed licence regime for ACNC registered charities. It provides a person commits an offence if they take part in a collection without authorisation by the relevant licensee, and the person knows they are not authorised to take part or is reckless about this.

The offence carries with it a maximum penalty of 200 penalty units, imprisonment for 2 years, or both. This is unchanged from the existing offence in the CC Act.

The purpose of this offence is to act as a deterrent to ensure that only those who are authorised to take part in a collection do so. It acts as a safeguard to donors to protect them from potentially fraudulent or otherwise exploitative behaviours.

Clause 20 Sections 16 to 20

In implementing the Principles, existing fundraising conduct obligations in the CC Act which overlap with the Principles need to be repealed. The purpose of this change is to support the overarching aim of the reforms, which is to create a consistent, harmonised national approach to fundraising, rather than retaining distinct ACT-specific provisions.

This clause removes sections 16 to 20 of the CC Act as they duplicate conduct obligations contained in the Principles.

Clause 21 Decision on application for licence
Section 23 (4) (b) (iii)

This clause omits the words ‘the nominated person’ in section 23 (4) (b) (ii) and substitutes them with ‘a nominated person’. This change is consequential to the change made under clause 25 which inserts a new section 42D which provides that for unincorporated bodies that are ACNC registered entities, there may be multiple nominated persons (as there may be multiple responsible entities for the body under the ACNC Act).

Clause 22 Section 24

This clause substitutes current section 24 and makes clear that licences (deemed and actual) to conduct collections in the ACT are subject to compliance with the Principles and any other condition stated in the licence or document which forms part of the licence.

Clause 23 Amendment, suspension or cancellation of licence -
other grounds
Section 35 (1), except examples and notes

This clause substitutes section 35 (1) and requires the director-general to be satisfied on reasonable grounds that a circumstance in section 23 (2) – (4) exists or that a licensee has breached a condition on their licence before they may amend, suspend or cancel a licence.

Section 23 of the CC Act sets out the circumstances in which the director-general must issue, or refuse to issue, a licence.

The change to section 35 is a minor update to apply the reasonable grounds test to subsection 35 (1) (b), so that the director-general must have a reasonable belief that a licensee has breached a condition of their licence before taking enforcement action. This rectifies a drafting oversight with existing section 35. It also supports the introduction of the Principles as a condition on a licence and allows enforcement action to be taken against holders of actual and deemed ACT licences should it be necessary to do so.

Clause 24 Section 35 (1), notes 1 and 2

This clause substitutes the notes under section 35 (1). Note 1 provides that a licence includes a deemed licence. Note 2 has been updated to remind the reader that a *licence* for the purposes of this Act includes a deemed licence.

Clause 25 New part 4A

This clause inserts new Part 4A (sections 42A – 42C) into the CC Act. New Part 4A creates a deemed licence regime which applies to ACNC registered charities. The purpose of this change is to provide a means of applying the Principles as a condition on a licence (see section 42C) to all charities who hold a licence (deemed or actual) to fundraise in the ACT. This change further ensures that the existing enforcement mechanism in section 35 of the CC Act can apply to all licence holders. This will enable the director-general to take enforcement action should a breach of the Principles occur.

This new deemed licence regime will replace the current framework in section 14 of the CC Act, where ACNC registered entities are exempted from the requirement to hold a licence to conduct charitable collections.

Section 42A ACNC registered entities authorised by deemed licence

New section 42A (1) clarifies that an ACNC registered entity is authorised by a deemed licence to conduct collections in the ACT generally.

New section 42A (2) also provides clarity around when a deemed licence is taken to have ended. It provides that the deemed licence remains in force until either the entity stops being an ACNC registered entity, or the licence is suspended or cancelled under section 36.

New section 42A (3) makes it clear, for the avoidance of doubt, that if a deemed licence ends due to suspension or cancellation, then the ACNC registered entity is no longer authorised to conduct charitable collections in the ACT, even if they continue to be registered with the ACNC (or cease registration but then re-register in due course).

It is intended that if a deemed licence is suspended, the deemed licence could resume if the suspension ends. If a deemed licence is cancelled, then new section 42A (4) provides regulatory flexibility to permit the entity to hold a deemed licence again.

New section 42A (4) provides for regulations to be made to exempt entities from the operation of section 42A (3). This is necessary since otherwise the cancellation of an entity's deemed licence would mean they would need to hold an ACT licence in perpetuity to conduct charitable collections in the ACT (they would permanently lose access to the deemed licence regime). In some circumstances, the government may wish to allow an ACNC registered entity to hold a new deemed licence by making the ACNC registered charity a prescribed entity and disapplying the operation of section 42A (3) by regulation.

This process acts as a safeguard and allows the government to properly ensure that any behaviours that resulted in the ACNC registered charity losing its deemed licence have been sufficiently resolved prior to it holding a deemed licence again.

Section 42B ACNC registered entities – certain provisions not to apply to deemed licences

As ACNC registered entities do not need to apply to the director-general for a deemed licence to conduct collections in the ACT, and are regulated under Commonwealth legislation (the ACNC Act), there are certain parts of the CC Act that do not need to apply to deemed licences.

New section 42B provides that the parts which do not apply to deemed licences are part 4 (other than sections 34 – 38 which enables licences to be amended, suspended or cancelled) and part 5.

Clause 16 of this explanatory statement sets out why it is appropriate that parts 4 and 5 of the CC Act do not apply to ACNC registered entities.

Section 42C ACNC registered entities – conditions of deemed licence

New section 42C supports the implementation of the Principles in the ACT by providing that a deemed licensee must comply with the Principles as a condition of their licence. The section also requires that a deemed licensee must comply with any other conditions imposed on the deemed licence by the director-general under section 35.

Section 42D ACNC registered entities – nominated person for an unincorporated body

Under the CC Act, the concept of ‘nominated person’ is used in several provisions with respect to unincorporated bodies that hold licences. In some instances (for example section 35) these provisions will apply to deemed licence holders. For ACT licences, the nominated person is the person specified in a licence application (or as notified subsequently from time to time to Access Canberra) and is the licence holder. However, the CC Act does not currently provide for ACNC registered entities to have an equivalent concept of nominated person.

New section 42D confirms that the nominated person for an unincorporated body that is a deemed licence holder is each person who is a responsible entity for the ACNC registered entity under the ACNC Act.

For the ACNC, the Responsible Entities (or **Responsible People**) for a charity are the people who are responsible for the decision-making, day-to-day management and compliance of a registered charity. An ACNC registered charity may be constituted in a variety of ways and this will dictate who the responsible entities are.

For example, if the charity is an unincorporated association, the persons who the members have agreed or recognised will be responsible for the day-to-day management and decision-making are its Responsible People. This will be determined by considering the association's governing documents and the practices its members have accepted.

Each of the Responsible People for an ACNC registered charity must meet the Governance Standards as well as comply with all applicable legal requirements under the ACNC Act.

New section 42D also clarifies that each nominated person for the unincorporated body is a licensee for the deemed licence and that all nominated people for the unincorporated body are jointly and severally authorised or required to comply with any obligations imposed on them by the CC Act. This supports the introduction of the Principles ensuring that all nominated persons are required to comply with them as a condition of the deemed licence.

Clause 26 New section 62A

New section 62A enables the Minister to make a determination under the CC Act in relation to conducting or taking part in a charitable collection. This will enable the Minister to introduce the Principles as law in the ACT (see further clause 27 below).

A determination under this section will be through a disallowable instrument (**DI**). This means that the Principles (and any future changes to them) must be tabled in the Legislative Assembly and accompanied by an explanatory statement. This is an added safeguard as it means the Principles are subject to an additional level of scrutiny through the disallowance process.

Clause 27 Dictionary, new definitions

This clause inserts a new definition for **deemed licence** into the CCA Act. A deemed licence for the purposes of new Part 4A of the CC Act is a licence in relation to an ACNC registered entity.

This clause also inserts a new definition for **fundraising principles** into the CC Act.

The Principles are the set of **National Fundraising Principles** as agreed by CFFR in February 2023. The overarching purpose of the Principles is to harmonise fundraising conduct requirements across all Australian jurisdictions and give charities and donors a clear understanding of appropriate conduct, while allowing for greater flexibility as to how charities achieve compliance.

Clause 28 Dictionary, definitions of *licence* and *nominated person*

This clause substitutes the existing definition of **licence** with a new definition in section 12A which includes both actual and deemed licences.

This supports the introduction of the deemed licence framework. Including deemed licences in the definition enables the Principles to be applied as a condition of all licences to conduct collections in the ACT. It also means that should the Principles be breached, enforcement action may be taken.

This clause also inserts a new definition for ***nominated person*** for an unincorporated body into the CC Act (see further clause 25 and new section 42D above). The definition directs the reader to different parts of the CC Act depending on whether the licence is an actual licence or a deemed licence.

Part 4 Charitable Collections Regulation 2003

Clause 29 Sections 7 to 9

This clause removes sections 7 to 9 of the *Charitable Collections Regulation 2003* (**CC Regulation**). Section 7 is now outdated as the concept of *licensee* is defined in section 13 of the Act (see clause 17 above). Sections 8 to 9 duplicate conduct obligations contained in the Principles.

Clause 30 Hours of participation Schedule 1, section 1.5

Currently, Schedule 1 section 1.5 of the CC Regulation (in conjunction with section 10 of the Regulation) permits conditions to be imposed on licences with respect to the permitted timeframes for children to be involved in charitable collections. However, the existing timeframes are less restrictive than those proposed generally via the Principles. Accordingly, this clause omits Schedule 1 section 1.5 as it is adequately covered by the Principles.

The other provisions in Schedule 1 are being retained as they are not covered in the Principles. It is important for the Government to retain regulatory flexibility to impose conditions with respect to the participation of children in charitable collections in appropriate circumstances, as children are a vulnerable group.

Clause 31 Dictionary, definition of *licensee*

This clause omits the definition of *licensee* from the CC Regulation as it is now contained in section 13 of the Act (see clause 17 above).

Part 5 Fair Trading (Australian Consumer Law) Act 1992

Clause 32 Subdivision 5.1A.1 and 5.1A.2 headings

This clause omits two unnecessary subdivision headings.

Clause 33 Section 34F

This clause substitutes the existing section 34F – Attendance at conciliation. The main aspects of the current section are retained, including:

- setting out who may attend the conciliation of a complaint on behalf of the consumer
- requiring the consumer to attend the conciliation, subject to certain exceptions
- allowing the Commissioner to agree to a party to the conciliation attending by telephone or other electronic means, and
- allowing the Commissioner to agree to another person accompanying the consumer at conciliation.

The section has been restructured for drafting clarity and to better support the new offence created by new section 34GA (see clause 34).

Clause 34 New section 34GA

This clause inserts a new offence for a business who receives a compulsory conciliation notice and fails to attend the conciliation at the time and place stated in the notice. The clause provides the maximum penalty for the offence is 30 penalty units, and that the offence is a strict liability offence. The clause also provides that the offence will not apply if the business has a reasonable excuse for attending the conciliation. The note provides the evidentiary burden for establishing that the business had a reasonable excuse for not attending the conciliation lies with the business. This is because matters pertaining to whether the business had a reasonable excuse are peculiarly within the knowledge of the business.

Clause 35 Civil penalties—business failing to attend conciliation Subdivision 5.1A.3

This clause omits Subdivision 5.1A.3 which contains a civil penalty regime for businesses that fail to attend a consumer conciliation (without reasonable excuse). Subdivision 5.1A.3 is now unnecessary with the introduction of an offence covering the same conduct, in new section 34GA (clause 34 above).

Clause 36 New Part 8

This clause inserts a new Part, Part 8 – Transitional – Housing and Consumer Affairs Legislation Amendment Act 2024. Part 8 sets out the transitional provisions for alleged contraventions of the existing civil penalty provisions which occurred before the commencement day and applications for a civil penalty order not determined by the commencement day for the Bill.

Where a business is alleged to have contravened the civil penalty provision before the commencement date, and the Commissioner had not, under the pre-amendment section 34M applied for a civil penalty order, the Commissioner may still do so within 6 years of the alleged contravention. If the Commissioner applies for a civil penalty order, the application is determined as if the pre-amendment Act, Division 5.1A applied.

Where, before the Commencement date, the Commissioner had applied for a civil penalty order, and the Magistrates Court had not yet determined the application, the pre-amendment Act continues to apply in relation to the application.

New Part 8 is necessary to ensure that there is no gap in the Commissioner's enforcement powers as a result of the transition from a civil penalty regime to a criminal offence regime. Part 8 will expire 5 years after the day it commences.

Clause 37 Dictionary, definitions of civil penalty order and civil penalty provision

This clause omits the now unnecessary definitions of a *civil penalty order* and *civil penalty provision* from the dictionary.

Part 6 Land Titles Act 1925

Clause 38 Registrar-general must give information about certain transactions and instruments to revenue commissioner Section 178B (2) (k) to (n)

Section 178B of the LTA provides for information to be shared with the Commissioner for ACT Revenue (**Commissioner**) by the Registrar-General for land titles to support the administration of taxes including conveyance duty, rates and land tax. The information is collected through the Buyer Verification Declaration made as part of the land titles registration procedures with the transfer of a property (**BVD**, see <https://actlis.act.gov.au/verificationFormLanding/buyer>).

In April 2023, an omnibus justice Bill (the *Justice and Community Safety Legislation Amendment Act 2023*) (**JACS Act**) made a minor and technical amendment to the LTA. The amendment allowed for the Land Titles Office (**LTO**) to collect details of the kind of documents used to verify a person's identity when they purchase land.

As per the explanatory statement to the related Bill, this was intended to provide consistency between the Regulation and the *Land Titles (Verification of Identity) Rules 2020* (**Verification Rules**, see <https://legislation.act.gov.au/di/2020-112/>) regarding the documents which are permitted to be used to verify an individual's identity in certain land titles transactions.

The 2023 amendments inadvertently went beyond addressing an inconsistency with Verification Rules and have resulted in a limitation on the information available to identify an individual under the operation of LTA, section 178B.

This clause substitutes existing section 178(2) (k) to (n) to address the error and support the LTO's role as agent for ACTRO in collecting buyer identity information. This will ensure the effectiveness and integrity of the administration of taxation laws in the Territory.

Specifically, new section 178 (2) (l) (iv) allows for regulations to prescribe details from each document used to verify a person's identity in accordance with the Verification Rules that must be shared by the Registrar-General with the Commissioner.

Other minor changes have been made to update and improve the operation of section 178B (2). In particular:

- the purchaser's date of birth and citizenship or residency status have been included as required information under section 178B (2) (l) (i) to (iii), since this is key basic identifying information typically collected under the Verification Rules
- if the purchaser is a trustee, the ABN of the administered trust must be shared, as well as the name of the trust (section 178B (2) (m)), and
- section 178B (2) (n) has been clarified by explicitly noting that a corporation that is a purchaser may include a corporation that is a trustee.

This reform promotes efficiencies for the public as the sharing of information between the Land Titles Office and ACT Revenue Office is a key feature of the Barrier Free Model for conveyance duty introduced in 2017. Under the Barrier Free Model, buyers are able to purchase property without having to pay the duty first. The registration of their purchase with the LTO then triggers their tax assessment by ACTRO, through information sharing between the agencies. This is a simplified process for both buyers and the Government.

Clause 39 New section 178B (2) (w)

This clause inserts new section 178B (2) (w) and creates a regulation making power. The section enables other information in relation to documents used to verify a purchaser's identity to be prescribed by regulation. The purpose of this change is to provide flexibility to Government as potential changes to the Verification Rules in the future (or potential changes in the administration of taxes) may require the ability to readily adjust information-sharing requirements.

Part 7 Land Titles Regulation 2015

Clause 40 New section 3

This clause inserts a new section 3 to the Land Titles Regulation. This clause prescribes the details in relation to documents used to verify a purchaser's identity that must be collected and provided by the Registrar-General to the Commissioner under section 178B (2) (l) (iv) of the LTA. The details align with the types of information collected under the Verification Rules.

Part 8 Residential Tenancies Act 1997

Clause 41 When does residential tenancy agreement start? New section 7 (2)

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of **consecutive tenancy agreement** and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause clarifies when a consequential tenancy agreement begins. It provides that a consecutive tenancy agreement starts on the day after the terminated residential tenancy agreement ends.

Clause 42 Terms included in residential tenancy agreements Section 8 (1) (g)

Section 8 of the RTA sets out when certain terms are included in a residential tenancy agreement. Generally, all tenancy agreements are taken to include the standard residential tenancy terms (**SRTTs**) in schedule 1 of the RTA. However, schedule 2 of the RTA contains SRTTs that are included in some, but not all tenancy agreements. Section 8 sets out when the schedule 2 SRTTs will be included in a tenancy agreement. At present, section 8 (1) (g) indicates the break lease fee clause will be included as a term of a tenancy agreement when the agreement is for a fixed term and both the lessor and tenant agree to its inclusion.

This Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements (see clause 90). As such, the break lease fee clause will be moved from schedule 2 to schedule 1 of the RTA.

As the break lease fee clause will now form part of the SRTTs in Schedule 1 of the RTA, section 8 (1) (g) is no longer necessary and is omitted.

Clause 43 Section 8 (4)

As noted above, this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements (see clause 90).

This clause is a consequential amendment. It substitutes the definitions of different types of clauses that are included in some, but not all, tenancy agreements (the schedule 2 SRTTs) and in doing so, it removes the definition of *break lease fee clause*. This is because section 8 will no longer need to separately refer to the break lease fee clause as it will automatically be included in all tenancy agreements by virtue of being included as part of the SRTTs in schedule 1 of the RTA.

This provision also changes the numbering of the remaining termination clause definitions. This renumbering reflects the removal of the break lease fee clause from schedule 2 of the RTA and the consequential renumbering of all remaining schedule 2 termination clauses (see clause 91 which omits the break lease fee clause from schedule 2 and clause 92 which renumbers the remaining clauses).

Clause 44 Section 11A

This section consolidates existing sections 11A (Energy efficiency rating – advertising), 11AAA (Adaptable housing – advertising) and 11AB (Minimum housing standards – advertising and disclosure) into 2 provisions (substituted section 11A and 11AAB). This consolidation improves the accessibility and readability of the legislation.

In addition to consolidating the above listed provisions, this amendment also adds the ability for the Government to prescribe by regulation additional matters that must be disclosed when advertising a rental premises.

As noted in the human rights section above, information asymmetry between tenants and lessors or agents when entering into a lease for a rental property can disadvantage tenants, who must rely on the information provided to them by lessors or agents when deciding to rent a property. Knowing certain information about the features of a rental property may be an important factor for a tenant when deciding whether to apply to rent a particular rental property. To address this power and information imbalance, disclosure of certain matters by lessors and agents when advertising a property for rent has been mandated.

In recent years, when the Government has consulted on residential tenancy reforms, it has become apparent that there is a strong desire on the part of prospective tenants to have access to information about the rental premises that can help inform their decision about whether they wish to rent the premises being advertised. As such, it is anticipated that additional disclosure requirements may be identified in future. This regulation making power will support the government to respond quickly to add additional disclosure requirements as the need for them is identified in future.

For example, and as is noted in the human rights section above, recent reforms to the swimming pool fencing requirements in the ACT (aimed at preventing unnecessary death or injury by drowning) identified the need to introduce disclosure requirements about the standard of pool fencing when leasing a property. In the Explanatory Statement for the *Building (Swimming Pool Safety) Legislation Amendment Act 2023* the Government indicated a future regulation would set disclosure requirements in relation to pool fencing when leasing a property. This amendment will now support the Government to introduce that disclosure requirement by way of regulation as well as other matters that require disclosure as they are identified in future.

Existing sections 11A, 11AAA and 11AB contain strict liability offences for failing to disclose certain matters when advertising a rental premises for lease. For each of these provisions, the offence will not apply if the person has a reasonable excuse for not including the required information in the rental advertisement. The above listed provisions also contain a strict liability offence for including false or misleading information about the matter that must be disclosed in the rental advertisement. Here again, the offence will not apply if the information contained in the rental advertisement is not false or misleading in a material particular.

The maximum penalty for each strict liability offence is 5 penalty units.

These features are transferred across into consolidated sections 11A and 11AB and the maximum penalty of 5 penalty units remains the same.

Substituted section 11A makes it a strict liability offence for a person to publish an advertisement for a rental premises without the required information. It also provides that the offence will not apply if the person has a reasonable excuse.

Substituted section 11AAB makes it a strict liability offence for a person who publishes an advertisement for a rental premises containing the required information to provide false or misleading required information. It also provides that the offence will not apply if the information is not false or misleading in a material particular.

The ***required information*** for both provisions includes:

- if there is an existing energy efficiency rating of the habitable part of the premises—a statement of the energy efficiency rating;
- if there is no existing energy efficiency rating of the habitable part of the premises—a statement to that effect;
- if the premises are an adaptable housing dwelling—a statement that the premises are an adaptable housing dwelling;
- if the premises are required to comply with the minimum housing standards—a statement about whether the premises comply;

- if the premises are exempt from complying with a minimum housing standard—a statement that the premises are exempt;
- anything else prescribed by regulation.

This provision allows the Government to prescribe additional required information by regulation and the same strict liability offences will apply to the disclosure of that additional required information. To ensure that individuals are aware of their obligations (and so that those individuals are not inadvertently committing an offence due to a lack of awareness of the disclosure requirements), the Government will ensure that information is made available to the public at any time that new matters that must be disclosed are added to the regulation.

Clause 45 Sections 11AAB and 11AA

This clause is consequential to the change set out in clause 44 above. It renumbers section 11AAB and 11AA to section 11AA and 11AB respectively to reflect that a number of provisions have been consolidated.

Note that section 11AAB is inserted by clause 44 above and is then renumbered by this clause.

Clause 46 Sections 11AAA and 11AB

This clause is consequential to the change set out in clause 44 above. It omits sections 11AAA and 11AB to reflect that a number of provisions have now been consolidated.

Clause 47 Lessor’s obligations Sections 12 (3) (k) and (l)

This clause amends section 12 (3) of the RTA to add to the information that the lessor must provide to the tenant at the point of entering into a lease.

If the rental premises are a unit under the *Unit Titles Act 2001*, the lessor will now be required to disclose information contained in a “unit title rental certificate”, as well as any changed information in relation to the unit title rental certificate that has been given to the lessor from the owners corporation of the units plan.

The concept of a unit title rental certificate will be introduced into the *Unit Titles (Management) Act 2011* by this Bill (see clause 110). A unit title rental certificate will contain information about the unit or the common property of a units plan that the lessor is required to disclose to a tenant when entering a tenancy. Unit owners who want to rent out their unit will be able to request a unit title rental certificate from the owners corporation. They will then be required to disclose the information contained in the unit title rental certificate to their tenant when entering a lease. The Minister will be able to determine the matters that must be disclosed in a unit title rental

certificate as well as set a maximum fee that a unit owner may be charged when requesting a certificate from the owners corporation.

This clause also gives the Government the ability to prescribe by regulation additional matters that a lessor must disclose to a tenant at the point of entering into a lease. This will allow the Government to respond quickly if additional matters that require disclosure are identified in future.

For example, as noted above, recent reforms to the requirements for swimming pool fences in the ACT (aimed at preventing unnecessary death or injury by drowning) identified the need to introduce disclosure requirements about the standard of pool fencing when leasing a property. This amendment will support the introduction of that disclosure requirement and others, as needed, in future.

Further, where a swimming pool is located on the common property of a units plan, a unit owner who intends to rent out their unit may not hold information about the standard of pool fencing as this information will be held by the owners corporation. To this end, it is intended that one of the matters that will be prescribed for inclusion in a unit title rental certificate will be information about the standard of any swimming pool fencing located on the common property. The unit title rental certificate will allow the lessor to obtain the required information from the owners corporation and they will then be able to disclose that information to their tenant when renting out the unit.

Clause 48 Section 12 (4), new definition of unit title rental certificate

This clause inserts the new definition of *unit title rental certificate* into the RTA. It refers the reader to the definition of unit title rental certificate which is contained in section 119 (1) (c) of the *Unit Titles (Management) Act 2011*. Unit title rental certificates are discussed further in clause 47 above.

Clause 49 Section 22

Background on the 'consecutive tenancy agreement changes'

This Bill introduces the concept of a 'consecutive tenancy agreement'. A **consecutive tenancy agreement** is defined (via additions to the Dictionary inserted by clause 93) as follows:

consecutive tenancy agreement, for premises—a residential tenancy agreement is a consecutive tenancy agreement if—

- (a) a residential tenancy agreement for the premises terminates or is terminated; and
- (b) 1 or more tenants under the terminated agreement continue to occupy the premises under a new residential tenancy agreement.

Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement.

The intention behind introducing the concept of a consecutive tenancy agreement is to clarify the legal requirements in relation to bond and condition reports where consecutive tenancy agreements (e.g., an initial 12-month fixed term tenancy followed by a second 12-month fixed term tenancy agreement) are entered into over the same rental premises. As indicated in the definition above, the concept of a consecutive tenancy agreement applies where at least 1 tenant in a tenancy agreement that is ending continues to occupy the premises under a consecutive agreement.

It is not uncommon for tenants and lessors to agree to enter multiple fixed term tenancy agreements. Where a new fixed term is agreed to, a new tenancy agreement is created from a legal perspective. However, in practice, lessors and tenants may not always comply with the technical legal requirements associated with ending one tenancy and starting another, including conducting a final inspection, discharging the bond and then lodging a new bond and doing a new start of tenancy condition report. These legal requirements may be burdensome when the tenancy is continuing in practice. The changes in this Bill create more flexibility in the legal requirements associated with ending one tenancy agreement and starting a new one.

Sometimes when lessors and tenants agree to enter a new tenancy agreement, the parties to the agreement will change. For example, it is not uncommon in a share house context for some tenants to change while others continue. The existing co-tenancy provisions in Part 3A of the RTA create a legal framework for changing tenants. However, Part 3A operates where the tenancy agreement is ongoing despite the change in tenants. For a range of reasons, some lessors and tenants may prefer to mark the change of tenants by ending one tenancy agreement and starting a new one. The changes introduced by this Bill will help support that transition where at least one tenant in the tenancy is continuing from one tenancy over the premises to the next.

When a consecutive tenancy agreement begins

Clause 41 amends section 7 of the RTA to indicate that a consequential tenancy agreement begins on the day after the terminated residential tenancy agreement ends.

Condition reports in consecutive tenancy agreements

Where there is a series of consecutive tenancy agreements, the condition report for the first tenancy agreement (immediately after the lessor last had vacant possession of the property) will be referred to as the *original condition report*. A definition for *original condition report* is inserted in the Dictionary via clause 97.

If the lessor and tenants complete additional condition reports at any stage during a series of consecutive tenancy agreements (either start of tenancy condition reports or final condition reports in relation to tenancy agreements that are starting and ending) these are referred to as *subsequent condition reports*. A definition for *subsequent condition report* is inserted in the Dictionary via clause 99.

Clause 53 amends existing section 30A of the RTA to clarify that where a tenancy agreement is ending and the lessor and at least 1 of the tenants under the current agreement have agreed to enter into a consecutive tenancy agreement, the lessor may, but need not, do a final condition report for the tenancy that is ending.

Similarly, **Clause 50** amends section 29 of the RTA to clarify that when a consecutive tenancy agreement begins, if there is already a condition report in relation to the premises from a previous tenancy agreement, the lessor may, but need not, do a start of tenancy condition report.

Clause 52 inserts new section 30AA. This new section provides that, for a consecutive tenancy, where a condition report exists from a previous tenancy (an original condition report or a subsequent condition report) that report can be relied on as evidence of the condition of the property when the inspection was carried out.

Bond arrangements in consecutive tenancy agreements – generally

Clause 54 amends section 34 to clarify that where the lessor and at least 1 tenant enter a consecutive tenancy agreement, the lessor need not comply with the requirement to give the tenant a bond release application form to the tenant for the previous tenancy agreement.

Clause 49 (this clause) substitutes section 22 to clarify that if there is a bond held in relation a previous tenancy agreement that hasn't been released:

- a) the lessor cannot ask for or accept a new bond for the consecutive tenancy, however,
- b) the bond from the previous tenancy will be taken to be the bond for the consecutive tenancy (see further below on this provision).

When a new tenant joins a tenancy at the start of a consecutive tenancy agreement

Clause 61 inserts new section 35EA which sets out what happens when a person joins a tenancy agreement when a consecutive tenancy agreement starts. When this occurs, the person becomes a co-tenant with the “existing tenants”. In this context “existing tenants” refers to the continuing tenants from the previous tenancy agreement that just ended.

Where a new person joins the tenancy, the existing tenants must give the new person a copy of the original condition report and any subsequent condition reports from the premises when the agreement starts.

Bond and condition report arrangements in consecutive tenancy agreements where there has been a change of tenants between agreements

Clauses 59 and 62 insert new sections 35BA and 35FA respectively into the RTA.

Section 35BA provides for repayment of bond to a former tenant (who has left the tenancy agreement at the end of one tenancy) by the continuing tenants (less any deductions for rent arrears or damage). It also requires the continuing tenants to notify the Territory of a change of interest in the bond after paying out the former co-tenant.

Section 35FA provides for payment of bond to the existing tenants (i.e. the continuing tenants from the previous tenancy) by the new person who joins at the start of a consecutive tenancy agreement. This provision requires the new person to notify the Territory of a change of interest in the bond after paying their share of the bond to the existing co-tenants.

If there is a dispute in relation to bond between the co-tenants, these provisions will allow the co-tenants to apply to ACAT for resolution of the dispute.

Clauses 55 and 56 amend section 34F so that if there is a discrepancy about the tenants named in the bond release application in relation to the repayment of bond to a former co-tenant or the payment of bond by a new co-tenant under a consecutive tenancy agreement, the Territory may refer the bond release application to ACAT to determine to whom the bond should be paid.

Finally, where a new co-tenant joins an existing tenancy agreement under the existing co-tenancy provisions in Part 3A of the RTA, **clause 60** amends existing section 35C to require that the existing tenants must give the new co-tenant a copy of the original condition report and any subsequent condition reports for the premises (see the example below for more detail).

Example

John is a lessor. He enters a 12-month, fixed term tenancy agreement with Anusha, Brielle and Caroline (the first tenancy agreement). In accordance with the usual requirements, John completes a start of tenancy condition report and gives it to Anusha, Brielle and Caroline at the start of the agreement. Anusha, Brielle and Caroline make their own comments on the report, sign it and return it to John within 2 weeks of the tenancy commencing (this condition report will later be known as the **original condition report**).

At the end of that agreement, Anusha decides she wants to leave but Brielle and Caroline decide they want to remain. John agrees to a new 12-month fixed term agreement and also agrees that a new tenant, Daniel, can become a co-tenant under the tenancy agreement. A second tenancy agreement (a **consecutive tenancy agreement**) is entered into between John, Brielle, Caroline and Daniel.

At the end of the first tenancy agreement John, Anusha, Brielle and Caroline jointly inspect the property and complete a final condition report for the property (this condition report will later be known as a **subsequent condition report**). The report identifies a carpet stain in Anusha's room but John decides not to apply for release of the bond at this stage. Anusha obtains a quote for fixing the carpet stain. Brielle and Caroline pay Anusha her share of the bond less the amount it will cost to repair the carpet in Anusha's room. After paying Anusha her share of bond, Brielle and Caroline notify the Territory that Anusha no longer has an interest in the bond.

At the start of the consecutive tenancy agreement, John is not allowed to ask for a new bond, however, the bond from the previous tenancy agreement is taken to be the bond under the consecutive tenancy agreement. Although John is entitled to do a new start of tenancy condition report for the premises under the consecutive tenancy agreement, he decides he does not need to, given that he just completed a final condition report under the previous tenancy agreement.

When Daniel joins at the start of the consecutive tenancy, Brielle and Caroline give him the original condition report and the subsequent condition report (the final condition report from the first tenancy agreement). Daniel pays Brielle and Caroline his share of the bond and then notifies the Territory that he now has an interest in the bond.

Part way through the consecutive fixed term agreement, Daniel decides he doesn't like living at the property. He uses the existing change of co-tenants process (in Part 3A of the RTA) to seek agreement from John, Brielle and Caroline to leave the tenancy. Everyone agrees to Daniel leaving and Brielle and Caroline pay him his share of the bond and notify the Territory that this has occurred. At the same time Brielle and Caroline seek John's agreement to a new tenant, Eduardo, joining the tenancy. John agrees and Eduardo joins the existing fixed term agreement. Brielle and Caroline give Eduardo the original condition report and the subsequent condition report. He pays them his share of the bond and notifies the Territory.

At the end of second fixed term Brielle, Caroline and Eduardo all decide to move out. As there will be no further consecutive tenancy, they are required to complete a final inspection and condition report. Even though there is no 'start of tenancy' condition report for this tenancy agreement, John, Brielle, Caroline and Eduardo are allowed to rely on the original condition report and subsequent condition report from the previous tenancy as evidence of the condition of the premises. After conducting the final inspection, the bond for the premises is released to Brielle, Caroline and Eduardo.

When John enters into a new tenancy agreement with new tenants Freddie and Georgina, this new tenancy agreement is not a consecutive tenancy agreement as none of the tenants from the previous tenancy continue to live at the tenancy.

Clause 49 Amended section 22 – bonds in consecutive tenancies

This clause substitutes existing section 22 to clarify the arrangements in relation to bond where a consecutive tenancy agreement has been entered into. Specifically, it provides that where a bond is held in relation to a tenancy agreement that is terminated, and 1 or more tenants under the terminated agreement continue to occupy the premises under a consecutive tenancy agreement, the lessor must not require or accept a bond in relation to the consecutive tenancy agreement unless a bond release application has been made in relation to the bond for the terminated agreement.

New section 22 also provides that where a bond release application has not been made in relation to the bond for the terminated agreement, the bond held in relation to the terminated agreement is taken to be a bond paid under the consecutive tenancy agreement.

This provision clarifies that a bond can effectively be “rolled over” from one tenancy agreement to the next, where the bond relates to the same rental premises and there is a continuing tenant (i.e. where a consecutive tenancy exists).

Clause 50 Section 29

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of **consecutive tenancy agreement** and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause substitutes existing section 29 which sets out the requirements for condition reports at the start of a tenancy.

Substituted section 29 (1) introduces **condition report** as a defined term:

A lessor must, not later than the day after a tenant takes possession of the premises, give the tenant 2 copies of a report about the state of repair or general condition of the premises and of any goods leased with the premises (**a condition report**) on the day the tenant is given the report.

Substituted section 29 also clarifies that where a consecutive tenancy agreement has been entered into, the lessor need not comply with the requirement to complete a start of tenancy condition report if an original condition report or subsequent condition report exists for the premises.

The definitions for *original condition report* and *subsequent condition report* are introduced to the Dictionary by clauses 97 and 99 below.

Clause 51 Evidence of condition of premises Section 30 (1) and (2)

This clause is a consequential amendment following the introduction of the defined term ***condition report*** in amended section 29 (see clause 50 above). The introduction of this term allows subsequent sections to refer to a condition report rather than “a report mentioned in section 29”.

As such, references in section 30 to a report mentioned in section 29 are removed and substituted with the new defined term *condition report*.

Clause 52 New section 30AA

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of ***consecutive tenancy agreement*** and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause inserts new section 30AA. This provision essentially allows condition reports from previous tenancy agreements to be relied on as evidence of the condition of the property in the consecutive tenancy agreements. In essence, this allows for the “roll over” of a condition report, in a similar way to amended section 22 allowing for the “roll over” of the bond from one tenancy agreement to the next.

Section 30AA applies if the agreement is a consecutive tenancy agreement. It provides that a statement in an original condition report is evidence of the state of repair or general condition of the premises, and any goods leased with the premises, on the day the report was given to the tenant. It also provides that a subsequent condition report is evidence of the condition of the premises on the day the condition report was signed by the tenant. However, if a subsequent condition report has not been signed by the tenant it cannot be relied on as evidence. If that is the case, then the original condition report or the most recent subsequent condition report can be relied on instead.

This provision also clarifies that a reference to a *tenant* includes a tenant under the current consecutive tenancy agreement as well as a tenant under a previous tenancy agreement for the premises that has ended.

Clause 53 Final inspection and condition report—end of tenancy New section 30 A (4)

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of *consecutive*

tenancy agreement and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause amends section 30A to insert new subsection (4). Section 30A currently provides for final inspections and conditions reports for tenancy agreements. New subsection (4) clarifies that where the lessor and at least one of the tenants under the tenancy agreement have agreed to enter into a consecutive tenancy agreement, then the lessor may, but need not, complete a final inspection and condition report for the tenancy that is ending.

Clause 54 Bond release application—lessor’s obligations
New section 34 (4)

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of *consecutive tenancy agreement* and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause amends section 34 to insert new subsection (4). Section 34 currently provides for the release of bond and it requires the lessor to provide the tenant(s) with a bond release application for the tenancy that is ending. New subsection (4) clarifies that where the lessor and tenant(s) enter a consecutive tenancy agreement, they need not comply with the requirement to release the bond from the previous tenancy agreement.

Where the parties decide not to release the bond from the previous tenancy agreement, amendments to section 22 (see clause 49) provide that the lessor will not be able to request a new bond under the consecutive tenancy agreement, and the bond from the previous tenancy agreement will be taken to be the bond for the consecutive tenancy agreement.

Clause 55 Bond release application—discrepancy in named tenant
New section 34F (1) (b) (iiia)

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of *consecutive tenancy agreement* and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause amends section 34F of the RTA. Section 34F deals with situations where the lessor or tenant make a bond release application but the names of the tenants on the bond application do not match the Territory’s records about the people who hold an interest in the bond (this may occur if tenants have not correctly notified the Territory about a change in interest in the bond when the co-tenants change).

If there is a discrepancy between the bond release application and the Territory's records, section 34F allows the Territory to refer the bond release application to ACAT so that ACAT may determine who holds an interest in the bond.

This clause inserts new subsection 34F (1) (b) (iiia) to clarify that the Territory may have been notified of a change in interest in the bond under section 35BA, which provides for the repayment of bond to a former co-tenant by existing co-tenants when the existing co-tenants remain in the rental premises under a consecutive tenancy agreement (see clause 59 which inserts new section 35BA).

Clause 56 New section 34F (1) (b) (v)

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of *consecutive tenancy agreement* and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause amends section 34F of the RTA. Section 34F deals with situations where the lessor or tenant make a bond release application but the names of the tenants on the bond application do not match the Territory's records about the people who hold an interest in the bond (this may occur if tenants have not correctly notified the Territory about a change in interest in the bond when the co-tenants change). If there is a discrepancy between the bond release application and the Territory's records, section 34F allows the Territory to refer the bond release application to ACAT so that ACAT may determine who holds an interest in the bond.

This clause inserts new subsection 34F (1) (b) (v) to clarify that the Territory may have been notified of a change in interest in the bond under section 35FA, which provides for the payment of bond to existing co-tenants by a new co-tenant who joins the tenancy at the start of a consecutive tenancy agreement (see clause 62 which inserts new section 35FA).

Clause 57 Co-tenant may leave residential tenancy agreement New section 35A (1) (c)

The RTA only permits a co-tenant to leave a residential tenancy agreement in certain situations. This clause inserts a new subsection to create a new situation when a co-tenant may stop being a party to a residential tenancy agreement. The subsection provides a co-tenant may stop being a party to a residential tenancy agreement in accordance with the procedure outlined in new section 46D (Termination for family violence).

Clause 58 Repayment of bond to leaving co-tenant
New section 35B (1) (a) (iii)

This clause is a consequential amendment. It inserts a new subsection to provide that the procedures for repaying a leaving co-tenant's portion of the bond also apply where the co-tenant stops being a party to a residential tenancy agreement in accordance with the procedure outlined in new section 46D (Termination for family violence).

Clause 59 New section 35BA

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of *consecutive tenancy agreement* and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause inserts new section 35BA. This section provides for the repayment of bond to a former co-tenant when other tenants under the agreement continue to live in the premises under a consecutive tenancy agreement and the bond for the previous agreement was not released (the 'remaining co-tenants'). In these circumstances, this section requires the remaining co-tenants to repay the former co-tenant their share of the bond, less any deductions for unpaid rent or reasonable costs in relation to the premises (such as costs for repairing damage caused by the former co-tenant). This section also requires the remaining co-tenants to notify the Territory of a change in interest in the bond after they have re-paid the former co-tenant their share of the bond.

This section also clarifies that where the tenant has been paid by the remaining co-tenants, they are no longer entitled to payment of any other amount of bond under the previous tenancy agreement. Where there is a dispute as to the amount of bond that the former co-tenant should be paid, the former co-tenant may apply to ACAT for resolution of the dispute.

Finally, this section clarifies that if the amount that may be deducted from the bond is more than the former co-tenant's share of the bond, then the remaining co-tenants are not required to pay the former co-tenant their share of the bond.

Clause 60 Becoming a co-tenant under existing residential tenancy agreement—generally
Section 35C (7) (b)

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of *consecutive*

tenancy agreement and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

Existing section 35C sets out when a person becomes a co-tenant under a continuing tenancy agreement (as opposed to a consecutive tenancy agreement). It also requires that where a new co-tenant joins an existing tenancy agreement, the existing tenants under that agreement are required to give the new co-tenant a copy of the condition report for the premises.

This clause amends existing section 35C to include reference to the new concepts of original condition report and subsequent condition reports, which can be relied on as forms of evidence under a consecutive tenancy agreement (see clauses 97 and 99 which inserts new definitions for *original condition report* and *subsequent condition report* into the Dictionary). This provision requires that if a new co-tenant joins a tenancy that is a consecutive tenancy agreement, the new co-tenant must be given a copy of the original condition report and any subsequent condition report for the premises.

Clause 61 New section 35EA

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of *consecutive tenancy agreement* and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause inserts new section 35EA into the RTA. Section 35EA sets out what must occur when a person becomes a co-tenant under a consecutive tenancy agreement when the consecutive tenancy agreement begins.

It provides that the new person will become a co-tenant together with the existing tenants when the consecutive tenancy agreement begins.

It also requires the existing co-tenants to give the new co-tenant a copy of the original condition report, and any subsequent condition report, for the premises not later than the day after the consecutive tenancy agreement starts. This is to ensure that the new co-tenant is aware of the condition of the premises as they may be held liable for the condition of the property at the time of the original condition report when the tenancy ends (it is intended that co-tenants will discuss the appropriate amount of bond for the new co-tenant to pay, having regard to any damage that may have occurred to the premises before the new co-tenant joins the tenancy).

This provision also clarifies that “existing tenants” in relation to a consecutive tenancy agreement means 1 or more tenants under the previous tenancy agreement that has just ended (the terminated residential tenancy agreement for the premises).

Clause 62 New section 35FA

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of *consecutive tenancy agreement* and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

This clause inserts new section 35FA into the RTA. Section 35FA provides for the payment of bond by a new co-tenant to the existing co-tenants when the new tenant joins the agreement at the start of a consecutive tenancy agreement. In these circumstances, the new co-tenant is required to pay their share of bond to the other co-tenants within 14 days after becoming a co-tenant. They are also required to notify the Territory that they have paid their share of the bond so the Territory can record the change in interest in the bond.

Clause 63 Termination Section 36 (1) (c) and (d)

This is a consequential amendment to the minor and technical amendments that clarify when a tenant may terminate a tenancy agreement under sections 46A and 46B (see clauses 65 and 66) and to the introduction of the new family violence termination provisions under new division 4.3A (see clause 67).

The RTA only permits residential tenancy agreements to be terminated in certain situations. This clause substitutes existing subsections 36 (1) (c) and (d) with new subsections 36 (1) (c), (d), (da) and (db).

These substituted sections provide for a tenancy agreement to end in the following ways:

- (c) if a tenant terminates the agreement and vacates the premises under section 46A because the tenant has accepted aged care or social housing accommodation;
- (d) if the agreement is a fixed term agreement—the tenant terminates the agreement and vacates the premises under section 46B because the lessor is offering the premises for sale;
- (da) if the ACAT terminates the agreement under division 4.3, division 4.4 or division 6.5A; or
- (db) if a tenant terminates the agreement in accordance with division 4.3A.

Clause 64 Section 36 (2)

This is a consequential change to the amendments in clauses 90 and 91. As noted above, this Bill makes the currently optional break lease fee clause a mandatory part

of all fixed term tenancy agreements. To do this, clause 91 omits the break lease fee clause from schedule 2 of the RTA and clause 90 inserts it into the SRTTs in schedule 1 as new SRTT 89A. Due to the removal of the break lease fee clause in schedule 2, all remaining schedule 2 termination clauses have been renumbered (see clause 92).

This clause updates the section reference for the posting termination clause following its renumbering after the removal of the break lease fee clause from schedule 2.

Clause 65 Termination of agreement for aged care or social housing needs Section 46A (3) and (4) and note

Current section 46A allows a tenant to end a fixed term tenancy agreement early where they have accepted a place in residential aged care or social housing. The purpose of this provision is to support vulnerable people to transition to appropriate forms of accommodation to better support their needs. The intention of the provision is to prevent a person from being penalised for ending their agreement early in such circumstances. At present, clause 46A indicates that the tenancy will end on the day the tenant has stated in their notice. It also contains a note which indicates that where the tenant ends a fixed term agreement early using this provision, they are not liable to pay compensation. The note refers the reader to section 84 (which relates to compensation for early termination of a fixed term agreement)).

This clause updates section 46A in two different ways. Firstly, it clarifies that for a tenant to end a tenancy by way of notice under this provision, they must vacate the tenancy on or before the day of their notice. It also indicates that if the tenant does not vacate in accordance with their notice, then the notice is taken to have been withdrawn and the tenancy will continue. If this occurs, and the tenant still wishes to leave, then they would need to either issue a new notice or agree a new tenancy end date with the lessor.

The second change is to implement a consequential amendment to the amendments in clauses 90 and 91. As noted above, this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements. To do this, clause 91 omits the break lease fee clause from schedule 2 of the RTA and clause 90 inserts it as new SRTT 89A in schedule 1.

As the break lease fee clause is now a mandatory part of all fixed term tenancy agreements, this clause clarifies that the break lease fee clause does not apply where a tenancy agreement has been ended early because the tenant has accepted a place in social housing or aged care.

Clause 66 Termination of fixed term agreements if premises for sale Section 46B (3) and (4) and note

Current section 46B allows a tenant to end a fixed term tenancy agreement early where the lessor offers the premises for sale and either:

- the sale offer is made within the first 6 months of the agreement and the lessor did not disclose the intended sale before entering the agreement, or
- the process of sale is taking an extended period of time and the lessor has requested access to the premises for the purposes of allowing prospective buyers to inspect the premises and the inspection requests have been more than 8 weeks apart.

The intention of section 46B is to prevent a tenant from being penalised for ending their agreement early when their quiet enjoyment of the property has been unduly disrupted by the sales process (either because they should have been advised that a sale may occur early in the fixed term period or because the sales process has become burdensome by taking longer than 8 weeks). Given this, the intention is that the tenant should not be penalised for ending the agreement early.

This clause updates section 46B in two different ways. Firstly, it clarifies that for a tenant to end a tenancy by way of notice under this provision, they must vacate the tenancy on or before the day of their notice. It also indicates that if the tenant does not vacate in accordance with their notice, then the notice is taken to have been withdrawn and the tenancy will continue. If this occurs, and the tenant still wishes to leave, then they would need to either issue a new notice or agree a new tenancy end date with the lessor.

The second change is to implement a consequential amendment to the amendments in clauses 90 and 91. As noted above, this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements. To do this, clause 91 omits the break lease fee clause from schedule 2 of the RTA and clause 90 inserts it as new SRTT 89A in schedule 1.

As the break lease fee clause is now a mandatory part of all fixed term tenancy agreements, this clause clarifies that the break lease fee clause does not apply where a tenancy agreement has been ended early because the tenant has ended the fixed term agreement early under section 46B because of the impacts of the sale of the premises on the tenant's quiet enjoyment of their tenancy.

Clause 67 New division 4.3A

Clause 67 inserts the new division 4.3A (Termination initiated by tenant—termination for family violence). This is a new framework which will allow a person who has experienced family violence to end their tenancy (or, if they are a co-tenant,

their interest in a tenancy) at short notice and without penalty. This will implement a commitment in the National Cabinet agreement *A Better Deal for Renters* to “allow tenants experiencing domestic or family violence to end agreements without penalty and with a streamlined process and evidence.”²²

In summary, the Bill (through new division 4.3A) will allow a tenant who has experienced family violence to terminate their agreement through a notice to the landlord (there is no need for them to make an application to ACAT), using appropriate supporting evidence.

The Bill also deals with the rights of any remaining co-tenants and provides safeguards to prevent the misuse of the new regime and to protect the confidentiality of information provided by the tenant.

Key features of the new approach include:

- A tenant who has experienced family violence will be able to leave their tenancy with immediate effect, provided they issue a *family violence termination notice* to their landlord with one of the prescribed supporting documents.
 - Supporting documents include, protection orders, family law orders and a declaration from a *competent person*.
 - The Government intends to make regulations prescribing who is a competent person, which may include, for example, health practitioners, care and protection workers, people who work in organisations that are funded to provide services in relation to domestic violence or sexual assault or refuge or emergency accommodation, and people who work in Aboriginal community-controlled organisations.
 - Regulations will also provide guidance on the form and content of competent person declarations.
- To minimise any risk of misuse of the provisions, it will be an offence for a person to provide false or misleading information to a competent person, or to forge a competent person declaration.
- The lessor may not ask the tenant for any other information or verify their claim that family violence has occurred.

²² See Prime Minister Anthony Albanese, *Media Release: Meeting of National Cabinet – Working together to deliver better housing outcomes*, Wednesday 16 August 2023. Available at <https://www.pm.gov.au/media/meeting-national-cabinet-working-together-deliver-better-housing-outcomes>

- The tenant will not be liable to pay any break lease fee.
- The lessor will be required to give notice to the Territory of the termination, before the lessor notifies any remaining co-tenants of the termination. This is so the Bond Office can flag the bond in their system as one that requires sensitive handling, before being contacted by any remaining co-tenants who seek to notify the Bonds Office of changes in interest in the bond. This will protect the privacy and safety of the leaving co-tenant.
- The lessor will be required to give notice to any remaining co-tenants of the termination. This protects the victim/survivor from having to serve the notice, since remaining co-tenants may include the alleged perpetrator. The tenancy will continue in force for any remaining co-tenants (at the same rent), but they may choose to terminate the tenancy (without penalty) if they notify the landlord within 4 weeks of receiving notice of the first tenant's departure.
- The existing co-tenancy change rules under Part 3A in relation to bond will apply, meaning that the remaining co-tenants must refund the departing tenant's portion of the bond, but may apply appropriate deductions (e.g. for unpaid rent or damage).
- To protect the tenant's privacy, the use or disclosure of information contained in the tenant's supporting documentation will be an offence (with appropriate exceptions e.g. for the lessor to communicate with their agent).
- If the circumstances of the tenant's departure become relevant in a dispute before ACAT (e.g. in relation to bond), ACAT may confirm that the family violence termination notice was validly issued, but must not 'look behind' the notice to enquire into whether family violence has occurred.

To support tenants, landlords and agents to use the new regime, subordinate legislation will be prepared to provide guidance on the form of notices to be provided by the tenant to the landlord, and the landlord to any other co-tenants. So that these instruments can be prepared, along with regulations on 'competent persons', the Bill proposes that the tenancy reforms will by commence by way of Ministerial notice (with automatic commencement at 6 months) (see clause 2).

New division 4.3A will supplement the existing rules in Division 6.5A of the RTA, which permits protected persons under protection orders to apply to ACAT for a range of orders in relation to the tenancy, including an order that in limited circumstances may allow the survivor-victim to remain in the property and exclude an alleged perpetrator.

The detail of the new provisions is as follows.

New section 46C Definitions—div 4.3A

New section 46C provides definitions for the following concepts through cross-references to relevant sections of the RTA and other legislation:

- *Competent person*
- *Competent person declaration*
- *Family violence*
- *Family violence order*
- *Family violence termination notice*
- *Notice of continuing tenancy*
- *Supporting document*
- *Vacating day*

New section 46D Termination for family violence

New section 46D sets out the process for a tenant in a residential tenancy agreement to seek to terminate their residential tenancy agreement early, where either they, or their dependent child, have experienced family violence.

The provision clarifies that the new termination process does not apply where the tenant has sublet the premises. The Bill expressly excludes sub-tenancies from the new rules, because if a head tenant experiencing family violence were permitted to immediately terminate their tenancy, this would automatically terminate at law the sub-tenancy and amount to an eviction of the sub-tenant without notice. This would raise issues of compatibility with human rights.

A tenant may terminate the agreement by giving the lessor written notice that they are vacating the premises because of family violence (a *family violence termination notice*) and vacating the premises in accordance with the notice. A co-tenant may stop being a party to their agreement by doing the same.

The family violence termination notice must state the day the tenant or co-tenant intends to vacate the premises (the *vacating day*). The vacating day must be on or after the day the tenant gives the notice to the lessor.

The family violence termination notice must be accompanied by at least one of the following documents (a *supporting document*):

- A family violence order protecting the tenant or their dependent child (this is an order made under the *Family Violence Act 2016*, section 115);
- An injunction made under section 68B or 114 of the *Family Law Act 1975* (Cth) in relation to the tenant or their dependent child;
- A competent person declaration relating to the tenant or their dependent child (new section 46H outlines the requirements for a competent person declaration); or
- any other document prescribed by regulation.

New section 46D also confirms that the break lease fee clause does not apply to a residential tenancy agreement terminated because the tenant has experienced family violence.

New section 46E Sole tenancies—effect of serving family violence termination notice

New section 46E confirms that the legal effect of serving a family violence termination notice if the leaving tenant is a sole tenant is that the agreement is terminated on the vacating day stated in the notice. As noted above (new section 46D), the leaving tenant must vacate the premises in accordance with the notice.

New section 46F Co-tenancies—lessor to give notice to Territory and other co-tenants

New section 46F requires a lessor to notify the Territory and any remaining co-tenants that a co-tenant has given a family violence termination notice for their residential tenancy agreement.

A lessor must, within seven days after the vacating day stated in the family violence termination notice tell the Territory the name of the leaving co-tenant and that the lessor has received a family violence termination notice from them.

A lessor must also, within seven days after the vacating day stated in the family violence termination notice, give each of the remaining co-tenants a *notice of continuing tenancy*. The notice of continuing tenancy must outline the matters in new section 46G (2) to (5), namely that:

- on the vacating day, the leaving co-tenant stopped being a party to the agreement and their rights and obligations under the agreement came to an end
- the tenancy agreement continues in force between the lessor and the remaining co-tenants on the same terms that existed on the vacating day (the *continuing agreement*)
- any of the remaining co-tenants may terminate the continuing agreement for all remaining co-tenants by giving the lessor a notice to vacate:
 - at least 3 weeks before the day they intend to vacate the premises;
 - for a fixed term agreement – no later than 4 weeks after the day the notice of continuing tenancy is given to the remaining co-tenants
- a break lease fee does not apply should the tenants choose to terminate the continuing agreement.

However, the lessor must not give the remaining co-tenants a notice of continuing vacancy until after the vacating day stated in the family violence termination notice, and after the lessor has notified the Territory of the family violence termination notice. This ensures the Territory receives information at least as early as the remaining co-tenants, to enable the Bonds Office to respond to any communication with sensitivity.

The lessor must also not give the remaining co-tenants a supporting document for the family violence termination notice. This is intended to protect the safety and privacy of the leaving co-tenant.

New section 46G Co-tenancies —effect of serving family violence termination notice

Section 46G outlines the legal effects of a co-tenant serving a family violence termination notice.

The leaving co-tenant stops being a party to the residential tenancy agreement on the vacating day stated in the family violence termination notice. On this day, their rights and obligations under the agreement come to an end.

However, the residential tenancy agreement continues in force between the lessor and the remaining co-tenant(s) on the same terms in force on the vacating day (the continuing agreement).

One or more of the remaining co-tenants may terminate the continuing agreement for all remaining co-tenants by giving the lessor a notice to vacate. Section 46F (4) outlines specific times for providing a notice to vacate. The notice to vacate must be given at least 3 weeks before the day they intend to vacate the premises. For a fixed term agreement, it must be given no later than 4 weeks after the day the notice of continuing tenancy is given to the tenants.

The rules in new section 46F are intended to provide flexibility for the remaining co-tenants to determine if they wish to stay in the property, noting that they will have assumed liability to cover the leaving co-tenant's share of the rent.

If the remaining co-tenants wish to remain in the property, it would be open to them to use the co-tenancy rules in Part 3A to join a new person to the tenancy to replace the leaving tenant. *New section 46H Lessor not to require other information*

Section 46G provides that if a lessor receives a family violence termination notice from a tenant, they must not ask (and their agent or other person acting on their behalf must not ask) for any other information which is not already given as a part of the notice. This is intended to prevent the tenant from having to justify or prove their experience of family violence, if they have obtained one of the permissible forms of supporting document under new section 46D.

New section 46I Competent person declaration

Section 46H outlines the requirements for a *competent person declaration*, which is a form of evidence a tenant can use as a supporting document when serving their family violence termination notice.

A *competent person* may make a declaration stating that a tenant or their dependent child has experienced family violence. This is known as a *competent person declaration*. The tenant or child must have previously consulted the competent person in their professional practice, before the competent person may provide a competent person declaration.

Section 46I provides that a regulation may prescribe a person, or a class of people, to be a competent person. The Government will consult further before prescribing competent people, for the purposes of this Division. Examples may include health practitioners, care and protection workers, people who work in organisations that are funded to provide services in relation to domestic violence or sexual assault or refuge or emergency accommodation, and people who work in Aboriginal community-controlled organisations.

A competent person may need to use personal information about a tenant's co-tenant or family member when preparing a competent person declaration. New section 46I authorises a competent person to collect, hold, use or disclose personal information about a tenant's co-tenant or family member, for the purposes of preparing a competent person declaration.

New section 46J Offence—using or disclosing information in supporting documents without authorisation

New section 46J makes it an offence for a person to use or disclose any information contained in a supporting document for a family violence termination notice, other than in accordance with an Australian law. The maximum penalty for this offence will be 20 penalty units.

However, there are exceptions to the offence for the use or disclosure of information as between the lessor, their agent or an employee of their agent, the Territory, or a legal adviser.

New section 46K Supporting documents to be securely stored or destroyed

New section 46K requires any person who has possession or control of a supporting document for a family violence termination notice (including copies of a document or parts of the document) to take all reasonable steps to ensure the document is securely stored (if it is to be used under a law applying in Australia) and in, any other case, is destroyed.

New section 46L ACAT not to decide if family violence happens

Section 76 of the RTA provides that ACAT has jurisdiction to hear and decide any matter that may be the subject of an application to ACAT under the RTA and standard residential tenancy terms (within ACAT's monetary jurisdiction).

New section 46L creates specific requirements for ACAT processes, where ACAT is asked to consider whether a notice given by a tenant is a family violence termination notice. ACAT may consider whether the notice contains the information required by section 46D, or whether a document accompanying the notice is a supporting document. However, ACAT must not consider whether the tenant or their dependent child experienced family violence, or the tenant's belief as to whether they could safely continue to occupy the premises.

This provision is intended to prevent ACAT from needing to 'look behind' the family violence termination notice and make findings about whether (and if so, what) violence has occurred.

New section 46M Offences—giving false or misleading information

New section 46M creates two new offences.

Firstly, it creates an offence if a person gives information to a competent person for the purpose of creating a competent person declaration and the information is false or misleading in a material particular.

Secondly, it creates an offence if a person makes a representation that a document is a competent person declaration, and the document is not a competent person declaration.

The maximum penalty for both offences is 50 penalty units. This is within the range of penalties for other offences in Territory laws concerning false or misleading information and is commensurate with the seriousness of a person seeking to misuse the new family violence termination regime.

Clause 68 No breach of standard residential tenancy terms Section 47 (6)

This is a consequential change to the amendments in clauses 90 and 91. As noted above, this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements. To do this, clause 91 omits the break lease fee clause from schedule 2 of the RTA and clause 90 inserts it into the SRTTs in schedule 1 as new SRTT 89A. Due to the removal of the break lease fee clause in schedule 2, all remaining schedule 2 termination clauses have been renumbered (see clause 92).

This clause updates the correct section references for the termination clauses that are contained in schedule 2 following their renumbering after the removal of the break lease fee clause from schedule 2.

Clause 69 Tenant's defective termination notice
Section 60 (4)

This is a minor and technical amendment to correct a previous typographical error.

Section 60 of the RTA allows a lessor to apply to ACAT for compensation if a tenant purports to give the lessor a termination notice and the notice was defective and the tenant has vacated the premises. Section 60 indicates that where this occurs the tenancy will end, however the lessor is permitted to apply to ACAT for compensation for the defective notice.

Section 60 (4) indicates when ACAT may order compensation. At present section 60 indicates that ACAT may only make the compensation order if satisfied the former lessor is **not** in a significantly worse position because of the defective notice than they would have been had the notice not been defective. The first 'not' in this section is an error.

The intention is that the lessor should only be entitled to compensation if they **are** in a significantly worse position than they would have been had the notice not been defective.

This amendment removes the word 'not' to clarify the intent of this provision.

Clause 70 Termination—affected residential premises
Section 64AA (3) to (5)

Current section 64AA allows a tenant or lessor to end a tenancy agreement by way of notice where the premises are affected by loose-fill asbestos (*affected residential premises*). The purpose of this provision is to enable parties to end a tenancy early where loose-fill asbestos has been found in the property due to potential impacts on the tenant's health if they remain in the premises. The provision also prevents a tenant from being penalised for ending their agreement early under this clause.

At present, clause 64AA indicates that the tenancy will end on the day the tenant has stated in their notice, however it does not contemplate what happens if the tenant does not vacate in accordance with the notice.

This clause updates section 64AA in two different ways. Firstly, it clarifies that for the tenancy to end by way of notice under this provision, the tenant must vacate the tenancy on or before the day of their notice. It also indicates that if the tenant does not vacate in accordance with their notice, then the notice is taken to have been withdrawn and the tenancy will continue. If this occurs, and the tenant still wishes to leave, then they would need to either issue a new notice or agree a new tenancy end date with the lessor.

If it is the lessor who issues the notice, but the tenant does not move out in accordance with the notice, then section 64AA indicates that the notice remains in

force and the lessor can apply to ACAT for a termination and possession order under section 55A.

The second change is to implement a consequential amendment to the amendments in clauses 90 and 91. As noted above, this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements. To do this clause 91 omits the break lease fee clause from schedule 2 of the RTA and clause 90 inserts it into the SRTTs in schedule 1 as new SRTT 89A.

As the break lease fee clause is now a mandatory part of all fixed term tenancy agreements, this clause clarifies that the break lease fee clause does not apply where a tenancy agreement has been ended early because the premises has been affected by loose-fill asbestos.

Clause 71 Termination—eligible impacted property Section 64AB (3) and (4)

Current section 64AB allows a tenant or lessor to end a tenancy agreement by way of notice where the premises are an *eligible impacted property* (as defined in the *Civil Law (Sale of Residential Property) Act 2003*). The purpose of this provision is to allow parties to end a tenancy early where loose-fill asbestos may impact the property. The provision also prevents a tenant from being penalised for ending their agreement early under this clause.

At present clause 64AB indicates that the tenancy will end on the day the tenant has stated in their notice, however it does not contemplate what happens if the tenant does not vacate in accordance with the notice.

This clause updates section 64AB in two different ways. Firstly, it clarifies that for the tenancy to end by way of notice under this provision the tenant must vacate the tenancy on or before the day of their notice. It also indicates that if the tenant does not vacate in accordance with their notice, then the notice is taken to have been withdrawn and the tenancy will continue. If this occurs, and the tenant still wishes to leave, then they would need to either issue a new notice or agree a new tenancy end date with the lessor.

If it is the lessor who issues the notice but the tenant does not move out in accordance with the notice, then section 64AB indicates that the notice remains in force and the lessor can apply to ACAT for a termination and possession order under section 55B.

The second change is to implement a consequential amendment to the amendments in clauses 90 and 91. As noted above, this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements. To do this clause 91 omits the break lease fee clause from schedule 2 of the RTA and clause 90 inserts it into the SRTTs in schedule 1 as new SRTT 89A.

As the break lease fee clause is now a mandatory part of all fixed term tenancy agreements, this clause clarifies that the break lease fee clause does not apply where a tenancy agreement has been ended early because the premises is an eligible impacted property (affected by loose-fill asbestos).

Clause 72 Section 64A heading

This clause makes a minor and technical change to the heading for section 64A. It changes the section heading from ‘Standard residential tenancy term – increase in rent’ to ‘Fixed term agreements – increase in rent’.

This change is intended to improve understanding and readability of the section and to clarify that section 64A of the RTA relates to when rent may be increased in a fixed term agreement.

Clause 73 New sections 64AAA and 64AAB

This clause inserts new sections 64AAA and 64AAB.

New section 64AAA

This provision amends the rules in relation to rent increases so that rent cannot be increased at intervals of less than 12 months, even where the parties enter a new fixed term tenancy agreement. This is intended to implement the commitment in the National Cabinet agreement *A Better Deal for Renters* to “move towards a national standard of no more than one rent increase per year for a tenant in the same property across fixed and ongoing agreements”.²³

Generally, the SRTTs prevent rent from increasing at intervals of less than 12 months (see SRTTs clause 35). However, there are currently two minor loopholes that could allow a lessor to increase the rent more frequently than 12 months. These are where:

- the parties to the tenancy agreement seek ACAT endorsement of a term that is inconsistent with clause 35 and which allows rent increases to occur more regularly than at 12 months intervals; or
- the lessor and tenant enter into a series of short-term tenancy agreements over the same premises (e.g. two agreements of 6 months’ duration).

²³ See Prime Minister Anthony Albanese, *Media Release: Meeting of National Cabinet – Working together to deliver better housing outcomes*, Wednesday 16 August 2023. Available at <https://www.pm.gov.au/media/meeting-national-cabinet-working-together-deliver-better-housing-outcomes>

In the first situation, lessors and tenants could potentially “contract out” of the prohibition on increases occurring at intervals of 12 months or more, by seeking an endorsed term which permitted increases more frequently. This is because the section 10 of the RTA currently allows parties to a tenancy agreement to apply for endorsement of a residential tenancy term that it is inconsistent with the SRTTs. Section 10 permits ACAT to endorse an inconsistent term so long as it is not inconsistent with the Act (other than the standard terms).

In the second situation, the current rent increase rules do not apply where the lessor and tenant(s) agree to enter into a new tenancy agreement over the same premises. Where a new agreement is entered into, the rent can be increased from one agreement to the next. In circumstances where the lessor and tenant have a series of short-term tenancies over the same rental premises (e.g., a series of four 3-month, fixed term agreements) this could mean that the rent increases 4 times in a 12 month period.

New section 64AAA works to close those loopholes. Firstly, by including the prohibition on increasing rent at intervals of less than 12 months in the main body of the RTA, this prevents parties from being able to contract out of this protection (because ACAT is not permitted to endorse terms that are inconsistent with the RTA (other than the SRTTs)).

Secondly, section 64AAA will prevent rent increases at intervals of less than 12 months, even where the parties enter new short-term tenancy agreements over the same premises during that 12-month period. To implement this change, this provision draws on the concept of a *consecutive tenancy agreement* which is a new defined term in the RTA (see amendments to the Dictionary in clause 93). Essentially, a consecutive tenancy agreement arises when one tenancy agreement ends and at least 1 tenant from that agreement enters a new tenancy agreement over the same premises. The second agreement is referred to as a consecutive tenancy agreement.

New section 64AAA now provides that a lessor may only increase the rent under a tenancy agreement if the rent increase takes effect 12 months after the tenancy began, or for a later increase, 12 months after the last rent increase took effect.

However, section 64AAA also clarifies that where the tenancy is a consecutive tenancy agreement, the lessor may only increase the rent it has been at least 12 months since the rent was increased under the previous tenancy agreement. This ensures that short-term tenancies of less than 12 months cannot be used as a means to circumvent the protection for tenants against having the rent increased at intervals of 12 months only.

New section 64AAB

New section 64AAB carries over the exemption for the housing commissioner that currently exists in clause 36 of the SRTTs into the main body of the RTA (given that the prohibition on increasing rent at intervals of less than 12 months has also been brought across). This ensures the housing commissioner may conduct rent reviews under the *Housing Assistance Act 2007* as required, whilst also protecting the tenant from having rent increases take effect at intervals of less than 12 months.

Clause 74 Section 64B heading

This clause substitutes the heading for section 64B for improved clarity and readability. It removes the existing heading “limitation on rent increases” and replaces it with “Limitation on rent increases—amount”. Given that new sections 64AAA and 64AAB (inserted by clause 73 above) each deal with different matters relating to rent increases this amended heading will assist the reader by explaining that section 64B relates to the amount by which rent may increase.

Clause 75 Section 64B (1) (a)

This clause substitutes existing section 64B (1) (a) to clarify that parties can only include a provision to increase the rent by a specified amount in a fixed term agreement. This is to prevent parties agreeing to include a rent increase amount in a periodic tenancy (which could continue indefinitely and may, overtime, significantly disadvantage a party to the tenancy agreement).

Clause 76 Orders by ACAT Section 83 (1) (I)

Clause 76 amends section 83 (1) (I) to correct an error arising out of previous reforms. The *Residential Tenancies and Other Legislation Amendment Act 2023* amended section 83 (1) (I) to provide that ACAT can make an order correcting a defective termination notice. This change was made in connection with other changes that clarified when a termination notice will be defective. However, prior to that change, section 83 (1) (I) permitted ACAT to correct a defect in a notice (i.e. any notice). By amending this section to refer to defective termination notices only, the 2023 amendment inadvertently removed ACAT’s ability to correct errors in other types of notices (which could include notices to remedy, rent increase notices, inspection notices, repairs notices etc.). This amendment restores ACAT’s ability to correct errors in notices other than termination notices.

Clause 77 Section 83 (2), except notes

This clause is a consequential change to the amendment in clause 76 above. It clarifies that ACAT may only make an order correcting a defective termination notice or other defect in a notice where the defect did not, and is not likely to, place the person receiving the notice in a significantly worse position than the person would have been in had the notice, or the service of the notice, not been defective.

Clause 78 Notice of intention to vacate—award of compensation
New section 84 (1A)

Currently section 84 of the RTA allows a lessor to apply to ACAT for compensation if the tenant has ended a fixed term tenancy agreement early and the tenancy agreement does not contain the break lease fee clause.

As noted above, this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements (see clause 90). Given this, section 84 will not be needed in future. However, given that some existing fixed term agreements may not contain the break lease fee clause, section 84 has been retained and amended (through this clause and clauses 79 to 81) to clarify that it applies only in relation to fixed term tenancy agreements that commenced before the commencement of the *Housing and Consumer Affairs Legislation Amendment Act 2024*, section 90 (as this Bill will be known if passed by the Legislative Assembly).

Clause 79 Section 84 (1)

This clause implements a minor and technical change by changing ‘a’ to ‘the’. It omits the words ‘If **a** lessor received a notice of intention to vacate before the end of **a** fixed term agreement’ (emphasis added) and substitutes the words ‘If **the** lessor received a notice of intention to vacate before the end of **the** fixed term agreement’ (emphasis added). This change adds clarity by referencing the specific fixed term agreement rather than a fixed term agreement in general.

Clause 80 New section 84 (5) (e) and (f)

Currently section 84 of the RTA provides that, where a lessor receives a notice of intention to vacate before the end of a fixed term agreement, and the date nominated in the notice is before the end of the fixed term agreement, the landlord may apply to ACAT for compensation for lost rent and the costs of readvertising the property.

Subsection 84 (5) provides that no compensation may be awarded to the lessor if the agreement is lawfully terminated under specified sections of the RTA.

This clause inserts two new sections, section 46D (Termination for family violence) and 46F (Co-tenancies—effect of serving family violence termination notice) into subsection 84 (5). This means that where a tenancy is terminated because of family violence, the landlord will not be able to apply to ACAT for compensation for the early termination.

Clause 81 Section 84 (6)

The amendment in this clause relates to the amendments in clauses 78 to 80 and 93.

Currently section 84 of the RTA allows a lessor to apply to ACAT for compensation if the tenant has ended a fixed term tenancy agreement early and the tenancy agreement does not contain the break lease fee clause.

As this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements (see clause 90), section 84 will not be needed in future. However, given that some existing fixed term agreements may not contain the break lease fee clause, section 84 has been retained and amended (by clauses 78-80 and this clause) to clarify that it applies only in relation to fixed term tenancy agreements that commenced before the commencement of the *Housing and Consumer Affairs Legislation Amendment Act 2024*, section 90 (as this Bill will be known if passed by the Legislative Assembly).

Clause 93 of this Bill inserts a new definition of *break lease fee clause* into the Dictionary (the new definition refers the reader to SRTT 89A which is inserted into the schedule 1 SRTTs by clause 90 of this Bill). However, given that amended section 84 will now only apply to tenancy agreements entered into before the commencement of this Bill, this clause substitutes a different definition of *break lease fee clause* which is specific to section 84.

The definition of *break lease fee clause* for this section refers to the current definition of *break lease fee clause*. As such it indicates that:

break lease fee clause means the clause in schedule 2, section 2.1 as in force immediately before the commencement of the Housing and Consumer Affairs Legislation Amendment Act 2024, section 91.

Clause 82 Standard residential tenancy terms **Schedule 1, clause 23**

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of *consecutive tenancy agreement* and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

Clause 21 of the SRTTs requires the lessor to give the tenant 2 copies of a condition report completed by the lessor within 1 day of the tenant taking possession of the premises.

Clause 22 of the SRTTs requires the tenant to examine the report and to indicate whether they agree or disagree with the report. It also requires that the tenant return a copy of the report to the lessor signed by the tenant indicating whether or not they agree with the report.

Clause 23 of the SRTTs currently requires the lessor to keep the condition report for at least a year after the tenancy has ended.

This clause of the Bill amends the SRTTs to accommodate the concept of a consecutive tenancy agreement.

It inserts new SRTT 22A which indicates that the lessor need not comply with clauses 21 and 22 if an original condition report or subsequent condition report exists for the premises.

It also amends existing clause 23 to clarify that if a condition report is not completed because of 22A, the lessor must keep the original condition report and any subsequent condition report for a period of not less than 12 months after the end of the consecutive tenancy agreement.

Clause 83 Schedule 1, new clause 23A (4)

This Bill introduces the concept of a consecutive tenancy agreement. Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. See clause 93 for the definition of **consecutive tenancy agreement** and see clause 49 for more detail on the changes associated with the consecutive tenancy agreement concept.

Clause 23A of the SRTTs requires the lessor and tenant to jointly inspect the premises at the end of the tenancy and to complete and sign a condition report. It also allows the parties to complete and sign the condition report without the other party being present if the other party was given a reasonable opportunity to be present when the report is completed and signed.

This clause amends clause 23A of the SRTTs to clarify that where there is a consecutive tenancy agreement, the lessor and tenants may, but need not, comply with the rest of clause 23A if there is an original condition report or a subsequent condition report for the premises.

Clause 84 Schedule 1, clause 35

This clause relates to the changes outlined in clause 73 above. Those changes are intended to close minor loopholes in the general rule that prevents rent increases from occurring at intervals of less than 12 months. One loophole is that the current rent increase rules do not apply where the lessor and tenant(s) agree to enter into a new tenancy agreement over the same premises. Where a new agreement is entered into, the rent can be increased from one agreement to the next.

In circumstances where the lessor and tenant have a series of short-term tenancies over the same rental premises (e.g., a series of four 3-month, fixed term agreements) this could mean that the rent increases 4 times in a 12-month period.

This clause prevents rent increases at intervals of less than 12 months, even where the parties enter new short-term tenancy agreements over the same premises during that 12 month period. To implement this change, this provision draws on the concept

of a *consecutive tenancy agreement* which is a new defined term (see amendments to the Dictionary in clause 93).

This clause amends SRTT 35 to provide that where the tenancy is a consecutive tenancy agreement, the lessor may only increase the rent if it has been at least 12 months since the rent was increased under the previous tenancy agreement. This ensures that short-term tenancies of less than 12 months cannot be used as a means to circumvent the protection for tenants against having the rent increased at intervals more frequently than 12 months.

Clause 85 Schedule 1, clause 36 (1)

This clause makes minor and technical changes to SRTT 36 (1). It amends the wording to improve clarity and readability of the provision (by removing a repetitive reference to the housing commissioner).

This clause removes the existing wording:

36 (1) This clause applies if—

- (a) the housing commissioner is the lessor under this tenancy agreement; and
- (b) the commissioner has decided to increase the rent after a review of rent under the *Housing Assistance Act 2007*, section 23.

And replaces it with:

36 (1) This clause applies if the housing commissioner—

- (a) is the lessor under this tenancy agreement; and
- (b) has decided to increase the rent after a review of rent under the *Housing Assistance Act 2007*, section 23.

Clause 86 Schedule 1, clause 36 (3)

This clause makes a minor and technical change to SRTT 36 (3). It amends the wording slightly to improve clarity and readability of the provision.

This clause removes the reference to 1 year and replaces it with reference to 12 months to improve consistency with other references to this time period throughout the SRTTs.

Clause 87 Schedule 1, clause 84 (1)

This clause amends SRTT 84 (1) for clarity and consistency with the amendments made to sections 46A, 46B, 64AA and 64AB in clauses 65, 66, 70 and 71 respectively. Those changes clarify that for a notice of intention to vacate given by a tenant to a lessor to have effect, the tenant must vacate the premises on or before the date stated in the notice.

This clause now amends clause 84 (1) of the SRTTs so that it will read:

If the tenant serves a notice of intention to vacate and vacates the premises on or before the date stated in the notice, the tenancy terminates on the date stated in the notice.

Clause 88 Schedule 1, clause 84 (2) (a)

This clause makes a minor and technical change to the wording in SRTT 84 (2) (a). It removes the word 'nominated' and replaces it with the word 'stated.' This wording change improves consistency with word usage throughout the RTA.

Clause 89 Schedule 1, clause 85

This clause substitutes existing clause 85 to improve readability of the section and to clarify that for a notice to vacate to take effect, the tenant must vacate the premises on or before the date stated in the notice.

Existing SRTT 85 simply indicates that a tenant's notice of intention to vacate must be in the same form and contain the same information as a notice to vacate from the lessor, except the notice must contain the statement that the tenant intends to vacate the premises on a certain date and the tenancy terminates on that date.

To assist with readability, amended SRTT 85 now sets out the requirements for a tenant's notice of intention to vacate. These are as follows.

The notice of intention to vacate must be in writing, in the form required by the RTA, and must include the following information:

- (a) the address of the premises;
- (b) the ground(s) on which the notice is issued, together with sufficient particulars to identify the circumstances giving rise to the ground(s); and
- (c) the date the tenant intends to terminate the tenancy

Amended SRTT 85 also confirms that if the tenant vacates the tenancy in accordance with the notice, the tenancy will end on the date stated in the notice.

Finally, it indicates that if the tenant does not vacate the tenancy in accordance with the notice, the notice is taken to be withdrawn and the tenancy continues. If this occurs, and the tenant still wishes to leave, then they would need to either issue a new notice or agree a new tenancy end date with the lessor.

These changes ensure greater consistency with other provisions relating to notices of intention to vacate issued by tenants and are consistent with the amendments made to sections 46A, 46B, 64AA and 64AB in clauses 65, 66, 70 and 71 respectively.

Clause 90 Schedule 1, new clause 89A

This clause implements the commitment in the National Cabinet agreement *A Better Deal for Renters* to “limit break lease fees for fixed term agreements to a maximum prescribed amount which declines according to how much of the lease has expired”.²⁴ This clause does this by inserting the previously optional break lease fee clause (which is currently in schedule 2, 2.1 of the RTA) into the SRTTs contained in schedule 1 of the RTA as new SRTT 89A. This makes this provision a mandatory term of all ACT tenancy agreements (subject to amendments preserving the existing legal position for fixed term agreements that commenced before the commencement of this Bill (see clause 78)). See clause 42 above for a more detailed explanation of how moving this provision from schedule 1 to schedule 2 achieves this outcome.

The new break lease fee clause inserted in SRTT 89A has been amended slightly from its current form, to improve its operation. The following changes have been made:

- the amended break lease fee clause more clearly gives the lessor the discretion not to charge the break fee;
- the amended break lease fee clause places a clear obligation on the lessor (if they decide to charge the break fee) to take reasonable steps to find a new tenant for the premises;
- the amended break lease fee clause provides that the break lease fee will not be payable until the defined period has ended; and
- the amended break lease fee clause clarifies that it does not apply where the tenant has ended the tenancy agreement under any of the following provisions:
 - section 46A (Termination of agreement for aged care or social housing needs);
 - section 46B (Termination of fixed term agreement if premises for sale);
 - section 46D (Termination for family violence);
 - section 46G (Co-tenancies—effect of serving family violence termination notice);

²⁴ See Prime Minister Anthony Albanese, *Media Release: Meeting of National Cabinet – Working together to deliver better housing outcomes*, Wednesday 16 August 2023. Available at <https://www.pm.gov.au/media/meeting-national-cabinet-working-together-deliver-better-housing-outcomes>

- section 64AA (Termination—affected residential premises); or
- section 64AB (Termination—eligible impacted property).

The reasons for these changes are as follows.

The break lease fee clause has been amended to more clearly give the lessor the option not to charge the break fee as there may be a range of compassionate or pragmatic circumstances in which the lessor may choose not to charge the break fee.

The break lease fee clause has been amended to place an obligation on the lessor to take reasonable steps to find a new tenant since it is reasonable to require the lessor to minimise any loss they may incur from the tenant breaking the lease.

The break lease fee clause has been amended to clarify that the break fee is not payable until the end of the defined period, since the quantum of the fee payable depends on what happens in this period. This is because the break lease fee amount is reduced if the lessor enters into a tenancy agreement with a new tenant during the defined period. This means that until the defined period has passed, neither party can be certain of the amount of the break fee. This clarification about when the break fee is payable will assist in ensuring the correct amount of break fee is paid by the tenant. Lessors or agents may not lawfully insist on payment of the full fee upfront by the tenant.

The break lease fee clause has been amended to be disapplied in a range of circumstances in which a tenant may end a tenancy agreement early in which the Government has determined that the tenant should not be penalised for leaving the agreement early. Presently, the RTA provides that for these specified circumstances, no compensation is payable to the lessor for early termination. Now that the Bill replaces the concept of seeking compensation for breaking a lease with the mandatory inclusion of the break lease fee clause, it is appropriate to disapply the break lease fee clause in those circumstances where existing Government policy is that the tenant should not be penalised for early termination.

Clause 91 Additional terms for certain residential tenancy agreements Schedule 2, section 2.1

This clause omits section 2.1 (which contains the break lease fee clause) from Schedule 2. In doing so, it removes the break lease fee clause from the SRTTs that are included in some but not all tenancy agreements. This was done because the break lease fee clause is now being made a mandatory part of all tenancy agreements.

Clause 92 Schedule 2, sections 2.2 to 2.6

This clause makes a consequential amendment to Schedule 2 as a result of Clause 91, which omits section 2.1 from Schedule 2. This clause renumbers sections 2.2 to 2.6 as 2.1 to 2.5, consequential to this omission.

Clause 93 Dictionary, new definitions

This clause inserts five new definitions.

It provides that a *break lease fee clause* means clause 89A of the standard residential tenancy terms.

It inserts a new definition of a *competent person* and cross references section 46I (1) (see Clause 67 on the new family violence termination provisions related to this definition).

It inserts a new definition of a *competent person declaration* and cross-references section 46I (1) ((see Clause 67 on the new family violence termination provisions related to this definition).

It inserts a new definition of a *condition report*, and cross references section 29 (1) of the RTA (see clause 50).

It inserts a new definition for a *consecutive tenancy agreement*. It provides that a residential tenancy agreement is a *consecutive tenancy agreement* if a residential tenancy agreement for a premises terminates or is terminated, and 1 or more of tenants under the terminated agreement continue to occupy the property under a new tenancy agreement (see clause 49).

Clause 94 Dictionary, definition of *defective termination notice*, new paragraph (ba)

This clause inserts a new paragraph (ba) into the definition of a *defective termination notice*. This is a consequential amendment, following the creation of a family violence termination notice in division 4.3A (see clause 67). The new paragraph (ba) provides that a *defective termination notice* includes a notice that purports to be a family violence termination notice, but does not include the information required by new section 46D, or is not accompanied by a supporting document mentioned in new section 46D (3) (b).

Clause 95 Dictionary, new definition of *family violence*

This clause inserts a new definition of *family violence*. The definition is cross referenced to section 8 of the *Family Violence Act 2016*.

Clause 96 Dictionary, definition of *family violence order*

This clause substitutes the definition of a *family violence order*. The definition of a *family violence order* for the Act generally is cross-referenced to the dictionary of the *Family Violence Act 2016*, and for new Division 4.3A (Termination initiated by tenant—termination for family violence) (see clause 67), is cross-referenced to section 115 of the *Family Violence Act 2016*.

Clause 97 Dictionary, new definitions

This clause inserts three new definitions.

The clause inserts a definition for a *family violence termination notice*. The definition is cross-referenced in the RTA to new section 46D (2) (a) (see Clause 67 on the new family violence termination provisions related to this definition).

The clause also inserts a definition for a *notice of continuing tenancy*. The definition is cross-referenced to new section 46F (2) (see Clause 67 on the new family violence termination provisions related to this definition).

The clause also inserts a definition for an *original condition report*. It provides that *original condition report* means a condition report given to a tenant under section 29 not later than 2 days after the lessor last had possession of the premises (see clause 49 on the consecutive tenancy agreement changes related to this new definition).

Clause 98 Dictionary, definition of *standard residential tenancy terms*, paragraph (a) (ii)

This clause makes a consequential amendment to the definition of *standard residential tenancy terms*. The current definition refers to sections 8 (1) (b) to (g). However, Clause 42 omits section 8 (1) (g). This clause updates the definition of standard residential tenancy terms to refer to sections 8 (1) (b) to (f), to reflect this omission.

Clause 99 Dictionary, new definitions

This clause inserts two new definitions, of *subsequent condition report* and *supporting document*.

It provides that a *subsequent condition report* means, for premises under a consecutive tenancy agreement, a condition report made under section 29 or 30A at any time after an original condition report was made under section 29 (see clause 49 on the consecutive tenancy agreement changes related to this new definition).

The definition of a *supporting document* is cross referenced to new section 46D (3) (b) (see Clause 67 on the new family violence termination provisions related to this definition).

Clause 100 Dictionary, definition of *termination notice*

This clause substitutes the definition of a *termination notice* in the RTA. The definition now provides, in addition to the three existing written notices which constitute a termination notice, that a family violence notice served in accordance with the RTA, constitutes a termination notice (see Clause 67 on the new family violence termination provisions related to this definition).

Clause 101 Dictionary, new definition of *vacating day*

This clause inserts a new definition of *vacating day* into the RTA. This definition is then cross referenced in the RTA to new section 46D (3) (a) (see Clause 67 on the new family violence termination provisions related to this definition).

Part 9 Unit Titles (Management) Act 2011

Clause 102 Dealings with common property New section 20 (5)

Under the Unit Titles (Management) Act 2011 (**UTMA**), an owners corporation (**OC**) is prohibited from carrying on business except in the exercise of its functions. Breach of this provision attracts a maximum penalty of 50 penalty units.

However, there is a limited exception from this prohibition related to sustainability infrastructure (in section 23(4)). This exemption provides that where an OC receives income from the operation of sustainability infrastructure (such as a solar feed in tariff) the OC is not considered to be carrying on a business if the income is used to pay the costs (including financing costs) of the installation or maintenance of the infrastructure or the cost of utilities used by, or provided to, the OC.

The *Unit Titles Legislation Amendment Act 2023 (Amendment Act)* commenced on 1 July 2023. The Amendment Act made several amendments to the UTMA to better support unit living. One of the amendments made was to allow OCs to sublease common property to utilise unused areas of the common property for revenue, or to provide additional services to residents and community members (e.g. a coffee cart, florist, or parcel locker service).

However, when this reform was progressed, amendments were not made to clarify the interaction between the ability to sublease common property and the prohibition on the OC carrying on a business. For the avoidance of doubt, this clause inserts new section 20 (5) and clarifies that the owners corporation is not considered to be carrying on business if it receives income from subletting the common property.

Clause 103 Installation of sustainability and utility infrastructure on common property
Section 23 (3)

This clause makes a technical amendment to section 23 (3). It aligns the language used in other sections of the UTMA by substituting 'earned' with 'received' to describe income or amounts received by the owners corporation.

Clause 104 Section 23 (4)

This clause makes a technical amendment to section 23 (4). Section 23 (4) is expressed to be 'for section 71' and so the change aligns the language with section 71 by substituting 'carrying on a business' with 'carrying on business'.

Clause 105 Executive committee – at and from first annual general meeting
Section 39 (4) (c) (ii)

This clause makes a technical amendment to rectify a drafting error in section 39 (4) (c) (ii). The change aligns the provision with the language used in section 39 (4) (a) by substituting 'eligible person' with 'qualified person'.

Clause 106 Owners corporation must not carry on business
Section 71 (1), note

This clause substitutes the note under section 71 (1) to include the changes made to enable an owners corporation to receive money from subletting the common property (see clause 96 above).

Clause 107 General fund – budget
New section 75 (2) (c) (iia)

This clause inserts a new subsection to require the general fund budget for a given financial year to include an estimate of payments necessary for any costs incurred in getting information for a unit title rental certificate (see clause 104 below).

Clause 108 General fund – what must be paid into the fund?
New section 76 (aa)

This clause inserts a new provision to require an owners corporation to pay any income received from subletting any part of the common property, under section 20(3), into the general fund.

Clause 109 Corporate register – information to be included

Section 114 (2) (d)

This clause makes a technical amendment to section 114 (2) (d). It aligns this section with the use of ‘sublet’ as a verb and ‘subleases’ as a noun elsewhere in the UTMA.

Clause 110 Section 119

This clause substitutes existing section 119 with new sections 119 to 119B.

Section 119 Unit title certificates

Presently section 119 of the **UTMA** allows unit owners who intend to sell their unit to request information from the owners corporation (**OC**) to provide to a prospective purchaser to meet disclosure requirements under the *Civil Law (Sale of Residential Property) Act 2003*.

In recent years the *Residential Tenancies Act 1997 (RTA)* has introduced disclosure requirements for landlords who intend to rent their property, including, most recently, disclosure requirements in relation to minimum standards. The ACT currently only has a minimum standard for ceiling insulation, however, it is likely that additional minimum standards will be introduced in future (noting that phasing in minimum quality standards for rental properties is a commitment under the National Cabinet agreement *A Better Deal for Renters*). In some circumstances in units plans, these minimum standards may involve aspects of the common property. For example, ceiling insulation is likely to be in common property.

To support landlords to meet their disclosure obligations under the RTA, section 119 has been amended. The change enables a unit owner, who intends to rent their unit, the power to request the OC to provide information prescribed by Ministerial determination about their unit or the common property that is suitable for disclosure to a potential tenant (*a unit title rental certificate*).

To support the OC in understanding what type of information an eligible person may request, the Bill provides that an eligible person may request a *unit title sale certificate*, a *unit title sale update certificate*, or a *unit title rental certificate*. The Minister may determine the information that must be included in any of these certificates. The provisions around unit title sale certificates and unit title sale update certificates are not materially changed from existing section 119, but the provisions have been redrafted.

The OC must provide the information requested within the required period. For a unit title sale certificate or a unit title sale update certificate this is 14 days. For a unit title rental certificate, to recognise there may be circumstances where the OC needs additional time to obtain particular information, the provision allows an extension of

time of up to 4 weeks. For example, this may occur if the OC must arrange and pay for an inspection and report about ceiling insulation in the units plan.

To minimise administrative burden for OCs and for landlords, a unit title rental certificate is valid for 5 years after the day it is given. This is appropriate as the information in the certificate is not likely to change frequently.

To cover the OC's administration costs in providing the information, section 119 has been amended to allow an OC to attach a fixed fee to a request for a unit title rental certificate. The fee must not be more than an amount determined by the Minister. The Minister may determine the maximum fee an owners corporation can fix by a disallowable instrument.

Section 119A Unit title rental certificate information

New section 119A is consequential to the change in section 119 (5) (c) and applies in circumstances where information about the unit or common property is requested for a potential tenant and the OC does not have the information. New section 119A requires the OC to take reasonable steps to get the information and pay any costs associated with this. This is intended to ensure that the new unit titles rental certificate regime works effectively. The cost associated with obtaining the required information is to be at OC expense, since the OC will then hold the information in perpetuity and it may benefit other owners (including future owners), including where the OC may need to demonstrate compliance with other laws. It is also noted that the information in the unit titles rental certificate is not likely to change significantly or frequently over time.

A failure to comply with a request for a unit title rental certificate will attract an offence under section 121 of the UTMA (see clause 107).

Section 119B Updating unit title rental certificate information

New section 119B into the UTMA is consequential to the change in section 119 (5) (c). If within 5 years after the day a unit title rental certificate is given to an eligible person, the OC becomes aware of a change in any of the information in the certificate, the OC must notify the person, in writing, of the changed information. However, this only applies where the eligible person to whom the certificate was given is the same person who continues to be recorded on the corporate register in relation to the unit.

Clause 111 Acting on information in unit title certificate **New section 120 (2)**

This clause inserts new section 120 (2). It clarifies that for the purposes of the UTMA a *unit title certificate* means a unit title sale certificate, a unit title sale update certificate, or a unit title rental certificate. This change is consequential to clause 104.

Clause 112 New section 120A

This clause inserts a new section 120A. This insertion is consequential to the substitution of section 119 (clause 104). Previously section 119 provided that an eligible person may ask to inspect the records of an OC. Within 14 days of receiving the request, the OC must allow the person to inspect the information contained in the corporate register and any other documents held by the corporation, and to take copies of any document they have inspected.

To improve clarity and readability, as the process for requests for information or access to records process is different to the process for unit titles certificates, these provisions have been removed from section 119, and inserted as new section 120A. The substance of the entitlement for an eligible person to request access and the obligation on the OC to provide access has not changed.

Clause 113 Section 121 heading

This clause substitutes the heading for section 121. This amendment is a minor technical amendment, to better reflect the obligations of OCs to provide information, certificates and access to records contained in Part 7 of the UTMA.

Clause 114 Section 121 (1)

This clause makes a technical amendment to section 121 (1). It aligns the language used in other sections of the UTMA by referring to OCs obligations to provide access to records, as well as information or certificates.

Clause 115 Section 121 (2) (a)

This clause makes a technical amendment to section 121 (2) (a). It replaces the use of the phrase 'requesting the information' with 'making the request' to align with the sections of Part 7 enabling a person to request access to records, information or a unit titles certificate.

Clause 116 New section 121 (3)

This clause inserts new section 121 (3) into the UTMA. It clarifies that for the purposes of the offence under this provision, a unit title certificate takes its meaning from new section 120 (2) and includes a unit title sale certificate, a unit title sale update certificate, or a unit title rental certificate.

Clause 117 New part 14

Part 14 Transitional – Housing and Consumer Affairs Legislation Amendment Bill 2024

This clause inserts a new Part 14 (sections 173 to 176) into the UTMA. New Part 14 contains transitional provisions to clarify the ongoing validity of unit title certificates given before the commencement day.

Section 173 Meaning of commencement day – pt 14

This section clarifies that for the purposes of new Part 14 of the UTMA, *commencement day* means the day Part 9 of the *Housing and Consumer Affairs Legislation Amendment Act 2024* commences.

Section 174 Unit title certificates given before commencement day

As a result of the changes to section 119 (clause 104), this section clarifies that where a unit title certificate was given to an eligible person under section 119 (3) (as in force immediately before the commencement day), then from commencement day it is taken to be a unit title sale certificate.

Section 175 Unit title update certificates given before commencement day

As a result of the changes to section 119 (clause 104), this section clarifies that where a unit title update certificate was given to an eligible person under section 119 (3) (as in force immediately before commencement day), then from commencement day it is taken to be a unit title sale update certificate.

Section 176 Expiry – pt 14

This clause clarifies that the transitional period will expire 12 months after the commencement of this Bill.

Clause 118 Dictionary, definition of *eligible person*

This clause makes a technical amendment to the definition of an *eligible person*. The words ‘for a unit or common property in relation to which access to information is required’ are substituted with ‘for a unit or common property.’ This ensures the wording aligns with the entirety of Part 7, noting that sections where a person may be requesting a unit title certificate also refer to an eligible person.

Clause 119 Dictionary, definition of *eligible person*, paragraph (d)

This clause makes a technical amendment to the definition of an eligible person. The phrase ‘if access to the information is necessary or desirable for the administration of this Act – the territory planning authority’ is replaced with ‘in relation to the administration of this Act – the territory planning authority.’ As noted above (clause

112), this ensures the wording aligns with the entirety of Part 7, noting that sections where a person may be requesting a unit title certificate also refer to an eligible person.

Clause 120 Dictionary, definition of *unit title certificate*

This clause omits the definition of *unit title certificate* as it has been replaced by a new definition (new section 120 (2), inserted by clause 105).

Clause 121 Dictionary, new definitions

This clause inserts new definitions of *unit title rental certificate*, *unit title sale certificate* and *unit title sale update certificate*, referring to, respectively, the new sections 119 (1) (c), (a), and (b).

Schedule 1 Other amendments

The amendments in Schedule 1 are minor, technical and/or consequential in nature.

Part 1.1 Agents Act 2003

Clause [1.1] Section 3, note 1

This clause is a minor technical amendment. The current note refers to the definition of an ‘executive officer’ of a corporation in section 9 of the *Corporations Act 2001* (Cth). This definition no longer exists. A new note has been inserted to provide a new example of a signpost definition.

Clause [1.2] Dictionary, definition of *executive officer*

This clause is a minor technical amendment. As the definition of ‘executive officer’ of a corporation in section 9 of the *Corporations Act 2001* (Cth) no longer exists, a new definition is inserted.

Part 1.2 Charitable Collections Act 2003

Clause [1.3] Section 15 (1) (c)

This clause updates the language used in this section in line with current legislative drafting practice. It omits the words ‘he or she is’ and substitutes with the non-gendered language ‘they are’.

Clause [1.4] Section 56 (4)

This clause updates the language used in this section in line with current legislative drafting practice. It omits the words ‘his or her’ and substitutes with the non-gendered language ‘the authorised person’s’.

Part 1.3 Civil Law (Sale of Residential Property) Act 2003

Clause [1.5] Section 9 (1) (g) (i) (B)

This is a minor consequential amendment arising from the changes to the definition of *unit title certificate* under the UTMA (clause 104). It clarifies that a unit title certificate for the purposes of this section is a *unit title sale certificate*. It omits the words ‘unit title certificate’ and substitutes it with ‘unit title sale certificate’.

Clause [1.6] Section 9 (1) (g) (i) (B), note

This is a minor consequential amendment arising from the changes to the definition of *unit title certificate* under the UTMA (clause 104). It clarifies that a unit title update certificate for the purposes of this section is a unit title sale update certificate. It omits the words ‘unit title update certificate’ and substitutes with ‘unit title sale update certificate’.

Clause [1.7] Section 10A (7), definition of *later required documents*, paragraph (b)

This is a minor consequential amendment arising from the changes to the definition of *unit title certificate* under the UTMA (clause 104). It clarifies that a unit title certificate for the purposes of this section is a unit title sale certificate. It omits the words ‘unit title certificate’ and substitutes it with ‘unit title sale certificate’.

Clause [1.8] Dictionary, definition of *unit title certificate*

This clause omits the definition of unit title certificate as it has been replaced by the new definition inserted by clause [1.9].

Clause [1.9] Dictionary, new definition of *unit title sale certificate*

This clause inserts a new definition of *unit title sale certificate*. This definition is then cross-referenced in the UTMA (see section 119 (1) (a)).

Part 1.4 Fair Trading (Australian Consumer Law) Act 1992

Clause [1.10] Section 8

This clause is a minor technical amendment. It omits an outdated reference to the *Legislative Instruments Act 2003 (Cth)* with a current reference to the *Legislation Act 2003 (Cth)*.

Part 1.5 Housing Assistance Act 2007

Clause [1.11] Section 22 (3) (b)

This clause makes a consequential amendment. The Act updates the heading to section 64B of the RTA, and so the reference to this section in the *Housing Assistance Act* has been correspondingly updated.

Part 1.6 Magistrates Court (Agents Infringement Notices) Regulation 2003

Clause [1.12] Schedule 1, item 5

This clause is a consequential amendment to Part 2 of this Act. Part 2 removes the requirement for employment agents to be licensed, including the offence contained in the former section 22. This clause removes section 22 (1) (b) (i) from Schedule 1 of the *Magistrates Court (Agents Infringement Notices) Regulation 2003*, setting out the infringement notice offences for the *Agents Act 2003*.

Part 1.7 Magistrates Court (Charitable Collections Infringement Notices) Regulation 2003

Clause [1.13] Section 6

This clause substitutes section 6 of the *Magistrates Court (Charitable Collections Infringement Notices) Regulation 2003* and clarifies that the head of Access Canberra as the regulator for the ACT is the entity who may issue infringement notices and take other administrative actions in relation to such notices under the CC Act.

Clause [1.14] Schedule 1, item 1

This clause is a consequential amendment to clause 20 of this Act which removes sections 16 to 20 of the CC Act. The offence under Schedule 1 item 1 relates to section 16 of the CC Act which has been repealed via this Act.

Schedule 2 New Magistrates Court (Fair Trading Australian Consumer Law Infringement Notices) Regulation

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Magistrates Court (Fair Trading Australian Consumer Law Infringement Notices) Regulation 2024*.

Clause 2 Dictionary

This clause provides that the dictionary at the end of the regulation is part of the regulation. The dictionary defines certain terms used in the regulation.

Clause 3 Notes

This clause provides that a note found in the regulation is explanatory and is not part of the regulation.

Clause 4 Purpose of regulation

This clause provides that the purpose of the regulation is to provide for infringement notices under the Magistrates Court Act, part 3.8, for certain offences against the Fair Trading (Australian Consumer Law) Act.

Clause 5 Administering authority

This clause provides that the administering authority for an infringement notice offence under the regulation is the commissioner for fair trading.

Clause 6 Infringement notice offence

This clause provides that the Magistrates Court Act, part 3.8, applies to an offence against the relevant provision. Under the Dictionary, *relevant provision* means the Fair Trading (Australian Consumer Law) Act, section 34GA (1) (see clause 34). Accordingly, failure by a business to attend a consumer conciliation without reasonable excuse will be an infringement notice offence.

Clause 7 Infringement notice penalty

This clause provides the penalties for offences against the Fair Trading (Australian Consumer Law) Act. The penalty for an individual is \$960. The penalty for a corporation is \$4,800 (five times that applicable for an individual).

This regulation also provides that the cost for serving a reminder notice for an infringement notice offence is \$34.

Clause 8 Contents of infringement notices – identifying authorised person

This clause provides that an infringement notice must identify the authorised person who served the notice. An authorised person may be identified in the notice by their full name, or surname and initials. Alternatively, the infringement notice may identify the authorised person by any unique number given to them by the administering authority.

Clause 9 Contents of infringement notices – other information

This clause specifies that infringement notices served on a company must include the company's ACN.

Clause 10 Contents of reminder notices – identifying authorised person

This clause provides that a reminder notice must identify the authorised person who served the notice. An authorised person may be identified in the notice by their full

name, or surname and initials. Alternatively, the reminder notice may identify the authorised person by any unique number given to them by the administering authority.

Clause 11 Authorised person for infringement notice offences

This clause provides that an authorised person may serve infringement notices and reminder notices for infringement notice offences. Under the Dictionary, an *authorised person* means an investigator appointed under the Fair Trading (Australian Consumer Law) Act, section 36.

Clause 12 Prescribed person – Act, s 135 (1)

This clause provides that a public servant is a prescribed person for this regulation. Section 135 of the *Magistrates Court Act 1930* allows the administering authority for the regulation to delegate their powers to either a prescribed person or an authorised person.