

CLAUSE NOTES

Residential Tenancy (Rent Control) Amendment Bill 2021

Clause 1: Short Title

The Short title will be the *Residential Tenancy (Rent Control) Amendment Act 2021*.

Clause 2: Commencement

The Amendment Act will commence on the day on which it receives Royal Assent.

Clause 3: Principal Act

The Principal Act to which the amendments in this Act apply is the *Residential Tenancy Act 1997*.

Clause 4: Section 8 amended (General functions and powers of Commissioner)

Amends section 8 of the Principal Act to replace references to sections 20 and 23, which this bill repeals, with references to the proposed new Division 2A of Part 2 which replaces sections 20 and 23.

Clause 5: Section 20 repealed

Repeals section 20 of the Principal Act. Section 20 contains provisions relating to increases in rent. These matters are dealt with in the proposed new Division 2A of Part 2.

Clause 6: Section 23 repealed

Repeals section 23 of the Principal Act. Section 23 contains provisions relating to unreasonable increases in rent. These matters are dealt with in the proposed new Division 2A of Part 2.

Clause 7: Part 2, Division 2A inserted

Inserts a new Division 2A in Part 2 of the Principal Act. The proposed new Division 2A is adapted from Part 5 (rental rate increases) of the *Residential Tenancies Act 1997* of the Australian Capital Territory (the Australian Capital Territory Act).

Various terminology has been changed from the provisions in the Australian Capital Territory Act to be consistent with the Principal Act. For example, “ACAT” has been changed to “Commissioner”, and “rental rate increase” has been changed to “rent increase”, as rent is a defined term in the Principal Act.

24C. Definitions in relation to rent increases

Provides definitions for “Australian Statistician”, “index number”, “rent increase”, “rent increase limit” and “rent reduction order”. The definition of rent increase limit sets the threshold for rent increases at CPI +10% (unless a higher increase is considered reasonable by the Commissioner in accordance with this Division).

These provisions do not occur in Part 5 (rental rate increases) of the Australian Capital Territory Act. The definitions of rent increase limit and index number come from the *Residential Tenancies Regulation 1998* of the Australian Capital Territory, and the other definitions are necessary or beneficial for the adaption of the ACT provisions into the Principal Act.

24D. Standard residential tenancy term – rent increase

Provisions mirroring section 64A of the Australian Capital Territory Act. “Fixed term agreement” has been replaced with “fixed term lease” to better match the terminology in the Principal Act.

These provisions prohibit the increase in rent under a fixed term lease unless the lease allows for an increase in rent.

This is similar to the existing provisions in section 20(1) of the Principal Act, which this bill repeals. Section 20(1) of the Principal Act also allows for an increase in rents if there is no written residential tenancy agreement, which is not explicitly provided for in proposed new section 24D – however, the silence of this section in relation to circumstances where there is no written residential tenancy agreement would continue to allow for rent increases, subject to the other provisions of proposed new Division 2A of Part 2.

24E. Limitation on rent increases

Provisions mirroring section 64B of the Australian Capital Territory Act. This proposed new section only allows for rent increases consistent with the amount allowed by a residential tenancy agreement, that is agreed to in writing by the tenant, or that the Residential Tenancy Commissioner (the Commissioner) has approved.

24F. Tenant may apply for review

Provisions mirroring section 64C of the Australian Capital Territory Act. This proposed new section allows a tenant to apply to the Commissioner for review of an increase in their rent.

24G. Waiver of notice requirements

Provisions mirroring section 65 of the Australian Capital Territory Act. This proposed new section –

- (a) allows the Commissioner to waive the requirement for a review request under proposed new section 24F to be lodged 14 days before an increase in rent would come into force; and
- (b) allows the Commissioner to validate an early vacation of a tenancy as a result of a rent increase for which notice was not properly provided by the tenant.

The terms “notice of intention to vacate premises” and “tenant vacates” from the Australian Capital Territory Act have been replaced with references reflective of the Principal Act.

24H. Freezing rents

Provisions mirroring section 66 of the Australian Capital Territory Act. This proposed new section ensures that rents do not increase while a review is being determined, unless the Commissioner allows for it.

24I. Guidelines for orders

Provisions mirroring section 68 of the Australian Capital Territory Act. This proposed new section provides guidelines for the determination of applications in relation to a rent increase.

This section stipulates that a rent increase must be allowed by the Commissioner if it is allowed under the residential tenancy agreement and is

not unreasonable, and provides matters that must be considered in determining whether an increase is unreasonable. This section also allows for the Commissioner to disallow a proposed rent increase, but allow a lesser rent increase.

24I. Orders

Provisions mirroring section 68A of the Australian Capital Territory Act. This proposed new section allows the Commissioner to issue an order allowing in full or in part a proposed rent increase, disallowing a rent increase, or allowing an alternative rent increase.

24K. Effect of orders

Provisions mirroring section 69 of the Australian Capital Territory Act. This provision requires that an order for a rent increase take effect from the date of the original proposed rent increase, require the owner to pay the difference between actual paid rent and the ordered rent increase (if such a difference in favour of the tenant exists), and allowing the Commissioner to grant a tenant time to repay rent owed as a result of an order.

24L. Further increases

Provisions mirroring section 70 of the Australian Capital Territory Act. This proposed new section voids any further rent increases over a period of 12 months if the Commissioner has reviewed a proposed rent increase under this Division.

24M. Reduction of existing rent

Provisions mirroring section 71 of the Australian Capital Territory Act. This proposed new section allows for the Commissioner, on application from a tenant, to issue or refuse to issue a rent reduction order.

A rent reduction order must be issued if the tenant's use or enjoyment of the premises has diminished significantly as a result of a range of reasons.

24N. Tenant or owner may apply to court for review of proposed rent increase

This proposed new section allows for a tenant or owner to apply for a court review of a proposed rent increase. The Australian Capital Territory Act does

not have these provisions, as the initial decision is made by their Civil and Administrative Tribunal (ACAT).

However, the current model in section 23 of the Principal Act, which is repealed by this bill, is for an assessment by the Commissioner with an appeal to the Court (the civil division of the Magistrates Court).

Proposed new section 24N retains the process currently in the Principal Act, and is similar to sections 23(5), (6) and (7) of the Principal Act, allowing the Court to put aside the decision of a Commissioner in order for a 'fresh decision' to be made.

Tasmania's Civil and Administrative Tribunal (TasCAT) is currently in the process of being established. In addition to a second tranche amendment bill being prepared this year, a consequential amendments bill "*to confer jurisdiction on to TasCAT within both its original and review jurisdictions*" is being prepared.

If the Bill passes, we expect the TasCAT reform process, including the consequential amendments bill, to consider amendments that may be necessary or desirable to the amended *Residential Tenancy Act 1997*.

24O. Tenant or owner may apply to court for review of rent reduction order

This proposed new section allows for a tenant or owner to apply for a court review of a rent reduction order. Proposed new section 24O applies the same process to rent reduction orders that proposed new section 24N applies to proposed rent increases.

Clause 8: Repeal of Act

The Amendment Act will be repealed 365 days from the day on which all provisions commence.