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

ELEVENTH ASSEMBLY

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2025 (NO 2)**

REVISED EXPLANATORY STATEMENT

**Presented by
Tanya Cheyne MLA
Attorney-General
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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2025 (NO 2)

The Bill **is not** 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*.

This explanatory statement relates to the Justice and Community Safety Legislation Amendment Bill 2025 (No 2) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

OVERVIEW OF THE BILL

The Bill is an omnibus bill which amends of the following legislation:

- *Civil Law (Sale of Residential Property) Act 2003*
- *Crimes (Sentencing) Act 2005*
- *Disability Services Act 1991*
- *Discrimination Act 1991*
- *Information Privacy Act 2014*
- *Guardianship and Management of Property Act 1991*
- *Medical Treatment (Health Directions) Act 2006*
- *Powers of Attorney Act 2006*
- *Residential Tenancies Act 1997*
- *Retirement Villages Act 2012*
- *Retirement Villages Regulation 2013; and*
- *Working with Vulnerable People (Background Checking) Act 2011.*

The Bill will improve the ACT's justice and community safety legislation, to ensure that it is of the highest standards, facilitates the practical operations of justice sector agencies and best supports and protects the ACT community.

In particular, the Bill will make amendments that will support the Drug and Alcohol Sentencing List (**DASL**) in the ACT Supreme Court and the conduct of guardianship or manager proceedings in the ACT Civil and Administrative Tribunal (**ACAT**).

The Bill will facilitate more effective complaints resolution procedures within the ACT Human Rights Commission (**HRC**) by creating a conciliation regime for information privacy complaints.

The Bill will also improve property laws in the ACT. It will modernise the process for condition reports under tenancy laws and make the posting termination clause fairer

and more effective for the benefit of tenants and lessors. In addition, it makes minor and technical changes to improve consistency in wording and layout in tenancy provisions. It will also remove a duplicated disclosure requirement concerning swimming pool safety barriers in sale of residential property laws.

Other minor amendments in the Bill will clarify discrimination law and update references to the Commonwealth's aged care legislation following 2024 reforms. This will improve the quality of the ACT's statute book by making it simpler and more consistent, coherent and up-to-date.

CONSULTATION ON THE PROPOSED APPROACH

The amendments in the Bill were developed in targeted consultation within Government and with relevant stakeholders where appropriate. In some cases, minor and technical amendments were identified by the Government agency that administers or operates under the relevant Act, or by key stakeholders in the relevant sector.

The amendments to the *Information Privacy Act 2014* (the **IP Act**) were proposed by the Information Privacy Commissioner (the **IP Commissioner**) within the HRC. The HRC was also consulted on the amendments to the *Discrimination Act 1991*.

The ACT Supreme Court and the ACT Magistrates Court were consulted and support the proposed amendments to the *Crimes (Sentencing) Act 2005* in relation to the DASL.

ACAT was consulted on the amendments relating to statutory declarations under the *Guardianship and Management of Property Act 1991* (the **GMP Act**) as well as the Discrimination Act amendments.

The Real Estate Institute of the ACT proposed amendments to the *Residential Tenancies Act 1997* (**RTA**) in relation to electronic condition reports and some aspects of the changes to the posting termination clause.

The amendment to the *Civil Law (Sale of Residential Property) Act 2003* (**CLSORPA**) to remove the duplication of disclosure requirements relating to swimming pool safety on the common property of a units plan was proposed by the ACT Law Society.

SUMMARY OF AMENDMENTS

Civil Law (Sale of Residential Property) Act 2003

This Bill will remove the requirement at section 9 (1) (k) of CLSORPA for a unit seller to disclose information about the safety barriers of regulated swimming pools on common property, given this information is already effectively conveyed to a unit buyer through the information disclosed by the unit title sales certificate.

In May 2024 the ACT Government introduced reforms relating to swimming pool safety barriers, as well as requirements to disclose information to prospective purchasers about the swimming pool safety barriers when a property with a regulated swimming pool is sold. Section 9 (1) (k) of the CLSORPA was introduced at that time. It requires a unit seller to disclose information about a regulated swimming pool on both the property being sold as well as any pool on the common property of a units plan.

However, separately to this, section 9 (1) (g) (i) (B) requires that a unit seller must also provide a unit buyer with a unit title sale certificate for the unit being sold.

A unit title sale certificate can be requested by a unit owner from the owners corporation under the *Unit Titles (Management) Act 2011* (UTMA). The UTMA also allows the Minister to determine the information that must be included in a unit title sale certificate.

The *Unit Titles (Sales Certificate) Determination 2024 (No 2)* indicates that the owners corporation must include information about swimming pool safety barriers relating to any regulated swimming pool on the common property of the units plan. This means that, at present, a unit seller is required to provide information about the safety barriers for regulated swimming pools on common property under both section 9 (1) (g) (i) (B) and 9 (1) (k).

This amendment will ensure that there is no duplication in the requirement to disclose information relating to swimming pools on the common property of a units plan.

Crimes (Sentencing) Act 2005

The Drug and Alcohol Sentencing List (**DASL**) is a sentencing option in the Supreme Court for people whose drug and alcohol use has contributed to their offending. This Bill inserts a new section, section 80ZBA, which will permit the Magistrates Court to hear and make certain temporary orders for persons subject to a Drug and Alcohol Treatment Order (**DATO**), who have been arrested under a warrant for a breach of the DATO (other than by commission of an offence) when the Supreme Court is not sitting. The Bill will also make minor amendments to section 80ZB to assist readability.

Currently, only the Supreme Court can issue orders under section 80ZB for individuals sentenced to a DATO who breach a treatment order without committing an offence. To address this limitation and maintain the integrity of the DATO, the Supreme Court may convene on non-sitting days, if required to respond to a breach. However, this is not ideal because the DASL is resource-intensive and costly. Alternatively, the matter will be brought before the Magistrates Court if the Magistrates Court is sitting (such as on a Saturday), however, the Magistrates Court is only permitted to make certain orders pursuant to section 8A of the *Bail Act 1992*.

This amendment allows the Magistrates Court to take certain actions under new section 80ZBA, to give a warning, require the offender to comply with 1 or more conditions as set out in section 80ZB(1)(d) (such as staying at a stated place, or not driving a car), and make an order temporarily cancelling the suspension of the sentence of imprisonment until the next day on which the Supreme Court is sitting. This will allow the Magistrates Court to make orders or arrangements that will only apply in the short time until the Supreme Court sits again. This may better protect the individual by responding to breaches quickly to curb problematic behaviour, provide protection to the community in circumstances where a person has not been complying with their DATO and increase efficiency within the ACT's Court procedures.

Discrimination Act 1991

The Bill will update the definition of *irrelevant criminal record* in the *Discrimination Act 1991* to address a misalignment between this definition and the *Spent Convictions Act 2000*.

The current definition in the Discrimination Act treats spent convictions as irrelevant criminal records. This does not take into account the exclusions in section 19 of the Spent Convictions Act, which in effect allow a person's spent conviction to be considered in some circumstances (for example, when applying for a position relating to the care of children). The issue arose in the ACAT decision of *Complainant 202012 v ACT* (as represented by the Director-General, Community Services Directorate) [2023] ACAT 17 in which Children, Youth and Families looked at a person's spent convictions to determine whether she was suitable to be a kinship carer. On a strict reading of the Discrimination Act, this could constitute unlawful discrimination. The Tribunal commented at [82] that "it is not difficult to see how a simple amendment could resolve the issue" of the apparent inconsistency between the two Acts.

The Bill will amend the definition of an "irrelevant criminal record" under the Discrimination Act, to clarify that requiring a person to disclose information about a criminal record under section 19 of the Spent Convictions Act is not automatically unlawful discrimination on the grounds of irrelevant criminal record. The new definition will continue to ensure that any unfavourable treatment or disadvantage relating to a spent conviction that is actually irrelevant may still amount to unlawful discrimination. This preserves the policy intent and the protective function of the Discrimination Act.

Information Privacy Act 2014

The Bill will create a conciliation framework for complaints under the IP Act, to facilitate better complaints resolution pathways for complainants raising issues about breaches of privacy under the Territory Privacy Principles.

Currently under the IP Act the IP Commissioner can inquire into and investigate complaints of breaches of privacy under the IP Act but has no explicit power to conciliate these matters. Conciliation is intended to be a low-cost, informal and effective way to resolve complaints, which benefits complainants and respondents alike.

This Bill will amend the IP Act to enable the IP Commissioner to conciliate privacy complaints. The amendments will mirror the pre-existing framework for conciliation of human rights complaints under the *Human Rights Commission Act 2005*, which has proven effective in the HRC's jurisdictions and is familiar to government agencies and members of the public.

The new conciliation regime will provide for more effective complaints-handling and consistency between the handling of complaints relating to breaches of the right to privacy (section 12 of the *Human Rights Act 2004 (HRA)*) by the HRC, which can be conciliated, and the handling of privacy complaints under the IP Act. It will assist the HRC to better respond to complaints from members of the community who have had their rights or privacy interfered with by government agencies or contracted service providers.

Guardianship and Management of Property Act 1991

The Bill will amend the GMP Act to enable ACAT to be informed of certain information by oath or statutory declaration.

Under section 10(2) of the GMP Act, a person cannot be appointed as a guardian or manager for someone with impaired decision-making ability unless they inform ACAT of certain matters, such as prior convictions. Section 10(2) requires this information to be provided under oath. ACAT has accepted statutory declarations in the past, including by relying on other laws, such as the *Oaths and Affirmations Act 1984*, the *Acts Interpretation Act 1901* (Cth) and *Statutory Declarations Act 1959*.

The Bill will modernise the GMP Act to confirm that statutory declarations may be accepted as well as oaths (or affirmations). The Bill will include a validating provision in relation to information accepted to date, to ensure there is no doubt that the current appointments of guardians and managers remain valid.

Residential Tenancies Act 1997

This Bill makes amendments to the RTA to facilitate:

1. electronic condition reports; and
2. the use of the posting termination clause.

It also makes a range of minor and technical amendments to increase consistency in wording in provisions throughout RTA.

Electronic Condition Reports

The Bill will amend clause 21 of the Standard Residential Tenancy Terms (**SRTTs**), so that, if the tenant agrees, the lessor can provide an electronic copy of the condition report.

The RTA requires that within 1 day of the tenant taking possession of the premises, the lessor must give 2 copies of a condition report completed by the lessor to the tenant.

Whilst the *Electronic Transactions Act 2001* currently allows for records to be sent electronically, stakeholder feedback is that most people assume that clause 21 requires a paper copy of the condition report, given that it specifies the requirement to provide 2 copies of the document. Other Australian jurisdictions clarify that when condition reports are sent electronically there is only a requirement to provide a single electronic copy of the record.

The amended provision requires that the electronic file provided by the lessor to the tenant must be capable of being edited by the tenant so that the tenant can provide any comments on the condition report prepared by the lessor. This amendment will decrease administrative burden, by clarifying that condition reports can be provided electronically in certain circumstances. It will also clarify that where a condition report is provided electronically, only one copy of the report will be required.

Posting Termination Clause

This Bill will update the posting termination clause under Schedule 2, Clause 2.1 of the SRTTs.

The following shortcomings of the current posting termination clause have been identified:

- (a) *MacDonald v Al-Ani & Anor (Residential Tenancies)* [2024] ACAT 79 identified that a tenant who is served with a notice to vacate is not permitted to break the lease prior to the expiration of the notice period without penalty. In this respect, the posting termination clause does not align with other tenancy termination provisions within the RTA, which permit tenants to issue a notice of intention to vacate with an earlier date than the lessor gave in their notice to vacate. The standard approach in other termination provisions is fairer in that it reduces the tenant's responsibility to pay double rent if they can find alternative accommodation in the notice to vacate period.
- (b) The posting termination clause currently provides that the residential tenancy agreement terminates either 8 weeks after the day the notice to vacate or notice of intention to vacate is received, or, if a later date is stated in the notice, on the stated date. This is inconsistent with other tenancy termination provisions in the RTA, which generally provide for the tenancy to end when

the tenant vacates the premises in accordance with a notice to vacate. In circumstances where a tenant does not vacate, the RTA requires the lessor to apply to ACAT for an order to end the tenancy. The omission of this requirement in connection with the posting termination clause limits the tenant's access to an important legal protection.

- (c) The posting termination clause also does not permit either the lessor or tenant to rely on the clause when their domestic partner is the person being posted.

The new provisions under this Bill will broaden the scope of legal protections under posting termination clauses, to:

- (a) enable tenants who have received an 8 week notice to vacate under the posting termination clause, to provide their lessors with a notice of their intention to vacate with an earlier vacate date than that given in their lessor's notice to vacate.
- (b) provide that the tenancy will end when a tenant vacates the tenancy agreement in accordance with the notice, and
- (c) allow either the tenant or the lessor to rely on the posting termination clause when their domestic partner (who is not a party to the tenancy agreement) is the person being posted.

Updating references to the Commonwealth Aged Care Act 2024 (Cth)

In late 2024, the Federal Parliament passed the *Aged Care Act 2024* (Cth) (the **new Act**). It is anticipated to commence on 1 July 2025. On commencement, the new Act will repeal the *Aged Care Act 1997* (Cth) (the **current Act**). Schedule 1 of the Bill contains amendments to ACT legislation to replace references to the current Act with references to the new Act and to make associated updates to terminology used in the new Act. The following legislation is amended:

- a) CLSORPA;
- b) *Disability Services Act 1991*;
- c) *Powers of Attorney Act 2006*;
- d) *Medical Treatment (Health Directions) Act 2006*
- e) RTA;
- f) *Retirement Villages Act 2012*;
- g) *Retirement Villages Regulation 2013*; and
- h) *Working with Vulnerable People (Background Checking) Act 2011*.

CONSISTENCY WITH HUMAN RIGHTS

Rights Engaged

The Bill engages the following sections of the Human Rights Act 2004 (**HRA**):

- Section 8 – right to recognition and equality before the law (*engaged*)
- Section 11 – right protection of the family and children (*promoted*)
- Section 12 – right to privacy (*promoted and limited*)
- Section 13 – right to freedom of movement (*limited*)
- Section 18 – right to liberty (*limited*)

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

Rights engaged

Discrimination Act amendments – right to recognition and equality before the law

Under section 8 of the HRA, everyone has the right to enjoy their human rights without distinction or discrimination of any kind. The Bill may engage this right because of the amendment to the Discrimination Act relating to the definition of *irrelevant criminal record*. However, the amendment does not limit this right because it merely clarifies the interaction between the Discrimination Act and the exclusions in the Spent Convictions Act, which are already in operation. There is no intention to reduce the scope of the protection afforded by the Discrimination Act – if a person is treated unfavourably or experiences disadvantage because of a spent conviction that is irrelevant in the circumstances, this may still amount to unlawful discrimination.

The amendment would also support various human rights protected by the exclusions in section 19 of the Spent Convictions Act (e.g. rights of children (section 11(2) HRA), security of person (section 18(1) HRA), equal protection of the law (section 8(3) HRA) with respect to care of older people and those with disability).

Rights promoted

Under section 12 of the HRA, everyone has the right not to have their privacy, family, home or correspondent interfered with unlawfully or arbitrarily and not have their reputation unlawfully attacked.

Under section 11 of the HRA, the right to protection of the family and children recognises the importance of the family unit in making up society and the benefits that come from preserving family relations. It further recognises that families should not be subject to arbitrary interference or separation by public authorities. The right also protects the special human rights of children, taking into account their particular vulnerabilities.

IP Act amendments – right to privacy

The Bill specifically promotes the right to privacy by improving complaint handling for breaches of privacy by ACT public authorities.

The amendments to the IP Act will provide the IP Commissioner with provisions to support their ability to investigate privacy complaints as set out in section 29 of the IP Act, by undertaking conciliations in appropriate cases. The conciliation framework within this Bill will facilitate better complaints resolution for complainants raising issues about breaches of privacy under the Territory Privacy Principles.

RTA amendments – right to privacy

The amendments to the posting termination clause that ensure a tenancy is only terminated where a tenant moves out in accordance with a notice to vacate (rather than the tenancy terminating on the date specified in the notice) promotes the tenant's right to privacy and home. It ensures that in circumstances where a tenant does not vacate the premises in accordance with the notice, the lessor must apply to ACAT for a termination and possession order under section 47 of the RTA to end the tenancy. This is an important legal protection for tenants.

RTA Amendments – right to protection of the family and children

The amendments to the posting termination clause allow both the tenant and lessor to end the tenancy using the posting termination clause in circumstances where their domestic partner is the person who is posted (and where their domestic partner is not a party to the tenancy agreement). This provision promotes the right to protection of the family by removing a barrier to domestic partners remaining together when one of the partners is posted. It does this by ensuring that they can end the tenancy agreement when the posting occurs, allowing them to move to the posted place together.

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.

RTA amendments – right to privacy

Under section 12 of the HRA, everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily or not to have their reputation unlawfully attacked.

The proposed amendments to the RTA expand the scope of the posting termination clause to allow the clause to be used when the lessor or tenant's domestic partner is the person being posted, even where the partner is not party to the tenancy agreement. This may limit the tenant's right to privacy and home, as it expands the circumstances in which a tenancy can be ended by the lessor.

This limitation has a legitimate purpose, as the amendment also promotes both the lessor and tenant's right to family, by allowing family units to remain together when the tenant or lessor's domestic partner is the person being posted. It is proportionate because the scope for termination is only expanded insofar as is necessary to enable persons to remain with their domestic partner.

Right to freedom of movement and right to liberty – amendments to the Crimes (Sentencing) Act 2005

The proposed amendments to the *Crimes (Sentencing) Act 2005* could engage the following rights under the HRA:

- the right to freedom of movement, which provides the right to move freely within the ACT and to enter and leave it, and the freedom to choose their residence in the ACT, pursuant to section 13; and
- the right to liberty and security of person. in particular, that no-one may be arbitrarily arrested or detained, pursuant to section 18.

The Drug and Alcohol Sentencing List (DASL) is a sentencing option in the Supreme Court for people whose drug and alcohol use has contributed to their offending that would otherwise be sentenced to a term of imprisonment. It offers an alternative approach to imprisonment by focusing on rehabilitating these offenders, reintegrating them into the community and reducing criminal offending.

The above rights are currently engaged by the Crimes (Sentencing) Act in relation to persons under a DATO, however, the insertion of new section 80ZBA will extend the operation of certain limited powers under the Act to the Magistrates Court.

Specifically, this proposed amendment will permit the Magistrates Court to hear a matter where a person under a DATO has been arrested for breaching a treatment order obligation if it is a day the Supreme Court is not sitting and the Magistrates Court is sitting (such as a Saturday or during the Supreme Court end-of-year shutdown period) and make limited orders in relation to that breach (to give a warning, impose certain conditions on the person, or temporarily cancel the suspension of the sentence of imprisonment). By enabling the Magistrates Court to

impose conditions (such as requiring a person to reside in a particular residence), the amendment will engage and possibly limit the right to freedom of movement. By enabling the Magistrates Court to make orders temporarily cancelling the suspension of the sentence of imprisonment (such that a person will be imprisoned until the next day the Supreme Court is sitting), the amendment engages the right to liberty and security of person.

The legitimate purpose of this amendment is to improve the operation of the DASL by enabling the Magistrates Court to make temporary orders in relation to certain breaches of DATOs on days the Supreme Court is not sitting. This is important as it will ensure that if a person is arrested, they are able to be dealt with promptly rather than being detained for a longer period in police custody. Additionally, it will ensure that if a person is brought before a court (which includes the Magistrates Court) that the court has sufficient powers both to protect the individual by responding to breaches quickly to curb problematic behaviour and to protect the community by ensuring the court has powers to either warn, impose conditions or impose the existing order of imprisonment, depending on the seriousness of the breach of the person's order.

This amendment will achieve its objective by allowing the Magistrates Court to hear the matter and make some of the orders available to the Supreme Court (a warning; requiring compliance with certain additional conditions (such as residing at a particular address); or temporarily cancelling the suspension of the sentence of imprisonment (such that the person will be imprisoned) until the next day the Supreme Court is sitting).

This approach is the least restrictive means reasonably available as it ensures that a court is available to hear a person's matter if they have been arrested for breaching their DATO. The person may otherwise have been required to remain in police custody if the Supreme Court was not available or brought before the Magistrates Court for an order to be made pursuant to the *Bail Act 1992*. The amendment has been drafted to ensure it is less restrictive by only permitting the Magistrates Court to make certain orders and to require that when the Supreme Court is next sitting that the matter must be listed before it for review, meaning any order made by the Magistrates Court will be reviewed within a short period. Additionally, a person's rights are not likely to be restricted further on the basis that these orders were orders already available to the Supreme Court for a person subject to a DATO.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the Justice and Community Safety Legislation Amendment Act 2025 (No 2).

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on the day after it is notified, except for:

- (a) Part 7, which will commence 1 month after this Act's notification date, to allow lessors and those engaged in the real estate sector with time to update tenancy agreements to reflect the new SRTTS; and
- (b) Schedule 1, which will commence on the later of the commencement of the *Aged Care Act 2024* (Cwlth), or the commencement of section 3 of this Act.

Clause 3 Legislation amended

This clause identifies the legislation that will be amended in the Bill:

- *Civil Law (Sale of Residential Property) Act 2003*
- *Crimes (Sentencing) Act 2005*
- *Discrimination Act 1991*
- *Guardianship and Management of Property Act 1991*
- *Information Privacy Act 2014*
- *Residential Tenancies Act 1997*

This Bill also amends other legislation, with amendments made under Schedule 1 to align ACT laws with the new *Aged Care Act 2024* (Cwlth):

- *Civil Law (Sale of Residential Property) Act 2003*
- *Disability Services Act 1991*
- *Medical Treatment (Health Directions) Act 2006*
- *Powers of Attorney Act 2006*
- *Residential Tenancies Act 1997*
- *Retirement Villages Act 2012*
- *Retirement Villages Regulation 2013*
- *Working with Vulnerable People (Background Checking) Act 2011*

Part 2 Civil Law (Sale of Residential Property) Act 2003

**Clause 4 Meaning of *required documents*
Section 9 (1) (k)**

This clause amends the list of *required documents* under section 9 (1) (k) of the *Civil Law (Sale of Residential Property) Act 2003* by removing the reference to ‘common property associated with the premises.’

This amendment removes the requirement for a unit seller to disclose information relating to regulated swimming pools on the common property of a units plan, as this information is already conveyed to prospective buyers, through the unit titles sale certificate. A unit titles sale certificate must be provided to a unit buyer under section 9 (1) (g) (i) (B) of the *Civil Law (Sale of Residential Property) Act 2003*.

The *Unit Titles (Sales Certificate) Determination 2024 (No 2)*, made under the *Unit Titles (Management) Act 2011*, lists what information the owners corporation must include in the unit title sales certificate. It includes a requirement to provide information about regulated swimming pools on the common property of a units plan.

This amendment removes unnecessary red tape by removing a duplicative regulatory requirement.

Part 3 Crimes (Sentencing) Act 2005

**Clause 5 Breach of treatment order—other than commission of
offence
Section 80ZB (1) (a)**

This clause makes a minor technical amendment to assist readability.

Clause 6 Section 80ZB (1) (b)

This clause makes a minor technical amendment to assist readability.

Clause 7 Section 80ZB (1) (c)

This clause makes a minor technical amendment to assist readability.

Clause 8 Section 80ZB (1) (d)

This clause makes a minor technical amendment to assist readability.

Clause 9 Section 80ZB (1) (e)

This clause makes a minor technical amendment to assist readability.

Clause 10 Section 80ZB (1) (f) and (g)

This clause makes minor technical amendments to assist readability.

Clause 11

New section 80ZBA

Breach of treatment order—other than commission of offence—Magistrates Court may make temporary order

This clause inserts a new provision (section 80ZBA), which permits the Magistrates Court to hear a breach of a Drug and Alcohol Treatment Order (DATO) matter and make a temporary order.

New section 80ZBA applies where an offender has been arrested for breaching a DATO (other by commission of an offence) and the offender cannot be brought before the Supreme Court because the Supreme Court is not sitting (on days such as a Saturday, a public holiday or the court shutdown period). In those circumstances the Magistrates Court can make an order of the type listed in new section 80ZBA(2) if satisfied on the balance of probabilities that the offender has breached a condition of their DATO. The orders available are providing a warning, imposing a condition (such as where a person should reside) or cancelling the suspension of the offender's sentence of imprisonment, such that the person will be imprisoned until the next day on which the Supreme Court is sitting.

The provision includes appropriate safeguards, including that the Supreme Court must review the order on the next day it sits and that any temporary cancellation of a suspended sentence will be until the next day the Supreme Court is sitting (which is frequent) and cannot be more than 14 days.

New section 80ZBA(4) provides that the Magistrates Court can make an order on its own initiative or on application by the specified parties, and requires the Magistrates Court to provide a copy of any order made to the offender, each member of the treatment team and any other person, to ensure relevant organisations are made aware of the order.

New section 80ZBA(8) notes that following any action from the Magistrates Court, the Supreme Court is able to take action under section 80ZB in relation to the person's breach of their DATO and review the order under section 80ZH of the Sentencing Act.

Part 4

Discrimination Act 1991

Clause 12

Dictionary, definition of *irrelevant criminal record* paragraph (f) and note

This clause updates the definition of *irrelevant criminal record* in the Dictionary of the *Discrimination Act 1991*. Currently, the definition treats extinguished and spent convictions as irrelevant for all purposes when considering whether unlawful discrimination has occurred.

The new definition preserves this position with respect to extinguished convictions.

The new definition clarifies the position with respect to spent convictions, by ensuring that it will not constitute unlawful discrimination if a person's spent conviction is taken into account in circumstances contemplated in section 19 of the *Spent Convictions Act 2005* (which has the effect that section 16 of that Act does not apply).

However, the new definition also indicates that a spent conviction will be an irrelevant criminal record, even if section 16 of the Spent Convictions Act does not apply, where the circumstances of the offence are not directly relevant to the situation in which discrimination arises.

The intention is to align the two Acts so that sections 16 and 19 of the Spent Conviction can operate to their full effect, but that any unfavourable treatment or disadvantage relating to a spent conviction that is actually irrelevant may still amount to unlawful discrimination.

Part 5 Guardianship and Management of Property Act 1991

Clause 13 Considerations affecting appointment Section 10 (2)

This clause makes a technical amendment to omit the words *on oath*.
This amendment supports Clause 14.

Clause 14 New section 10 (2A)

This clause inserts new section 10(2A). This is a minor and technical amendment that inserts a provision which enables persons applying to be a guardian or manager to inform ACAT of certain matters by an oath or statutory declaration.

Clause 15 Emergency removal of disabled persons, section 68(4)

This clause amends section 68 (4), to include the ability for ACAT to be informed of matters by statutory declaration as well as on oath, when an application is made under this section.

Clause 16 New section 74A

This clause inserts a new section 74A, which confirms the validity of previous guardian and manager appointments, including where information was provided to ACAT by statutory declaration.

Part 6 Information Privacy Act 2014

Clause 17 Dealing with privacy complaints New section 40 (2) (d) and (3)

This clause inserts new section 40 (2) (d) to include the conciliation of complaints. This amendment is consequential to clauses 12 and 13 which creates explicit rules for the IP Commissioner to conciliate complaints.

Section 40 (2) provides for the circumstances in which the IP Commissioner may, at their discretion, decide not to continue dealing with a complaint received. This amendment confirms that where conciliation ends without agreement being reached, this may be a basis for the IP Commissioner to decline to deal further with the complaint. Under section 41, this decision must be communicated to the parties.

This amendment also includes new section 40 (3) which cross-references the new definition of *conciliation* in clause 13.

Clause 18 New section 41A

This clause inserts a new section 41A to create an explicit conciliation framework for complaints under the IP Act, to facilitate better complaints resolution pathways for complainants raising issues about breaches of privacy under the Territory Privacy Principles.

New section 41A confirms that the information privacy commissioner, may, at any time, conciliate a privacy complaint, or matter that forms part of a complaint, if satisfied that the complaint or matter is appropriate for conciliation.

This provision ensures that the IP Commissioner has the ability to conciliate a privacy complaint, as well as continue to deal with the complaint under other sections of the Act while it is being conciliated.

Clause 19 New division 6.3A

This clause inserts a new division 6.3A into the IP Act, containing provisions that are necessary to the implementation of conciliation of privacy complaints. The provisions are substantially similar to the conciliation regime in the *Human Rights Commission Act 2005 (HRC Act)*.

New section 44A provides the definition of a conciliation of a privacy complaint. It defines the IP Commissioner's responsibility under division 6.3A to impartially assist the parties to resolve their complaint and confirms that the parties participate voluntarily and decide the outcome. This amendment also inserts definitions of *conciliation agreement* and *parties*, which are referred to in division 6.3A.

New section 44B provides that the parties must attend conciliation and makes it an offence (with a maximum penalty of 50 penalty units) if a party fails to attend at the

stated time and place for the conciliation without reasonable excuse. This mirrors the existing offence in section 59 of the HRC Act.

The proposed offence strikes a balance between ensuring the IP Commissioner can exercise their dispute resolution functions and preserving the voluntary nature of conciliation. The power to require attendance (backed by an offence) requires parties to take the IP Commissioner's processes seriously. However, should a person attend as required, and still be unwilling to participate, the Commission cannot compel them to do so.

This balanced approach has been applied in the complaints jurisdictions under the HRC Act since the Commission was created in 2005. The Explanatory Statement for the relevant Bill justified the offence provision as offering an effective tool where a party may be reluctant to attend, but if they did attend, they may participate and reach a constructive outcome.¹ New section 44C provides that the IP Commissioner may allow, or ask, people other than the parties to attend conciliation if satisfied that the person's attendance will assist the conciliation. However, parties may not be legally represented unless the Commissioner is satisfied this will substantially help the conciliation. This provision is intended to help promote the informal nature of conciliation as an alternative dispute resolution mechanism.

New section 44D enables the IP Commissioner to conduct the conciliation in the manner that they decide.

New section 44E provides for when an agreement is reached by conciliation. The IP Commissioner may assist the parties in making a written record of their agreement. Each party must sign the agreement, and the IP Commissioner must give a copy of the conciliation agreement to each party.

New section 44F permits the use of information in conciliation agreements by the IP Commissioner only to the extent that the parties agree.

New section 44G defines the conditions in which a conciliation will end, whether because the parties reach agreement, one party withdraws, both parties agree to end the process, or the IP Commissioner ends the process because agreement is not likely to be reached. The IP Commissioner must tell the parties that the conciliation has ended under this provision and why, and may then close the complaint.

New section 44H governs the admissibility of information or documents prepared for or communicated in conciliation in subsequent legal proceedings. The provision ensures that section 131 of the *Evidence Act 2011* will apply, which excludes evidence of settlement negotiations (except to the extent that the parties have

¹ Human Rights Commission Bill 2005, [Explanatory Statement](#), clause 59.

agreed that a conciliation agreement may be used by the Commissioner in whole or in part).

New section 44I protects conciliation attendees from civil liability for acts done honestly and without recklessness during conciliation.

Clause 20 Section 45

This clause substitutes section 45. The purpose of the new provision is to ensure that if a complaint is successfully resolved through conciliation, the IP Commissioner need not tell the parties that an application may be made to court for an order about the complaint, even if the Commissioner is satisfied that an interference with privacy has occurred.

Clause 21 Dictionary, new definitions of *conciliation*, *conciliation agreement* and *parties*

This clause inserts minor and technical amendments, by inserting definitions of *conciliation*, *conciliation agreement* and *parties* to the IP Act, which supports provisions under division 6.3A.

Part 7 Residential Tenancies Act 1997

Clause 22 Terms included in residential tenancy agreements section 8 (1) (f)

This clause is a minor and technical amendment to update *clause* to *clauses*, as this Bill splits the current posting termination clause into two separate clauses: one for the lessor and one for the tenant to reflect the different ways the tenancy can terminate depending on whether the lessor or tenant issues the termination notice. This amendment is consequential to the amendments in clause 35.

For the avoidance of doubt, it is intended that if the lessor and tenant agree to include the posting termination clauses in the tenancy agreement – they include **both** termination clauses in their agreement. They cannot agree to include only the posting termination clause for the lessor (102) or only the posting termination clause for the tenant (102A).

Clause 23 Section 8 (4), definition of *posting termination clause*

This amendment is consequential to the amendments in clause 35, as a result of which there will now be two posting termination clauses rather than one (one for the lessor and one for the tenant).

This clause is a minor and technical amendment to insert a new definition of *posting termination clauses*.

The amended provisions defines *posting termination clauses* to mean the clauses in schedule 2, section 2.1.

Clause 24 Termination

section 36 (1) (p)

This clause omits section 36 (1) (p) from the *Residential Tenancies Act 1997* (RTA).

Section 36 sets out the circumstances in which a residential tenancy agreement can be ended. This provision has been omitted as it is no longer necessary to list the posting termination clauses as a separate way to end a tenancy agreement because the posting termination clauses at Schedule 2, 2.1 are standard residential tenancy terms. This means that terminating an agreement under the posting termination clause is covered under either:

- Section 36 (1) (b) – where a party serves a termination notice in accordance with the standard residential tenancy terms and the tenant vacates the premises in accordance with the notice; or
- Section 36 (1) (e) - where the ACAT makes a termination and possession order in relation to the premises that are the subject of the tenancy agreement under division 4.4 (specifically, section 47 of the RTA).

The history to the posting termination clause is that it was inserted into section 8 of the RTA in 2005 via the *Residential Tenancies Amendment Act 2005*. At the time, it was referred to as the “fair clause for posted people.” In 2016 it was recognised that termination via the “fair clause for posted people” was not a listed ground under section 36 and so termination via the fair clause for posted people was inserted into section 36 as a separately recognised ground for ending a tenancy agreement via the *Residential Tenancies Amendment Act 2016*.

In 2023 the *Residential Tenancies Legislation Amendment Act 2023 (the 2023 Amendment Act)* moved the fair clause for posted people into schedule 2, 2.1 and renamed the provision the ‘posting termination clause.’ The 2023 Amendment Act also amended the definition of *standard residential tenancy term* so that it includes the posting termination clause.

As the posting termination clause is captured in the definition of standard residential tenancy term, it is no longer necessary to separately list it as a ground for termination under section 36 of the RTA.

Clause 25 Section 36 (2)

This amendment is consequential to the amendments in clause 24. As clause 24 omits the posting termination clause as a separate ground under which a tenancy can end under section 36 (because it is already captured under other provisions in section 36) it is no longer necessary to include a definition of posting termination clause within section 36 of the RTA.

Clause 26 Standard residential tenancy terms
Schedule 1, clause 21 (1)

This clause updates the rules around condition reports to enable lessors to provide tenants with electronic copies of condition reports in certain circumstances.

Currently, clause 21 of Schedule 1 states that within 1 day of the tenant taking possession of the premises, the lessor must give 2 copies of a condition report completed by the lessor to the tenant.

This amendment confirms that 2 paper copies, or, if the tenant agrees, one electronic copy must be provided, in a form that can be electronically edited by the tenant.

This amendment will lessen administrative burden for lessors and tenants who prefer to communicate electronically by allowing them to issue and receive condition reports electronically.

Clause 27 Schedule 1, clause 38 (2)

This is a minor and technical amendment to substitute the defined term “tribunal” instead of “ACAT” to create greater consistency throughout the Act. There is no substantive change to the operation of the provision.

Clause 28 Schedule 1, clause 70 (a), note

This is a minor and technical amendment to substitute the defined term “tribunal” instead of “ACAT” to create greater consistency throughout the Act. There is no substantive change to the operation of the provision.

Clause 29 Schedule 1, clause 85 (3)

This is a minor and technical amendment to bring the wording and layout of this clause into line with similar provisions in the Act. There is no substantive change to the operation of the provision.

Clause 30 Schedule 1, clause 86 (2), note

This is a minor and technical amendment to substitute the defined term “tribunal” instead of “ACAT” to create greater consistency throughout the Act. There is no substantive change to the operation of the provision.

Clause 31 Schedule 1, clause 89A (5)

This clause is consequential to the changes made in clause 35 which amend the posting termination clause to create two separate posting termination clauses – one for use by the lessor and one for use by the tenant. Under the changes made by clause 35 where the tenant ends the tenancy under the posting termination clauses the lessor will not be able to charge them a break lease fee for doing so.

This clause amends the break lease fee provision in the standard residential tenancy terms to clarify that where a tenant ends a fixed term tenancy under the posting termination clauses, the lessor will not be able to charge them a break lease fee.

This is considered appropriate from a policy perspective as, by choosing to include the break lease fee clause in the tenancy agreement, both the lessor and tenant agree that the tenancy can be terminated during the course of the fixed term. In that context, it is unreasonable to allow the lessor to charge a break lease fee when they have already agreed that the tenant can end the tenancy during the fixed term by agreeing to include the break lease fee clauses in the tenancy agreement.

Clause 32 Schedule 1, clause 89A (6), new definition of *posting termination clause*

This clause is consequential to the changes in clauses 31 and 35. Clause 35 amends the posting termination clause and clause 31 indicates that the lessor is not able to charge a break lease fee where the tenancy is ended under the posting termination clauses.

This clause inserts the definition of posting termination clause into clause 89A (which sets out when the break lease fee clause may be used).

Clause 33 Schedule 1, clause 96 (2)

This is a minor and technical amendment to bring the wording of this clause into line with similar provisions in the Act. There is no substantive change to the operation of the provision.

Clause 34 Schedule 1, clause 97 (1)

This is a minor and technical amendment to bring the wording and layout of this clause into line with similar provisions in the Act. There is no substantive change to the operation of the provision.

**Clause 35 Additional terms for certain residential tenancy agreements
Schedule 2, section 2.1**

This clause updates the posting termination clause under Schedule 2, Clause 2.1. It replaces the current posting termination clause with two separate clauses: one for use by the lessor and one for use by the tenant.

The changes to the posting termination clause are intended to:

- enable tenants and lessors to rely on the posting termination clauses where their domestic partner (who is not a party to the tenancy agreement) is posted to or from Canberra in the course of their employment
- allow tenants who receive a notice to vacate under the posting termination clauses to end their tenancy earlier than the vacate date stipulated in the

lessor's notice, without penalty, by issuing their own notice of intention to vacate to the lessor, and

- ensure that a tenancy does not end automatically on the date stipulated in a lessor's notice to vacate, if the tenant does not actually move out by that date. This brings the clause into line with other termination provisions in the RTA which only allow for the tenancy to end if the tenant moves out in accordance with the notice to vacate issued to them.

Amended clause 102 allows a lessor to issue an 8-week notice to vacate to the tenant where they, or their domestic partner is posted to the ACT in the course of their employment. It also provides that if a tenant receives a notice to vacate under that clause, they may vacate the premises at any time before the date stated in the lessor's notice to vacate, provided they give the lessor:

- at least two weeks' notice of their intention to vacate; or
- in the last 2 weeks before the lessor's notice to vacate date – at least 4 days' notice of their intention to vacate.

Where the tenant moves out in accordance with either the notice to vacate issued to them by the lessor or in accordance with their own notice of intention to vacate given to the lessor, the tenancy will end when the tenant moves out in accordance with the notice. This means the tenant will not have to pay double rent for an extended period of time in circumstances where they have been able to find alternative accommodation before the vacate date given to them by the lessor.

The amended provision also clarifies that the tenant will not be required to pay a break lease fee if they end a fixed term tenancy early under standard term 102 (3).

If a tenant does not move out in accordance with the notice to vacate given to them by the lessor, the lessor will need to apply to ACAT for a termination and possession order under Division 4.4, section 47 of the RTA.

New clause 102A allows a tenant to issue an 8-week notice of intention to vacate to the lessor where they or their domestic partner are posted away from the ACT in the course of their employment. Where a tenant issues a notice of intention to vacate under 102A, and the tenant vacates the premises in accordance with their notice, the tenancy will end when the tenant vacates the tenancy. However, if the tenant does not vacate the tenancy in accordance with their notice of intention to vacate, their notice will be taken to be withdrawn and the tenancy will continue.

Clause 36 Schedule 2, clause 103 (3)

This is a minor and technical amendment to bring the wording of this clause into line with similar provisions in the Act. There is no substantive change to the operation of the provision.

Clause 37 Schedule 2, clause 103 (4)

This is a minor and technical amendment to bring the wording of this clause into line with similar provisions in the Act. There is no substantive change to the operation of the provision.

Clause 38 Schedule 2, clause 103 (4) (b)

This is a minor and technical amendment to bring the wording of this clause into line with the remainder of the provision, following the amendment in clause 29. There is no substantive change to the operation of the provision.

Clause 39 Schedule 2, clause 104 (5), example

This is a minor and technical amendment to substitute the defined term “tribunal” instead of “ACAT” to create greater consistency throughout the Act. There is no substantive change to the operation of the provision.

Clause 40 Schedule 2, clause 104 (7) (b)

This is a minor and technical amendment for consistency of wording within this provision and for consistency with other provisions in the Act. There is no substantive change to the operation of the provision.

Clause 41 Schedule 2, clause 105 (5) (b)

This is a minor and technical amendment for consistency of wording within this provision and for consistency with other provisions in the Act. There is no substantive change to the operation of the provision.

Clause 42 Schedule 2, clause 106A (7) (b)

This is a minor and technical amendment for consistency of wording within this provision and for consistency with other provisions in the Act. There is no substantive change to the operation of the provision.

Clause 43 Schedule 2, clause 107 (3) (b)

This is a minor and technical amendment for consistency of wording within this provision and for consistency with other provisions in the Act. There is no substantive change to the operation of the provision.

Clause 44 Schedule 2, clause 111 (7) (b)

This is a minor and technical amendment for consistency of wording within this provision and for consistency with other provisions in the Act. There is no substantive change to the operation of the provision.

Clause 45 Schedule 2, clause 112 (4) (b)

This is a minor and technical amendment for consistency of wording within this provision and for consistency with other provisions in the Act. There is no substantive change to the operation of the provision.

Clause 46 Dictionary, new definition of *Residential Tenancies Act*

This clause makes a minor and technical amendment which confirms that the definition of *Residential Tenancies Act* for the purposes of the standard residential tenancy terms in schedule 1 of the RTA means the *Residential Tenancies Act (1997)*.

Clause 47 Dictionary, definition of *tribunal*

This clause makes a minor and technical amendment which ensures that the definition of *tribunal* also applies in relation to schedule 2 of the RTA.

Schedule 1 Other amendments

Schedule 1 (other amendments) makes a series of minor and technical amendments to definitions, with the purpose of updating references in ACT laws to the *Aged Care Act 1997* (Cwlth). This Act will be repealed by the *Aged Care Act 2024* (Cwlth). The updated definitions effected through Schedule 1 will refer to the newer Act. In certain instances, terminology has been updated to better align with the newer Act. For example, the amendments in clauses 1.19, 1.20 and 1.28 of Schedule 1 introduce the concept of persons being *approved* for *access* to aged care, instead of existing language around persons being *assessed* for their eligibility. This change aligns better with the 2024 Act, which treats the concept of an assessment of a person's needs separately to the formal process of approval to enter an aged care facility. There is no intention to alter the scope and effect of ACT laws.