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

TENTH ASSEMBLY

**Government Amendments to the
Housing and Consumer Affairs Legislation Amendment Bill 2024**

SUPPLEMENTARY EXPLANATORY STATEMENT

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HOUSING AND CONSUMER AFFAIRS LEGISLATION AMENDMENT BILL 2024

This supplementary explanatory statement relates to the Government amendments (**the amendments**) to the Housing and Consumer Affairs Legislation Amendment Bill 2024 (**the Bill**). It has been prepared in order to assist the reader of the Bill and the amendments and to help inform debate. It does not form part of the Bill or the amendments.

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

OVERVIEW OF THE GOVERNMENT AMENDMENTS

The amendments amend the:

- *Agents Act 2003* (**Agents Act**);
- *Residential Tenancies Act 1997* (**RTA**); and
- *Residential Tenancies Regulation 1998* (**the Regulation**).

Agents Act amendments

The amendments seek to alter the commencement provision for the amendments to the *Agents Act 2004*. The amendments propose to allow for the repeal of the requirement for employment agents to be licensed to commence on 1 July 2024.

Residential Tenancies amendments

The amendments seek to apply the rules limiting excessive rent increases consistently across all residential tenancy agreements. At present, these rules are different for fixed-term and periodic tenancy agreements.

The amendments provide that where at least one tenant remains the same, a landlord must not increase the rent more frequently than once every 12 months, and this increase must not be more than the amount prescribed by regulation unless the tenant consents to a higher increase, or the ACT Civil and Administrative Tribunal approves it. Currently, under the Regulation, the amount prescribed is 110% of the increase in the 'Rents' subgroup of the consumer price index for Canberra.

The amendments will ensure that these rent increase rules apply to consecutive tenancy agreements for fixed-terms, where at least one tenant remains the same.

For example:

- a) Two tenants sign a second or subsequent 12-month fixed-term agreement for the same property.
- b) Three people in a share house are in a fixed-term agreement, one tenant is replaced by a new co-tenant, and these three co-tenants and the landlord agree to sign a new fixed term agreement with all their names on the lease.
- c) A tenant on a periodic lease agrees with their landlord to move onto a fixed-term lease.

These reforms will promote consistency and coherency in the RTA, by applying rent increase rules uniformly, irrespective of tenancy type and history. This will make it easier for renters, landlords and real estate agents to navigate the applicable rules where tenants have remained in a property for longer periods of time or under multiple consecutive residential tenancy agreements.

The amendments will permit landlords to increase the rent during the currency of a fixed-term agreement, provided it has been 12 months since the last increase, the landlord has provided the tenant with 8 weeks notice and the proposed increase is not more than the prescribed amount.

Under the standard residential tenancy terms, a tenant can terminate a fixed-term or periodic agreement upon receiving a notice of a rent increase.

CONSULTATION ON THE PROPOSED APPROACH

The ACT Human Rights Commission, Legal Aid ACT and ACT Government Directorates were consulted in relation to the amendments. Targeted consultation with key community stakeholders was undertaken in relation to the Bill itself and this consultation is addressed in the explanatory statement accompanying the Bill.

CLIMATE IMPACT

This Bill does not have climate impacts.

CONSISTENCY WITH HUMAN RIGHTS

Rights Engaged

This Bill engages the right to privacy and reputation under section 12 of the *Human Rights Act 2004* (HRA).

Rights Promoted

Section 12 (a) of the HRA provides for the right to privacy and the right not to have one's home interfered with unlawfully or arbitrarily.

The amendments create consistency in the ACT's rent increase rules. Currently, these rules do not apply to fixed-term tenancy agreements or consecutive fixed-term tenancy agreements where the same tenants are remaining in the same home with the same lessor. This means that, when a fixed term agreement ends, either the rent for the new fixed term is set by the lessor to any amount to which the tenants agree, or the tenancy rolls over into a periodic tenancy. Anecdotal feedback indicates that many tenants prefer the security of a fixed term tenancy.

The amendments promote the right to not have one's home interfered with arbitrarily by protecting tenants who prefer the security of a fixed term tenancy from excessive rent increases.

Rights Limited

This Bill does not limit any human rights.

CLAUSE NOTES

Amendment 1

Clause 2 (1)

Page 2, line 6–

Clause 2 currently provides that the Bill, other than sections 5 and part 8, commence on the 7th day after notification.

Amendment 1 is consequential to amendment 2 and amendment 15. It proposes to substitute the reference to sections 5 and part 8, with a reference to section 5 and parts 2, 8 and 8A.

Substituted clause 2 (3) proposes that Part 2 of the Bill commences, or is taken to have commenced, on 1 July 2024. As such, amendment 1 indicates that Part 2 commences separately to other parts of the Bill.

Amendment 15 proposes to introduce new part 8A to the Bill. New Part 8A provides for amendments to the *Residential Tenancies Regulation 1998*. These changes relate to the changes to the *Residential Tenancies Act 1997* introduced by amendments 3-14. Amendment 2, through proposed new clause 2 (4) provides for commencement of Part 8A of the Bill together with Part 8 by way of Ministerial notice. As such, amendment 1 now indicates that Part 8A of the Bill will also commence separately to other parts of the Bill.

Amendment 2

Proposed new clause 2 (3), except notes

Page 2, line 11–

Amendment 2 proposes to omit existing clause 2 (3) from the Bill and substitute it with proposed new clauses 2 (3) and (4).

Proposed clause 2 (3) provides that Part 2 of the Bill commences, or is taken to have commenced, on 1 July 2024.

Part 2 of the Bill amends the *Agents Act* to repeal the requirements for employment agents to be licensed. Currently, the Bill provides for commencement of these reforms 7 days after notification.

Proposed clause 2 (3) provides for retrospective commencement in the event that notification of passage of the Bill does not occur before 1 July 2024. However, this period of retrospectivity, if any, is likely to be very short. It is considered appropriate as most employment agents licences are due to expire on 30 June 2024, and

commencement on 1 July 2024 will eliminate any gap between their licences expire and the licensing requirement is removed. It will also remove the requirement for affected agents to renew their licences for this gap period.

It is noted that this retrospective commencement will be beneficial for those it impacts. It does not impose any new obligations, rather it removes a requirement to be licensed. This benefits licence holders as it means they will not need to apply for renewal of their expiring licence as there will be no gap between expiry of their licence and commencement of the amendments which remove the need for them to be licensed.

Proposed clause 2 (4) is consequential to amendment 15.

Currently the Bill provides for commencement of Part 8 of the Bill (which amends the *Residential Tenancies Act 1997*) by way of Ministerial notice. Clause 15 of the Government amendments introduces Part 8A which provide for amendments to the *Residential Tenancies Regulation 1998*. Clause 15 relates to the amendments 3-14 which amend parts of the Bill relating to rent increases in residential tenancy agreements.

To ensure that all the amendments relating to the residential tenancies can commence together, the commencement provision of the Bill at clause 2 (4) is amended to allow for new Part 8A to commence together with Part 8 by way of Ministerial notice.

Amendment 3

Proposed new clause 71A

Page 44, line 21–

Amendment 3 proposes to insert new clause 71A into the Bill.

Clause 71A inserts new section 64AE – Meaning of rental rate increase—pt 5 into the RTA. Section 64AE creates a new definition of a rental rate increase, meaning an increase in the rental rate for a premises under a residential tenancy agreement (including a consecutive tenancy agreement – see the definition in clause 93 of the Bill), or an increase in the rental rate for the premises that will take effect under a proposed consecutive tenancy agreement.

A ‘rental rate increase’ will therefore encapsulate situations where a lessor is proposing a rental rate increase during an existing tenancy agreement (whether a fixed-term or periodic tenancy agreement) and where the tenant and lessor propose to enter a consecutive tenancy agreement where the rental rate payable will be increased in the next tenancy agreement (the consecutive tenancy).

For example, tenants are in a property under a fixed-term tenancy agreement for 12 months. Four weeks before their fixed-term ends, their landlord proposes a further fixed-term agreement, and a rental rate increase that is not more than the prescribed amount. Allowing for 8 weeks notice, the rental rate increase could take effect 4 weeks into the next fixed-term agreement.

The following amendments apply the concept of a rental rate increase through Part 5 of the RTA. In addition, existing provisions in Part 5 commonly use the phrase 'rental rate increase' (see for example, section 64C of the RTA). The insertion of this definition will ensure provisions operate uniformly across fixed-term and periodic tenancy agreements, including consecutive tenancy agreements.

Amendment 4

Clause 72

Page 44, line 22–

Amendment 4 proposes to omit clause 72 from the Bill.

It replaces Clause 72, providing that section 64A of the RTA only applies to fixed-term agreements entered into before the commencement of the *Housing and Consumer Affairs Legislation Amendment Act 2024 (the Amendment Act)* (as the Bill will be known if passed). Section 64A currently provides that under a fixed term agreement, the rent may not be increased during the currency of the fixed term unless the amount of the increase or a method for working it out, is set out in the agreement.

To achieve consistency, the amendments will enable a lessor to increase the rental rate during a fixed term agreement, provided the lessor has given the requisite notice, the proposed increase is not excessive, and enough time has passed since the start of the tenancy, the last increase under the existing tenancy, or if the current tenancy is a consecutive tenancy agreement it has been at least 12 months since the rent was set or increased under a previous tenancy. Consequently, the prohibition in the current section 64A needs to be omitted.

However, the amendments seek not to interfere with fixed term agreements entered into before the commencement of the Amendment Act. As such the proposed clause 64A (1) preserves the operation of this prohibition for existing fixed-term agreements.

Amendment 5

Clause 73, proposed new section 64AAA (1)

Page 45, line 4–

Amendment 5 proposes to omit 'may increase the rental rate under a residential tenancy agreement only if' from proposed clause 73, and substitute it with 'must not increase the rental rate under a residential tenancy agreement unless.'

This is a minor and technical amendment, made to enhance the clarity and readability of the legislation. The proposed phrasing aligns with the proposed new wording for section 64B (1) (see amendment 7 below) and better reflects the intention that this provision is a limitation on rent increase, as reflected in the section heading.

Amendment 6

Clause 73, proposed new section 64AAA (2)

Page 45, line 10–

Amendment 6 proposes to omit 'may increase the rental rate only if' from proposed clause 73, and substitutes it with 'must not increase the rental rate unless.'

This is a minor and technical amendment, made to enhance the clarity and readability of the legislation. The proposed phrasing aligns with the proposed new wording for section 64B (1) (see amendment 7 below) and better reflects the intention that this provision is a limitation on rent increase, as reflected in the section heading.

Amendment 7

Clause 75

Page 46, line 4–

Amendment 7 amends clause 75 of the Bill.

The proposed amendment omits everything before paragraph (b) in section 64B (1) of the Act, and instead provides that the rental rate increase for premises must not be more than the amount prescribed by regulation unless, for a fixed term agreement to which section 64A applies, the agreement allows the lessor to increase the rental rate by the higher amount.

Section 64B (1) (a) currently permits a lessor to increase the rent by an amount more than the prescribed amount if this is permitted under the residential tenancy agreement.

However, amendment 4 above proposes to remove the ability for a lessor to specify, in a fixed term residential tenancy agreement, a rental rate increase or a method for working it out. Amendment 4 is proposed not to apply to residential tenancy agreements entered into before the commencement date (that is, a residential tenancy agreement to which section 64A currently applies).

Amendment 7 is consequential to amendment 4. As after the commencement of the Amendment Act a lessor will no longer be able to specify a rent increase in a fixed term agreement, section 64B (1) (a) will have no work to do in relation to these agreements. Amendment 7 clarifies that a lessor can increase the rental rate by more than the prescribed amount only where permitted by a residential tenancy agreement entered into before the commencement of the Amendment Act.

Additionally, the introduction of the new definition of a rental rate increase in amendment 3, and its proposed use in section 64B (1), will mean the limitation on the amount of rent increases will apply consistently across tenancy agreements.

Amendment 8

Proposed new clauses 75A and 75B

Page 46, line 7–

Amendment 8 proposes to insert new Clauses 75A and 75B into the Bill.

Clause 75A Guideline for orders

Section 68 (2)

Proposed clause 75A replaces the section 68 (2) of the current RTA. Section 68 (2) currently provides that the ACT Civil and Administrative Tribunal (**ACAT**) must allow a rental rate increase if the increase is allowed under the residential tenancy agreement and is not excessive.

However, amendment 4 above proposes to remove the ability for a lessor to specify a rental rate increase or a method for working it out in a fixed term residential tenancy agreement. Amendment 4 is proposed not to apply to residential tenancy agreements entered into before the commencement date (that is, a residential tenancy agreement to which section 64A applies).

Amendment 8 is therefore consequential to amendment 4. It clarifies when the ACAT must allow a rental rate increase in fixed term residential tenancy agreements that were entered into before the commencement of the Amendment Act.

For agreements entered into before the commencement of the Amendment Act, the ACAT must allow a rental rate increase if it is allowed under the agreement and is not excessive. In any other case, the ACAT must allow a rental rate increase if it is not excessive.

Additionally, the introduction of the new definition of a rental rate increase in amendment 3, and its proposed use in section 68 (2), will mean the guidelines for ACAT orders apply consistently across tenancy agreements.

Clause 75B Sections 71 (5) and 71AAA (5)

Proposed clause 75B amends sections 71 (5) and 71AAA (5) of the RTA.

Amendment 3 above proposes to introduce the concept of a rental rate increase. Proposed clause 75B seeks to replace references in section 71 (5) and 71AAA (5) to an 'increase in the rental rate' with a reference to a 'rental rate increase.' This is a minor and technical amendment aimed at promoting consistency throughout Part 5A of the RTA.

Amendment 9

Proposed new clause 83A

Page 48, line 23–

Amendment 9 proposes to insert new Clause 83A into the Bill.

Proposed clause 83A amends current clause 34 of the Standard Residential Tenancy Terms outlined in Schedule 1 of the RTA, to provide that the amount of rent under a residential tenancy agreement must not vary from period to period, except as provided by the RTA. This removes the ability for a residential tenancy agreement to specify that the rent will vary from period to period.

Proposed clause 83A also provides that the amount of rent under a proposed or existing consecutive tenancy agreement must not vary from the amount of rent under a terminated or terminating residential tenancy agreement, except as provided by the RTA.

This clause deals with the situation where a residential tenancy agreement is terminated or is terminating, and 1 or more tenants under the terminated agreement continue to, or propose to continue to, occupy the premises under a new tenancy agreement. When proposing a rental rate increase (including an increase in the rental rate for the premises that will take effect under a proposed consecutive tenancy agreement), the lessor must comply with the limitations on rent increases set out in the RTA. This is consistent with the amendments proposed above, for example, in amendment 7.

Amendment 10

Clause 84

Page 48, line 26–

Amendment 10 makes a minor and technical amendment to Clause 84 in the Bill. It replaces 'may not' with 'must not' in a prohibition on increasing the rent more frequently than once every 12 months. The amendment is made to enhance the clarity and readability of the legislation.

Amendment 11

Clause 84

Page 49, line 1–

Amendment 11 makes a minor and technical amendment to Clause 84 in the Bill. It replaces ‘may not’ with ‘must not’ in a prohibition on increasing the rent more frequently than once every 12 months, including in consecutive tenancy agreements. The amendment is made to enhance the clarity and readability of the legislation.

Amendment 12

Proposed new clauses 86A and 86B

Page 49, line 17–

Amendment 12 proposes to insert three new clauses into the Bill – clauses 86A to 86C.

These clauses respectively replace clauses 37 and 38, and insert new clause 41 (2) into the current standard residential tenancy terms (Schedule 1 to the RTA).

Clause 86A Schedule 1, clause 37

Proposed clause 86A substitutes schedule 1, clause 37 in the RTA. Currently, clause 37 of the standard residential tenancy terms provides that the restriction on rent increases applies provided the identity of at least 1 of the tenants who occupy the premises remains the same as at the last increase. The Bill and the Amendments extend the restrictions on both the *amount* and *frequency* of a rent increase. The amendments propose update clause 37 to reflect this change; that the restriction on both the amount and frequency apply as long as one of the tenants remains the same as at the time of the last rent increase.

Clause 86B Schedule 1, Clause 38

Proposed clause 86B substitutes schedule 1, clause 38 in the RTA. The current Clause 38 of the standard residential tenancy terms provides that a lessor must give a tenant 8 weeks written notice of a rent increase and specifies what must be included in the rent increase.

In line with the extension of the rent increase rules to the proposed rent for a consecutive tenancy agreement, clause 38 is updated to require that a lessor give a tenant 8 weeks written notice of an intended increase in the rent both under a residential tenancy agreement, or an intended increase in the rent that will take effect under a proposed consecutive tenancy agreement.

Clause 38 is also updated to correctly capture the requirements for the contents of a rent increase notice outlined in section 64B of the RTA (in particular, whether the

proposed rent is above the prescribed amount, and that if the tenant does not agree to this increase, the lessor must obtain the ACAT's approval for the increase).

Clause 86C Schedule 1, new clause 41 (2)

Clause 86C inserts new paragraph (2) into Clause 41 of the standard residential tenancy terms. Clause 41 currently provides that if a tenant wishes to vacate the premises before the increase takes effect, the tenant must give 3 weeks notice to the lessor.

Paragraph (2) is inserted to make clear that, for an increase in rent that will take effect under a proposed tenancy agreement, the tenant may still terminate the existing tenancy under clauses 88 and 89 of the standard residential tenancy terms, which provide for the termination of a periodic tenancy and the termination of a tenancy agreement at the end of the fixed term.

Amendment 13

Clause 93

Proposed new dictionary definition of *consecutive tenancy agreement*, paragraph (b)

Page 53, line 25–

Amendment 13 makes a minor amendment to clause 93 in the Bill. It replaces a reference to 'a new residential tenancy agreement' with a reference to 'the new agreement.' This amendment is made to enhance the clarity and readability of the legislation.

Amendment 14

Clause 97

Proposed new dictionary definition of *rental rate increase*

Page 55, line 12–

Amendment 14 is consequential to amendment 3 above. It inserts a new dictionary definition into the Bill of a rental rate increase, referring to the definition which will be included in the proposed section 64AE.

Amendment 3 proposes the introduction of this new definition to support the subsequent amendments applying the rent increase rules uniformly across tenancy agreements.

Amendment 15

Proposed new part 8A

Page 56, line 18–

Amendment 15 proposes to insert new Part 8A into the Bill, which contains clauses 101A to 101E. New Part 8A amends the Residential Tenancies Regulation 1998.

Clause 101A *Rental increase threshold – Act, s64B and s 68*

Section 5A (1)

Proposed clause 101A makes a minor and technical amendment to paragraph 5A (1) of the *Residential Tenancies Regulation 1998* (**the Regulation**). Paragraph 5A (1) of the Regulation outlines the formula to be used when calculating the prescribed amount.

As discussed above, for example, in amendment 4, the concept of an ‘increased rental rate’ is introduced and then used consistently throughout Part 5A of the RTA. To enhance consistency between the legislation, Clause 101A replaces a reference to the ‘current rent’ with a reference to the ‘current rental rate’, aligning with the terminology used in the RTA.

Clause 101B *Section 5A (2), new definition of current rental rate*

Proposed clause 101B inserts a new definition of the ‘current rental rate’ for premises under a residential tenancy agreement into section 5A (2) of the Regulation. For a proposed consecutive tenancy agreement, the current rental rate means the most recent rental rate for the premises under a terminating or terminated residential tenancy agreement. In any other case, the current rental rate will be the most recent rental rate for the premises.

Clause 101C *Section 5A (2), definition of initial index number*

The amendments above apply the rent increase rules across multiple consecutive tenancy agreements, where at least one of the tenants remain the same. However, the current definition of ‘initial index number’ only captures rent increases within a single tenancy agreement.

Clause 101C substitutes the definition of ‘initial index number’ in the Regulation to cater to these amendments, and the different situations in which a permissible rent increase may need to be calculated. Accordingly, the definition of the initial index number depends upon whether the rent increase is proposed to take effect in a proposed (future) consecutive tenancy agreement, within the currency of an existing consecutive tenancy agreement, or under an existing tenancy agreement (that is not a consecutive tenancy agreement).

A proposed consecutive tenancy agreement is where a residential tenancy agreement is about to be terminated, and the lessor and at least 1 of the same tenants are proposing to enter a new tenancy agreement. In this case, the initial index number means the most recently published index number on:

- (i) if the rental rate has not been increased under the terminating or a previously terminated residential tenancy agreement—the day the original tenancy agreement started; or
- (ii) if the rental rate has been increased under the terminating or a terminated residential tenancy agreement—the day the lessor gave the tenant notice of the most recent increase.

An existing consecutive tenancy agreement refers to the situation where a residential tenancy agreement for the premises has been terminated, and 1 or more tenants under the tenants under the terminated agreement have continued to occupy the premises under a new residential tenancy agreement. Where the lessor proposes to increase the rent during the currency of this agreement, the initial index number means the most recently published index number:

- (i) if the rental rate has not been increased under the existing agreement or a terminated residential tenancy agreement—the day the original tenancy agreement started; or
- (ii) if the rental rate has been increased under the existing agreement or a terminated residential tenancy agreement—the day the lessor gave the tenant notice of the most recent increase.

In any other case, the initial index number means the most recently published index number:

- (i) if the rental rate has not been increased under the residential tenancy agreement—the day the agreement started; or
- (ii) if the rental rate has been increased under the residential tenancy agreement—the day the lessor gave the tenant notice of the most recent increase.

This definition of an ‘initial index number’ is then used to perform the calculation in Clause 101A, for the purposes of determining the prescribed amount. The effect of these amendments is to preserve the existing position that in calculating the prescribed amount, the lessor is entitled to take into account the change in Consumer Price Index figures since the last rent increase (or where no increase has occurred, since the tenancy began), and to apply this rule across the various types of tenancy agreements.

Clause 101D *Section 5A (2), new definition of original tenancy agreement*

Proposed clause 101D inserts a new definition of ‘original tenancy agreement’ into the Regulation. An ‘original tenancy agreement’ is defined to mean, for premises under an existing consecutive tenancy agreement or for which there is a proposed

consecutive tenancy agreement, the residential tenancy agreement that started immediately after the lessor last had possession of the premises.

This clause is proposed to support the definition of the initial index number above, in particular, where a rent increase is proposed for premises under an existing or proposed consecutive tenancy agreement, and where the rent has not previously been increased.

Clause 101E Dictionary, note 2

Note 2 in the Dictionary of the Regulation notes that terms used in the Regulation have the same meaning that they have in the RTA and provides a list of terms which are defined in the RTA.

Clause 101E proposes to add 'consecutive tenancy agreement' to that list of terms.