



STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

JEREMY HANSON CSC MLA (CHAIR), MARISA PATERSON MLA (DEPUTY CHAIR), JO CLAY MLA

Inquiry into referred 2019–20 Annual and Financial Reports and Budget Estimates 2020-21
ANSWER TO QUESTION ON NOTICE

Asked by Ms Jo Clay MLA: To ask the Attorney-General:

In relation to: **Residential Tenancies Amendment 2020 – Part One**

JCSAR p199

What were the key concerns raised by stakeholders on the Residential Tenancies Amendment Bill 2020, and have these been addressed in the current draft? There is a concern that people will be worse off because people characterised as tenants now will soon be classified as occupants with less rights. What is your response to this?

Mr Shane Rattenbury MLA: The answer to the Member's question is as follows:–

Significant consultation was undertaken prior to the introduction of the Residential Tenancies Amendment Bill 2020 (now the *Residential Tenancies Amendment Act 2020 (No 2)* (the Amendment Act)). This included:

- a series of occupancy agreement round tables conducted in 2017-18;
- a 2019 stakeholder consultation paper canvassing issues related to occupancy law reform;
- a public exposure draft of the Bill (tabled in the Legislative Assembly in late 2019 and open for comment for a 2-month period including through publication on the YourSay website);
- meetings with stakeholders in 2019 and 2020 about the public exposure draft of the Bill; and
- further consultation with university student accommodation stakeholders after introduction of the bill and prior to debate.

A range of feedback was provided, at all stages.

This included occupant and grantor feedback about frustration with a perceived lack of clarity in the definition of 'occupancy agreement' under the existing *Residential Tenancies Act 1997* (RTA).

Stakeholders advised that this lack of clarity had led to:

- situations where parties believed that they were entering into an occupancy agreement but subsequently had the ACT Civil and Administrative Tribunal (ACAT) find the agreement to be a tenancy agreement; and
- situations where accommodation providers had sought to have proposed additional terms for a tenancy agreement endorsed by ACAT only to have the proposed terms rejected on the basis that the arrangement was more akin to an occupancy agreement than a tenancy agreement.

There was strong feedback about the need for an improved definition of 'occupancy agreement', which more clearly differentiated occupancies from tenancies.



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

JACS No. 40

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The Amendment Act introduced an amended definition of an occupancy agreement which clearly sets out the circumstances in which occupancy agreement may be used (such as in the provision of crisis accommodation, where the agreement states that it is an occupancy agreement for the purposes of providing emergency accommodation). However, this amended definition does not compel accommodation providers who fall within a permissible category for occupancy agreements (such as providers of crisis accommodation) to use occupancy agreements. Accommodation providers are still able to use residential tenancy agreements should they so choose. The amended definition serves to clarify that, where the agreement made in a context permitted by the RTA states that it is an occupancy agreement, it will be an occupancy agreement.

These changes do not result in people who are tenants under existing tenancy agreements being worse off. The Amendment Act does not allow a landlord to convert an existing tenancy agreement into an occupancy agreement. Existing tenancy agreements can only be terminated in accordance with the termination provisions set out under the RTA.

In addition, the Amendment Act makes occupancy agreements subject to stronger minimum protections than had been the case.

Approved for circulation to the Standing Committee on Justice and Community Safety

Signature:

A handwritten signature in blue ink, appearing to read "Shane Rattenbury", is written over a blue circular stamp.

Date: 15/3/21

By the Attorney-General, Shane Rattenbury MLA