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Minister for Consumer Affairs

Minister for Water, Energy and Emissions Reduction

Minister for Gaming

Member for Kurrajong

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Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

C/O [scrutiny@parliament.act.gov.au](mailto:scrutiny@parliament.act.gov.au)

Dear Chair

I write to respond to the Committee's comments in [Scrutiny Report No. 25 of January 2023](#) (the Report) on the Residential Tenancies Legislation Amendment Bill 2022 (the Bill) ([Attachment A](#)) and the Explanatory Statement (**ES**) ([Attachment B](#)). I also write to advise the Committee that I propose to move Government amendments to the Bill when it is debated.

**Committee comments on the Bill**

*Comment on notice periods where a tenant is ineligible for ongoing housing assistance following temporary housing assistance*

The Report notes proposed section 2.5 of Schedule 2 of the Bill will introduce a temporary housing assistance termination clause which applies where the Housing Commissioner provides temporary housing assistance for a remaining resident after a former tenant dies or moves out, and then finds the person is ineligible for ongoing housing assistance. The Report notes the termination provision provides for different notice periods depending on whether the Housing Commissioner determines the tenant is not eligible for ongoing assistance during the period of temporary housing assistance or after the period has ended (26 weeks and 12 weeks respectively).

The Committee noted that where a decision on ongoing eligibility is made before the end of a temporary accommodation period, the tenant will receive 26 weeks' notice, but when the decision is made after the end of the temporary accommodation period, the tenant will only receive 12 weeks' notice.



Hence, a tenant in the former category will receive more notice than a tenant in the latter category. The Committee requested further information on whether it is possible to avoid differential treatment of tenants depending on when a decision is made on their ongoing eligibility, at least when that decision is made within 12 weeks before or after the end of the temporary accommodation period.

*Response to comment notice periods where a tenant is ineligible for ongoing housing assistance following temporary housing assistance*

It is acknowledged the 26-week and 12-week notice periods associated with the temporary housing assistance period may result in different outcomes for two similarly situated tenants who are found to be ineligible for housing assistance, where one tenant is found ineligible just before the end of the period of temporary housing assistance (who will receive a 26-week NTV) and another tenant who is found ineligible just after the end of a temporary housing assistance period (who will receive a 12-week NTV). This situation limits the right to equality before the law for the second tenant who will receive the significantly shorter notice period. However, the second shorter notice period is nonetheless considered a reasonable and proportionate limitation on the basis that:

- The individual will have already been notified (at the outset of the temporary housing assistance period) that their ability to stay in the property is temporary and contingent on them being assessed as eligible for ongoing assistance.
- The 12-week NTV provided after the end of housing assistance is additional time following the end of the temporary period of assistance that has already been provided to them.
- The individual was offered the temporary assistance on a compassionate basis outside of the usual allocations process, meaning they received a property allocation ahead of someone in the priority needs category. The shorter notice period therefore allows the Housing Commissioner to regain possession of the property sooner in order to make it available to a person who is eligible and is on the priority waiting list.
- It is anticipated that, in most cases, a decision as to eligibility will be able to be made during the temporary assistance period, and so the shorter 12 week notice period is likely to be activated in exceptional cases.
- The shorter notice period is also intended to avoid creating a significant incentive for the tenant to delay the provision of information to support the assessment of their eligibility in order to extend the period of time they can remain in the property.

The Government considered the option of providing a 26-week NTV period regardless of whether a decision as to eligibility is made during or after a period of temporary assistance. This option was not adopted as it undermines the purpose of providing temporary assistance, by unduly extending the period in which an ineligible person is able to remain in a public housing property.

The overall imperative of directing limited public housing to persons most in need must be considered. Providing a 26-week NTV following the end of a period of assistance that was only ever intended to be short term in nature has negative impacts on other vulnerable people.

It advantages a person in a breakdown of tenancy situation as compared to a person on the priority needs list awaiting the allocation of a property. Accordingly, allowing for a shorter 12-week NTV period following the end of a temporary assistance period is considered the least rights restrictive means of ensuring a period of temporary housing assistance is not unduly extended. Accordingly, the limitation on the right to equality imposed by the shorter notice period is considered reasonable and proportionate.

A Revised Explanatory Statement (**Revised ES**) has been prepared to provide additional human rights analysis in relation to this provision and is at [Attachment C](#).

*Comment on the limitation on the right to freedom of expression*

The Report noted the Bill introduces strict liability offences related to information that must or must not be included in advertisements for rental properties and the offences which limit the conduct of agents or owners in discussions with prospective tenants (by preventing them from soliciting rent bids). The Committee noted these offences may therefore limit the right to freedom of expression by limiting the things that lessors or agents can say or do. The Committee therefore recommended that, if the Explanatory Statement is otherwise amended, consideration be given to including a statement recognising the potential limitation of freedom of expression and incorporating a justification for why any such limit is reasonable.

*Response to comment on the limitation on the right to freedom of expression*

As a Revised ES was prepared to address the Committee's comments on the temporary housing assistance termination provision, the Revised ES also addresses the Committee's comments on the limit to the right to freedom of expression in the Bill.

I note there are also aspects of the Bill which *promote* the right to freedom of expression which were not previously addressed in the ES. The Bill introduces a new ground on which a proposed eviction may be considered retaliatory – that is, where the eviction occurs in response to a tenant publishing information, or disclosing information that was published, about the premises, the residential tenancy agreement or the lessor (see clauses 23 and 25 of the Bill). This new ground will provide tenants with protection from retaliatory eviction if they (for example) speak to the media or post statements on social media about their tenancy (provided their statements are not knowingly or recklessly false or misleading). This new protection promotes the right to freedom of expression as it provides a protection against retaliatory eviction in circumstances where a tenant publicly expresses an opinion related to their tenancy. This additional rights-promoting aspect of the Bill has now also been addressed in the Revised ES.

*Comments on other residential tenancy related matters*

I note the Report also made comment on the *Residential Tenancies Amendment Regulation 2022 (No 1)* and its Regulatory Impact Statement. I will respond to the Committee separately on those items.

## Government Amendments to the Bill

As noted above, I intend to move Government amendments to the Bill when it is debated. By way of background to the proposed Government's amendments (**the amendments**), the *Residential Tenancies Act 1997* (**the Act**) currently allows lessors to end a tenancy for 'no cause' by providing the tenant with 26 weeks' notice. Clause 43 of the Bill proposes to remove the 'no cause' termination provision from the Act.

The amendments include a transitional provision that would confirm the validity of any 'no cause' notices to vacate (**NTV**) issued before the commencement of clause 43 of the Bill in circumstances where the vacate date specified in the NTV falls after commencement.

The transitional provision is intended to preserve the operation of 'no cause' NTVs that are lawfully issued prior to the commencement of clause 43. This reflects the general position that members of the public are entitled to rely on the law, and exercise rights under the law, until such time as it changes. The transitional provision will avoid the retrospective invalidation of NTVs that were legally valid at the time of issue. It is intended to create certainty and clarity for parties to a tenancy agreement as to the status of NTVs issued before commencement, for the avoidance of doubt where the vacate date is after commencement.

The amendments also include an amendment to the commencement provision for the Bill so that the transitional provision will commence by way of Ministerial notice, consistently with clause 43. A copy of the amendments together with a Supplementary Explanatory Statement are at Attachments D and E respectively.

I note the proposed transitional provision will engage and may limit the right to privacy. The privacy implications of the transitional provision are addressed in the Supplementary Explanatory Statement. I also note both the ACT Human Rights Commission and the Human Rights Scrutiny team in the Justice and Community Safety Directorate were consulted about the amendments and are supportive of them.

Thank you for your consideration of these amendments and my response to your comments on the Bill.

Yours sincerely

Shane Rattenbury MLA  
Attorney-General

Encl.

**Attachments:**

Attachment A	Presentation Copy - Residential Tenancies Legislation Amendment Bill 2022
Attachment B	Presentation Copy - Explanatory Statement - Residential Tenancies Legislation Amendment Bill 2022
Attachment C	Revised Explanatory Statement - Residential Tenancies Legislation Amendment Bill 2022
Attachment D	Government Amendment - Residential Tenancies Legislation Amendment Bill 2022
Attachment E	Supplementary Explanatory Statement - Residential Tenancies Legislation Amendment Bill 2022