



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 Two**

JCSAR p199

- Are the amendments to the Residential Tenancies Act relating to the definition of 'occupancy agreements' going to be applied retrospectively? If so, how does the government intend to ensure that the cohort of people (the most vulnerable group of renters in the ACT) who may now face eviction because of loss of long-term tenancies do not face imminent homelessness?
- If the changes are retrospective, is the ACT Government aware that many long term tenants of community housing organisations will now be legally defined as occupants and will lose many of the protections they currently enjoy such as access to ACT Civil and Administrative Tribunal in the event of a threatened eviction?
- Noting that the new rules have not made it compulsory for granters to bring eviction matters to the ACT Civil and Administrative Tribunal or the Human Rights Commission, is the ACT Government prepared to amend the Residential Tenancies Act to ensure that people who have been in homes for periods longer than 3 months cannot now be summarily evicted without any form of hearing?
- How is it envisaged that the ACT Human Rights Commission will be involved in urgent eviction proceedings given the lack of power to make orders to preserve or terminate occupancies?

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

- **Are the amendments to the Residential Tenancies Act relating to the definition of 'occupancy agreements' going to be applied retrospectively? If so, how does the government intend to ensure that the cohort of people (the most vulnerable group of renters in the ACT) who may now face eviction because of loss of long-term tenancies do not face imminent homelessness?**

The amendments to the *Residential Tenancies Act 1997* (RTA) introduced by the *Residential Tenancies Amendment Act 2020 (No 2)* (the Amendment Act) relating to occupancy agreement do not apply retrospectively per se. However, the Amendment Act makes both new *and existing* occupancy agreements subject to stronger minimum protections, meaning that people living in accommodation provided under existing occupancy agreements benefit.

The Amendment Act does not create any ability for a landlord under an existing tenancy agreement to terminate the agreement and replace it with an occupancy agreement. Where a landlord wishes to



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

JACS No. 41

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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

terminate an existing tenancy agreement they must do so in accordance with an existing ground for termination under the RTA.

- If the changes are retrospective, is the ACT Government aware that many long term tenants of community housing organisations will now be legally defined as occupants and will lose many of the protections they currently enjoy such as access to ACT Civil and Administrative Tribunal in the event of a threatened eviction?

As noted above, these changes do not serve to convert existing tenancy agreements into occupancy agreements. The changes do not make long term residential tenants of community housing organisations subject to occupancy agreements and there is no reduction in rights or protections for residential tenants.

- Noting that the new rules have not made it compulsory for granters to bring eviction matters to the ACT Civil and Administrative Tribunal or the Human Rights Commission, is the ACT Government prepared to amend the Residential Tenancies Act to ensure that people who have been in homes for periods longer than 3 months cannot now be summarily evicted without any form of hearing?

No such amendment is currently proposed.

Even though it is not compulsory for grantors to bring eviction matters to the ACT Civil and Administrative Tribunal, the tribunal can hear applications in relation to occupancy disputes, including an application brought by an occupant to challenge a purported termination of their agreement by their grantor.

- How is it envisaged that the ACT Human Rights Commission will be involved in urgent eviction proceedings given the lack of power to make orders to preserve or terminate occupancies?

It is not envisaged that the ACT Human Rights Commission (HRC) will, necessarily, be involved in urgent eviction proceedings.

Where an occupant wishes to challenge the termination of their agreement, they may make an immediate application to ACAT.

The Amendment Act introduced an alternative dispute resolution pathway for occupants who wish to bring an occupancy dispute to the HRC for conciliation. This pathway offers a forum in which occupants can have a facilitated conversation with their grantor in relation to their occupancy agreement (for example, an occupant may disagree with an aspect of the house rules in their occupancy agreement and may wish to have a facilitated conversation with the grantor about how the rules could be amended). The Amendment Act also created a pathway for the HRC to refer occupancy dispute complaints to ACAT for determination.



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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 horizontal line.

Date: 15/3/21

By the Attorney-General, ~~Shane~~ Rattenbury MLA