Upcoming changes to the Residential Tenancies Act (RTA) 2024

On 9 April the ACT Attorney-General tabled thehttps://www.legislation.act.gov.au/b/db_69507/. The Bill covers a range of changes to different Acts and incorporates 60 amendments to the RTA, as well as other changes to the Unit Titles (Management Act) and the Housing Assistance Act. They are likely to commence in 6 months from the notification day, or an earlier date if proclaimed by the Attorney-General. The Bill was presented and passed on 26 June 2024.

A detailed overview of, and reasoning for, the changes can be found in the associated Explanatory Statement and Human Rights compatibility Statement - Part 8 Residential Tenancies Act 1997. (ES). A Supplementary Explanatory Statement was tabled on 26 June 2024. Additional amendments will be published shortly. The overview below does not include the June changes because they have not been published at date of writing. The Residential Tenancies Act page provides all legislation relevant to the Act, including the Explanatory Statements and Regulations.

The table below provides a sequential breakdown of the changes of significance in the Bill with reference to the specific sections, noting that some amendments are related only to renumbering and minor rewording and are not included. Comments are from the ES followed by notes by us.

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7. When does residential tenancy agreement start? A residential tenancy agreement starts on the earliest of the following days: a) the day stated in the agreement; b) the 1st day both parties have signed the agreement and received a copy signed by the other; c) the day the tenant takes possession of the premises; d) the 1st day the lessor receives rent from the tenant.	**Clause 41 New section 7(2)** ***Insert*** (2) However, a consecutive tenancy agreement starts on the day after the terminated residential tenancy agreement end	This Bill introduces the concept of a consecutive tenancy agreement. This clause clarifies when a consequential tenancy agreement begins. It provides that a consecutive tenancy agreement starts on the day after the terminated residential tenancy agreement ends. A residential tenancy agreement is a consecutive tenancy agreement if— (a) a residential tenancy agreement for the premises terminates or is terminated; and (b) 1 or more tenants under the terminated agreement continue to occupy the premises under a new residential tenancy agreement. ********************************* This new concept is the first of several changes addressing issues relating to shared housing agreements when not all co-tenants move out. Shared housing issues were first incorporated into the RTA in 2021, these changes deal with some outstanding issues arising from how landlords and agents have managed

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		changes in co-tenancies. They are a welcome change. Related clauses below 22 -Consecutive tenancy agreements It also applies to address a rent increase loophole for after short term tenancies (see clause 73 below).
8. Terms included in residential tenancy agreements: (1) A residential tenancy agreement for premises— a. is taken to contain the standard residential tenancy terms set out in schedule 1— i. for a fixed term agreement—as in force on the day the parties enter into the agreement; or ii. for a periodic agreement—as in force from time to time; and b. is taken to contain the public housing termination clauses if the lessor is the housing commissioner; and c. is taken to contain the temporary housing assistance termination clauses if— i. the lessor is the housing commissioner; and ii. the tenant is receiving temporary housing assistance for the premises; and d. is taken to contain the community housing provider termination clause if— i. the lessor is a registered community housing provider; and ii. the premises are owned by another person; and iii. the registered community housing provider leases the premises to the tenant under an agreement with the owner; and e. taken to contain the subsidised accommodation clauses if— i. either— A. the lessor or an entity acting on the lessor's behalf is a registered community housing provider; or	**Clause 42.** ***Omit Section 8 (1) (g)***	Section 8 of the RTA sets out when certain terms are included in a residential tenancy agreement. Generally, all tenancy agreements are taken to include the standard residential tenancy terms (**SRTTs**) in schedule 1 of the RTA. However, schedule 2 of the RTA contains SRTTs that are included in some, but not all tenancy agreements. Section 8 sets out when the schedule 2 SRTTs will be included in a tenancy agreement. At present, section 8 (1) (g) indicates the break lease fee clause will be included as a term of a tenancy agreement when the agreement is for a fixed term and both the lessor and tenant agree to its inclusion. **This Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements (see clause 90). As such, the break lease fee clause will be moved from schedule 2 to schedule 1 of the RTA. As the break lease fee clause will now form part of the SRTTs in Schedule 1 of the RTA, section 8 (1) (g) is no longer necessary and is omitted.** *********************************** This is an issue because it reflects a significant change incorporating what was a clause that was recognised as inconsistent with the standard terms. Break lease clauses were inconsistent because they involve a fee (or penalty) for terminating early rather than payment of compensation for losses. They were introduced into the Act as acceptable inconsistent terms after lessors argued it was common practice to include them. This was regardless of the fact that the terms were inherently unfair because they applied the fee without any reference

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B. the lessor or the owner of the premises receives government funding or assistance to provide the premises to the tenant; and ii. paragraphs (b) or (c) (ii) do not apply; and f. is taken to contain the posting termination clause if the lessor and tenant agree to the clause being included; and **g. is taken to contain the break lease fee clause if—** **i. the agreement is a fixed term agreement; and** **ii. the lessor and tenant agree to the clause being included; and** h. may contain any other term— i. that is consistent with the standard residential tenancy terms; or ii. that is inconsistent with a standard residential tenancy term if the term has been endorsed by the ACAT under section 10.		to the losses incurred by the lessor. A positive aspect of the break lease provision is that it continues to refer to compensation and is limited to reflect actual losses. This accurately demonstrates the problem with the ability in the ACT to contract out of the standard terms. Few jurisdictions allow contracting out of their RTAs. It was argued at the time that these clauses reflected bad practice and common usage was not a fair argument for allowing them. We have obviously lost this argument. Inconsistent clauses remain a problem in the ACT.
11A. Energy efficiency rating—advertising (1) A person commits an offence if— (a) the person publishes an advertisement for the lease of premises; and (b) the advertisement does not contain— (i) if there is an existing energy efficiency rating of the habitable part of the premises—a statement of the energy efficiency rating; or (ii) if there is no existing energy efficiency rating statement for the habitable part of the premises—a statement to that effect. (c) Maximum penalty: 5 penalty units. (2) Subsection (1) does not apply if the person has a reasonable excuse. (3) A person commits an offence if— (a) the person publishes an advertisement for the lease of premises; and	**Clause 44 *substitute*** **11A Advertising—required information** (1) A person commits an offence if— (a) the person publishes an advertisement for the lease of premises; and (b) the advertisement does not contain the required information. Maximum penalty: 5 penalty units. 2) Subsection (1) does not apply if the person has a reasonable excuse. Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58). 3) An offence against this section is a strict liability offence. 4) In this section: *adaptable housing dwelling*—see the Civil Law (Sale of Residential Property) Act 2003, dictionary.	This amendment consolidates existing sections and adds the ability for the Government to prescribe additional matters that must be disclosed when advertising a rental premises. Information asymmetry between tenants and lessors or agents when entering into a lease for a rental property can disadvantage tenants, who must rely on the information provided to them by lessors or agents when deciding to rent a property. Knowing certain information about the features of a rental property may be an important factor for a tenant when deciding whether to apply to rent a particular rental property. To address this power and information imbalance, disclosure of certain matters by lessors and agents when advertising a property for rent has been mandated. In recent years, when the Government has consulted on residential tenancy reforms, it has become apparent that there is a strong desire on the part of prospective tenants to have access to information about the rental premises that can help inform their decision about whether they wish to rent the premises being

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(b) the advertisement includes a statement of the energy efficiency rating of the habitable part of the premises; and (c) the statement is false or misleading. (d) Maximum penalty: 5 penalty units. (4) Subsection (3) does not apply if the person has a reasonable excuse. (5) Also, subsection (3) (c) does not apply if the statement is not false or misleading in a material particular. (6) An offence against this section is a strict liability offence.	*required information* means the following information: (a) if there is an existing energy efficiency rating of the habitable part of the premises—a statement of the energy efficiency rating; (b) if there is no existing energy efficiency rating of the habitable part of the premises—a statement to that effect; (c) if the premises are an adaptable housing dwelling—a statement that the premises are an adaptable housing dwelling; (d) if the premises are required to comply with the minimum housing standards—a statement about whether the premises comply; (e) if the premises are exempt from complying with a minimum housing standard—a statement that the premises are exempt; (f) anything else prescribed by regulation.	advertised. As such, it is anticipated that additional disclosure requirements may be identified in future. This regulation making power will support the government to respond quickly to add additional disclosure requirements as the need for them is identified in future. *********************** The new 11A makes it a strict liability offence for a person to publish an advertisement for a rental premises without the required information. It also provides that the offence will not apply if the person has a reasonable excuse. *********************** No issues identified with these changes. They are clarifying and improving the existing provisions. Of course, at a time of crisis availability of properties there is little real choice for people. That said these regulations establish good practice and mean that new tenants will be provided with useful information about the potential costs they will be facing. An outstanding question is who would take action in ACAT relating to this. The RTA provides that only parties to an agreement can make an application and these provisions relate to advertising prior to a tenancy commencing. Thai leaves it to a tenant to take action once they are in a tenancy, or perhaps a role for a Tenancy Ombudsman.
11AA. Certain special conditions must be advertised. A person commits an offence if— (a) the person publishes an advertisement for the lease of residential premises; and (b) the proposed residential tenancy agreement for the premises—	**Clause 45** ***Insert new*** **11AAB Advertising—false or misleading required information** (1) A person commits an offence if— (a) the person publishes an advertisement for the lease of premises; and (b) the advertisement includes the required information; and	This new section makes it a strict liability offence for a person who publishes an advertisement for a rental premises containing the required information to provide false or misleading required information. It also provides that the offence will not apply if the information is not false or misleading in a material particular. This provision allows the Government to prescribe additional required information by regulation and the same strict liability

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(i) contains a term endorsed by the ACAT under section 10 (Endorsement of inconsistent tenancy terms by ACAT); or (ii) requires the lessor's consent to keep an animal on the premises; and (c) the advertisement does not— (i) if paragraph (b) (i) applies—state that the term applies; and (ii) if paragraph (b) (ii) applies— A) state that consent is required; and B) if the lessor has prior approval from the ACAT under section 71AF to impose a condition on consent—state that a condition applies. Maximum penalty: 5 penalty units.	(c) the required information is false or misleading. Maximum penalty: 5 penalty units. (2) Subsection (1) does not apply if the person has a reasonable excuse. *Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) and s (3) (see Criminal Code, s 58). (3) Also, subsection (1) (c) does not apply if the information is not false or misleading in a material particular. (4) An offence against this section is a strict liability offence. (5) In this section: ***required information***—see section 11A (4).	offences will apply to the disclosure of that additional required information. To ensure that individuals are aware of their obligations (and so that those individuals are not inadvertently committing an offence due to a lack of awareness of the disclosure requirements), the Government will ensure that information is made available to the public at any time that new matters that must be disclosed are added to the regulation. ********************** This is more likely to be used by tenants because they are more likely to suffer losses if there is false information. Aside from that, the practicality of the commitment to ensure information is made available to the public is questioned. Recently the Government emailed tenants and landlords through the Office of Rental Bonds. This method of communication had not occurred for some time, with information being limited to contact with stakeholder groups (the vast majority being housing providers, agents and landlords). We hope that it will continue. We continue to recommend that ORB re-introduce a newsletter to ensure all people receive updates, not just agents and landlords.
12. Lessor's obligations (3) The lessor must provide the tenant with the following information: (a) the lessor's full name; (b) an address for service on the lessor and at which the lessor can be contacted by the tenant; (c) for the premises that are the subject of the proposed residential tenancy agreement—	**Clause 47** **New section 12 (3) (k) and (l)** (k) if the premises are a unit under the Unit Titles Act 2001— (i) a unit title rental certificate given to the lessor under the Unit Titles (Management) Act 2011, section 119; and (ii) any changed information in relation to a unit title rental certificate given to the lessor under	This clause amends section 12 (3) of the RTA to add to the information that the lessor must provide to the tenant at the point of entering into a lease. If the rental premises are a unit under the Unit Titles Act 2001, the lessor will now be required to disclose information contained in a "unit title rental certificate", as well as any changed information in relation to the unit title rental certificate that has been given to the lessor from the owner's corporation of the units plan.

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(i) a copy of an energy efficiency rating statement (if any) for the habitable part of the premises; or (ii) a copy of a fresh energy efficiency rating statement for the habitable part of the premises if— (A) building work under the *Building Act 2004*, section 6 has been carried out on the premises that affects the energy efficiency rating of the habitable part of the premises; and (B) before the building work was carried out, an energy efficiency rating statement had been prepared for the habitable part of the premises; (d) if the premises are crisis accommodation provided by a declared crisis accommodation provider—a statement explaining that the lessor can terminate the agreement on 4 weeks notice if the lessor needs the premises to use as crisis accommodation for someone other than the tenant; (e) if there is an asbestos assessment report for the premises and the lessor can obtain a copy of the report after taking reasonable steps—a copy of the report; (f) if there is no asbestos assessment report for the premises or the lessor cannot obtain the asbestos assessment report for the premises after taking reasonable steps—an asbestos advice for the premises; (g) a written statement that contains the following information: (i) if the premises are required to comply with a minimum housing standard (A) a statement about whether the premises comply; and (B) if the premises do not comply with the standard—the reason why the premises do not comply and the proposed compliance date that the premises must comply with the standard. (ii) if the premises are exempt from complying with a minimum housing standard—the reason for the exemption;	the Unit Titles (Management) Act 2011, section 119B; (l) any other information prescribed by regulation.	The concept of a unit title rental certificate will be introduced into the Unit Titles (Management) Act 2011 by this Bill (see clause 110). A unit title rental certificate will contain information about the unit or the common property of a units plan that the lessor is required to disclose to a tenant when entering a tenancy. Unit owners who want to rent out their unit will be able to request a unit title rental certificate from the owners corporation. They will then be required to disclose the information contained in the unit title rental certificate to their tenant when entering a lease. The Minister will be able to determine the matters that must be disclosed in a unit title rental certificate as well as set a maximum fee that a unit owner may be charged when requesting a certificate from the owners corporation. This clause also gives the Government the ability to prescribe by regulation additional matters that a lessor must disclose to a tenant at the point of entering into a lease. This will allow the Government to respond quickly if additional matters that require disclosure are identified in future. ************************ Sensible change ensures that tenants are supplied with relevant information that is often difficult for them to access.

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(h) if the tenant asks—a copy of any record required to be kept by the lessor in accordance with section 19C (Lessor must keep records about minimum housing standards); (i) if section 8 (1) (c) applies—a statement explaining that the lessor can terminate the agreement on 26 weeks notice if the tenant does not apply for ongoing housing assistance within 6 weeks after the start of the temporary housing assistance; (j) if section 8 (1) (e) applies—a copy of any subsidised accommodation eligibility requirements.		
22. Successive residential tenancy agreements If— (a) a bond is being held in relation to a residential tenancy agreement that terminates or is terminated (the ***first agreement***); and (b) 1 or more of the tenants under the first agreement continue to occupy the premises under a second successive residential tenancy agreement (the ***second agreement***); the lessor must not require or accept a bond in relation to the second agreement unless the bond in relation to the first agreement is the subject of an application for release under division 3.4 (Release of bond money).	**Clause 49 *Substitute*** **22 Consecutive tenancy agreements** (1) This section applies if— (a) a bond is being held in relation to a residential tenancy agreement that terminates or is terminated; and (b) 1 or more tenants under the terminated agreement continue to occupy the premises under a consecutive tenancy agreement. (2) The lessor must not require or accept a bond in relation to the consecutive tenancy agreement unless a bond release application has been made under division 3.4 (Release of bond money) in relation to the bond for the terminated agreement. (3) If a bond release application is not made under division 3.4 in relation to the bond for the terminated agreement, the bond held in relation to the agreement is taken to be a bond paid under the consecutive tenancy agreement.	Clauses 41, 49-56, 59-62, 73, 82-84, 93, 97 and 99 all insert amendments related to the concept of a consecutive tenancy agreement. The intention behind introducing the concept of a consecutive tenancy agreement is to clarify the legal requirements in relation to bond and condition reports where consecutive tenancy agreements (e.g., an initial 12-month fixed term tenancy followed by a second 12-month fixed term tenancy agreement) are entered into over the same rental premises. The concept of a consecutive tenancy agreement applies where at least 1 tenant in a tenancy agreement that is ending continues to occupy the premises under a consecutive agreement. It is not uncommon for tenants and lessors to agree to enter multiple fixed term tenancy agreements. Where a new fixed term is agreed to, a new tenancy agreement is created from a legal perspective. However, in practice, lessors and tenants may not always comply with the technical legal requirements associated with ending one tenancy and starting another, including conducting a final inspection, discharging the bond and then lodging a new bond and doing a new start of tenancy condition report. These legal requirements may be burdensome when the tenancy is continuing in practice. The changes in this Bill create more flexibility in the legal requirements associated with ending one tenancy agreement and starting a new one.

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		Sometimes when lessors and tenants agree to enter a new tenancy agreement, the parties to the agreement will change. For example, it is not uncommon in a share house context for some tenants to change while others continue. The existing co-tenancy provisions in Part 3A of the RTA create a legal framework for changing tenants. However, Part 3A operates where the tenancy agreement is ongoing despite the change in tenants. For a range of reasons, some lessors and tenants may prefer to mark the change of tenants by ending one tenancy agreement and starting a new one. The changes introduced by this Bill will help support that transition where at least one tenant in the tenancy is continuing from one tenancy over the premises to the next *********************** Sensible change providing clarity for resolving issues in share housing that have existed for many years. It is very important that these changes are communicated to all tenants.
29. Condition report—start of tenancy (1) A lessor must, not later than the day after the tenant takes possession of the premises, give the tenant 2 copies of a report about the state of repair or general condition of the premises, and of any goods leased with the premises, on the day the tenant is given the report. (2) A report under subsection (1) must be signed by the lessor. (3) The tenant must, within 2 weeks after receiving the copies of the report mentioned in subsection (1), return 1 copy to the lessor, either— (a) signed by the tenant; or (b) endorsed with a statement, signed by the tenant, indicating whether the tenant agrees or disagrees with the whole of the report or with specified parts of it. (4) If the tenant returns the copy signed but without further endorsement, the tenant is taken to have agreed with the whole of the report. (5) To remove any doubt, a condition report for premises may, but need not, contain a list of items at the premises, other than goods leased with the premises.	**Clause 50 *substitute*** (1) A lessor must, not later than the day after a tenant takes possession of the premises, give the tenant 2 copies of a report about the state of repair or general condition of the premises and of any goods leased with the premises (a ***condition report***) on the day the tenant is given the report. (2) A condition report must be signed by the lessor. (3) The tenant must, within 2 weeks after receiving the copies of the condition report, return 1 copy to the lessor, either— (a) signed by the tenant; or (b) endorsed with a statement, signed by the tenant, indicating whether the tenant agrees or disagrees with the whole of the report or with specified parts of it. 4) If the tenant returns the copy signed but without further endorsement, the tenant is taken to have agreed with the whole of the condition report. 5) However, for a consecutive tenancy agreement, the lessor and tenant need not comply with this	Clarifies that when a consecutive tenancy agreement begins, if there is already a condition report in relation to the premises from a previous tenancy agreement, the lessor may, but need not, do a start of tenancy condition report. *********************** This does not adequately address a serious ongoing problem in these circumstances where some agents and landlords consistently require all tenants to vacate the premises for a final inspection and new condition report. This is impractical and causes a great deal of unnecessary anxiety, work and often cost for the remaining tenant/s when they are required to remove and store all their belongings. While the new clause acknowledges the issue by stating it is not necessary it leaves the way open to continue the practice.

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	section if an original condition report or subsequent condition report exists for the premises. 6) To remove any doubt, a condition report for premises may, but need not, contain a list of items at the premises, other than goods leased with the premises.	There must be some reference to reasonable actions if a new report is to be created. It is possible for parties to work around remaining tenants' belongings in relation to final inspections.
Division 3.3 Condition of premises and deductions from bond **30 Evidence of condition of premises**	**Clause 52** ***Insert*** **30AA Evidence of condition of premises—consecutive tenancy agreement** (1) This section applies if a residential tenancy agreement is a consecutive tenancy agreement. (2) A statement in an original condition report for the premises under the consecutive tenancy agreement is evidence of the state of repair or general condition of the premises, and of any goods leased with the premises, on the day the tenant was given the report. (3) A statement in a subsequent condition report is evidence of the state of repair or general condition of the premises, and of any goods leased with the premises, on the day the condition report was signed by the tenant. (4) However, if a subsequent condition report is not signed by the tenant— (a) a statement in the report cannot be relied on as evidence of the state of repair or general condition of the premises, or of any goods leased with the premises; and (b) the state of repair or general condition of the premises, and of any goods leased with the premises, is taken to be as stated in— (i) if no subsequent condition report exists for the premises—the original condition report for the premises; or (ii) if 1 subsequent condition report exists for the premises—that report; or	This new section provides that, for a consecutive tenancy, where a condition report exists from a previous tenancy (an original condition report or a subsequent condition report) that report can be relied on as evidence of the condition of the property when the inspection was carried out. ************************ This is merely a restatement to ensure that the existing requirement applies to consecutive agreements.

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	(iii) if more than 1 subsequent condition report exists for the premises—the most recent report. (5) In this section: ***tenant***, for a consecutive tenancy agreement, includes— (a) a tenant under the agreement; or (b) a tenant, including a different tenant to the tenant mentioned in paragraph (a), under any terminated agreement for the premises.	
30A. Final inspection and condition report—end of tenancy (1) A lessor must, together with the tenant, carry out an inspection of the premises at the end of the residential tenancy agreement. (2) The lessor must, together with the tenant, complete and sign a condition report based on the inspection. (3) However, a party may complete and sign the condition report in the absence of the other party if the party has given the other party a reasonable opportunity to be present when the report is completed and signed.	**Clause 53 New section 30A(4)** *insert* (4) Also, the lessor and tenant need not comply with this section if at least 1 tenant under the residential tenancy agreement has agreed with the lessor to enter into a consecutive tenancy agreement for the premises.	Clarifies that where a tenancy agreement is ending and the lessor and at least 1 of the tenants under the current agreement have agreed to enter into a consecutive tenancy agreement, the lessor may, but need not, do a final condition report for the tenancy that is ending. ************************ As noted above in relation to new condition reports this change does not adequately address a serious ongoing problem where some agents and landlords consistently require all tenants to vacate the premises for an inspection even if there is a new agreement. This is impractical and causes a great deal of unnecessary anxiety, work and often cost for the remaining tenant/s when they are required to remove and store all their belongings. There must be some reference to reasonable actions if a final condition report is to be created. It is possible for parties to work around remaining tenants' belongings. The ACT Government factsheet assumes this but the regulation stops short of prohibiting unnecessary inspections.
34. Bond release application—lessor's obligations	**Clause 54 Bond release application—lessor's obligations new section 34 (4)** *insert*	Clarifies that where the lessor and at least 1 tenant enter a consecutive tenancy agreement, the lessor need not comply with

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(1) If a residential tenancy agreement is terminated, the lessor must give the tenant— (a) a bond release application form signed by the lessor; and (b) if the application includes a claim by the lessor for a deduction from the bond— (i) a written statement of the reasons for the deduction; and (ii) if the reasons include a reason mentioned in section 31 (a) or (b) (Deductions from bond)—a written estimate of the cost of the repairs or restoration. (2) The lessor must give the signed bond release application to the tenant— (a) if the application includes a claim for a deduction from the bond for a reason mentioned in section 31 (a) or (b)—10 working days after the day the residential tenancy agreement is terminated; and (b) in any other case—3 working days after the day the residential tenancy agreement is terminated. (3) If there are 1 or more co-tenants, the lessor's obligation under subsection (1) is satisfied if the lessor gives the bond release application form to 1 of the co-tenants.	(4) However, the lessor need not comply with this section if 1 or more tenants under the terminated agreement continue to occupy the premises under a consecutive tenancy agreement.	the requirement to give the tenant a bond release application form to the tenant for the previous tenancy agreement. ********************** As noted above in relation to new condition reports this change reflects the changes in relation to consecutive agreements. Since the bond stays with the Office of Rental Bonds and the tenants are required to sort out payment of shares and changing details with the ORB, the bond release application is not relevant. Note - the Office of Rental Bonds does provide information in relation to the current provisions relating to co-tenancies Rental bonds | ACT Revenue Office - Website
34F. Bond release application—discrepancy in named tenant (1) This section applies if— (a) a lessor or tenant makes a bond release application to the Territory in relation to a residential tenancy agreement; and (b) the name of a tenant in the bond release application does not match the name of the tenant that has been notified to the Territory under— (i) section 23 (3) (b) (Deposit of bond by lessor); or (ii) section 24 (1) (b) (Deposit of bond by tenant); or (iii) section 35B (2) (b) (Repayment of bond to leaving co-tenant); or	**Clause 55 Bond release application—discrepancy in named tenant** **New section 34F (1) (b) (iiia)** insert (iiia) section 35BA (2) (b) (Repayment of bond to former co-tenant—consecutive tenancy agreement); or **Clause 56 New section 34F (1) (b) (v)** insert (v) section 35FA (2) (b) (Payment of bond by new co-tenant—consecutive tenancy agreement).	Clauses 55 and 56 amend section 34F so that if there is a discrepancy about the tenants named in the bond release application in relation to the repayment of bond to a former co-tenant or the payment of bond by a new co-tenant under a consecutive tenancy agreement, the Territory may refer the bond release application to ACAT to determine to whom the bond should be paid. Clauses 57 and 58 add sections to include termination for family violence ********************** As noted above these changes reflect the consecutive tenancy and family violence provisions.

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(iv) section 35F (2) (b) (Payment of bond by new co-tenant). (2) The Territory may refer the bond release application to the ACAT. (3) If a bond release application is referred to the ACAT, the ACAT must— (a) decide who is entitled to receive the released bond; and (b) make an order directing the Territory to release the bond in accordance with the decision.		Communication of the changes is essential.
35B. Repayment of bond to the leaving co-tenant **This section applies if—** a) a co-tenant (the ***leaving co-tenant***) stops being a party to a residential tenancy agreement— A) under section 35A; or B) because of an ACAT order under section 35G (1) (a), (c) (ii) or (d); and b) a bond is held in relation to the agreement; and c) the leaving co-tenant paid some or all of the bond in relation to the agreement; and d) 1 or more of the remaining co-tenants continue to be a party to the agreement. 7) The remaining co-tenants must, not more than 14 days after the day the leaving co-tenant stops being a party to the residential tenancy agreement— a) pay to the leaving co-tenant an amount equal to the bond paid by the leaving co-tenant under the agreement; and b) notify the Territory that the leaving co-tenant has been paid under paragraph (a). 8) The remaining co-tenants may deduct from that amount— a) any portion of rent unpaid by the leaving co-tenant; and	**Clause 58 Repayment of bond to leaving co-tenant** **New section 35B (1) (a) (iii)** ***Insert*** (1) This section applies if— (a) premises are occupied under a consecutive tenancy agreement; and (b) a person (the ***former co-tenant***)— (i) was a party to the residential tenancy agreement that terminates or is terminated; but (ii) is not a party to the consecutive tenancy agreement; and (c) the former co-tenant paid some or all of the bond in relation to the terminated agreement; and (d) 1 or more of the remaining co-tenants under the terminated agreement are parties to the consecutive tenancy agreement. (2) The remaining co-tenants must, not more than 14 days after the day the consecutive tenancy agreement starts— (a) pay to the former co-tenant an amount equal to the share of the bond paid by the former co-tenant under the terminated agreement; and (b) notify the Territory that the former co-tenant has been paid under paragraph (a). (3) The remaining co-tenants may deduct from that amount— (a) any portion of rent unpaid by the former co-tenant; and	Provides for repayment of bond to a former tenant (who has left the tenancy agreement at the end of one tenancy) by the continuing tenants (less any deductions for rent arrears or damage). It also requires the continuing tenants to notify the Territory of a change of interest in the bond after paying out the former co-tenant. *********************** These changes do address long term problems arising out of changes in co-tenancies. The major issue for the Government is how to communicate all of them to tenants and landlords. All these changes are in the Act itself and many tenants (and some landlords and agents) are not aware of the standard terms, let alone the Act. We recommend the use of an ORB newsletter.

Current RTA Provisions	The changes in the Bill	Explanatory Statement Content & Shelter Comments
b) other reasonable costs in relation to the premises. **Example—reasonable costs** for damage caused to the premises by the leaving co-tenant 9) A leaving co-tenant is not entitled to payment of any other amount of the bond under the residential tenancy agreement. 10) Subsection (2) does not apply if the amount that may be deducted under subsection (3) is more than the amount of the bond paid by the leaving co-tenant. 11) A leaving co-tenant may apply to the ACAT for resolution of a dispute in relation to subsection (2) or (3) as a tenancy dispute even if the leaving co-tenant has stopped being a party to the residential tenancy agreement.	(b) other reasonable costs in relation to the premises. (4) A former co-tenant is not entitled to payment of any other amount of the bond under the terminated agreement. (5) Subsection (2) does not apply if the amount that may be deducted under subsection (3) is more than the amount of the bond paid by the former co-tenant. (6) A former co-tenant may apply to the ACAT for resolution of a dispute in relation to subsection (2) or (3) as a tenancy dispute even if the former co-tenant is not a party to the consecutive tenancy agreement. *Note* The ACAT may make orders requiring the payment of an amount to a person—see s 83 (1) (c).	
35C. Becoming a co-tenant under existing residential tenancy agreement—generally (1) This section applies if— (a) a tenant under a residential tenancy agreement (an existing tenant) wants another person (a new person) to become a co-tenant under the agreement; and (b) the premises are not a social housing dwelling or crisis accommodation. (2) To remove any doubt, this section does not apply to the grant by an existing tenant of a sub-tenancy or a bare licence to occupy the premises. Example—bare licence. Ollie is a tenant in a house under a residential tenancy agreement. Ollie's brother, Loki, is going overseas and needs a place to stay for 2 weeks. Ollie has said that Loki could stay in the spare room until he goes. (3) The new person may only become a co-tenant under the residential tenancy agreement— (a) if the existing tenant obtains the consent of the lessor and any other existing tenant; or (b) if the existing tenant makes an application to the ACAT under section 35D.	**Clause 60 Section 35C (7) (b)** ***substitute*** (7) (b) not later than the day after the new person becomes a co-tenant, the existing tenants must give the new person a copy of— (i) if the agreement is a consecutive tenancy agreement—the original condition report and any subsequent condition report for the premises; or (ii) in any other case—the condition report for the premises.	Amends existing section 35C to require that the existing tenants must give the new co-tenant a copy of the original condition report and any subsequent condition reports for the premises ************************ Issues as noted above regarding communication.

Current RTA Provisions	The changes in the Bill	Explanatory Statement Content & Shelter Comments
(4) For subsection (3) (a), the existing tenant must seek the consent of the lessor and any other existing tenant— (a) by notice in writing (the consent application); and (b) at least 14 days before the day it is proposed the new person will become a co-tenant under the residential tenancy agreement (the proposed joining day). (5) The lessor must— (a) not unreasonably refuse consent; and (b) if the lessor refuses consent—tell the existing tenant and the new person, in writing, the reason for refusing consent. (6) For subsection (3) (a), the lessor and any other existing tenant are taken to consent if they do not respond within 14 days after receiving the consent application. (7) If consent is given to the new person becoming a co-tenant under the residential tenancy agreement— (a) the agreement continues with the new person becoming a co-tenant with the existing tenants; and (b) the existing tenants must give the new person a copy of the condition report for the premises not later than the day after they become a co-tenant. (8) For subsection (7), the new person becomes a co-tenant on the proposed joining day or any other day agreed between the parties.		
35E Becoming a co-tenant under existing residential tenancy agreement—social housing dwelling and crisis accommodation 1) This section applies if the lessor and each tenant (the existing tenants) under a residential tenancy agreement in relation to a social housing dwelling or crisis accommodation consent to another person becoming a co-tenant under the agreement. 2) The residential tenancy agreement continues with the other person becoming a co-tenant with the existing tenants.	**Clause 61** *insert* **35EA Becoming a co-tenant at start of consecutive tenancy agreement** (1) This section applies if a person becomes a co-tenant under a consecutive tenancy agreement on the day the agreement starts. *Note* See s 35C for becoming a co-tenant at any time after the day the consecutive tenancy agreement starts. (2) The consecutive tenancy agreement starts with the person becoming a co-tenant with the existing tenants. (3) The existing tenants must give the other person a copy of the original condition report and any	Sets out what happens when a person joins a tenancy agreement when a consecutive tenancy agreement starts. When this occurs, the person becomes a co-tenant with the "existing tenants". In this context "existing tenants" refers to the continuing tenants from the previous tenancy agreement that just ended. Where a new person joins the tenancy, the existing tenants must give the new person a copy of the original condition report and any subsequent condition reports from the premises when the agreement starts. ************************ Issues as noted above regarding communication.

Current RTA Provisions	The changes in the Bill	Explanatory Statement Content & Shelter Comments
3) The existing tenants must give the other person a copy of the condition report for the premises not later than the day after they become a co-tenant. 4) For subsections (2) and (3), a person becomes a co-tenant on the day agreed between the parties.	subsequent condition report for the premises not later than the day after the day the agreement starts. (4) In this section: ***existing tenants***, in relation to a consecutive tenancy agreement, means 1 or more tenants under the terminated residential tenancy agreement for the premises	
35F. Payment of bond by new co-tenant (1) This section applies if— (a) a person (the ***new co-tenant***) becomes a new co-tenant under a residential tenancy agreement under section 35C, section 35D or section 35E; and (b) a bond is held in relation to the agreement; and (c) 1 or more of the other co-tenants (the ***other co-tenants***) continue to be a tenant under the agreement. (2) The new co-tenant must, not more than 14 days after the day they become a co-tenant under the residential tenancy agreement— (a) pay to the other co-tenants the new co-tenant's share of the bond under the agreement; and (b) notify the Territory that the new co-tenant has paid their share of the bond.	**Clause 62** ***insert*** **35FA Payment of bond by new co-tenant—consecutive tenancy agreement** (1) This section applies if— (a) a person (the ***new co-tenant***) becomes a co-tenant under a consecutive tenancy agreement; and (b) section 22 (3) applies to the bond in relation to the consecutive tenancy agreement. (2) The new co-tenant must, not more than 14 days after the day they become a co-tenant under the consecutive tenancy agreement— (a) pay to the other co-tenants the new co-tenant's share of the bond under the agreement; and (b) notify the Territory that the new co-tenant has paid their share of the bond	Provides for payment of bond to the existing tenants (i.e. the continuing tenants from the previous tenancy) by the new person who joins at the start of a consecutive tenancy agreement. This provision requires the new person to notify the Territory of a change of interest in the bond after paying their share of the bond to the existing co-tenants. If there is a dispute in relation to bond between the co-tenants, these provisions will allow the co-tenants to apply to ACAT for resolution of the dispute. ************************* Issues as noted above regarding communication.
36. Termination (1) Despite anything to the contrary in any territory law, a residential tenancy agreement must not terminate or be terminated other than in the following circumstances: a) if a fixed term agreement ends and the tenant vacates the premises on or after the end of the agreement; b) if 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; c) if a tenant terminates an agreement under section 46A because the tenant has accepted aged care or social housing accommodation;	**Clause 63** **Section 36 (1) (c) and (d)** ***substitute*** (c) if a tenant terminates the agreement and vacates the premises under section 46A because the tenant has accepted aged care or social housing accommodation; (d) if the agreement is a fixed term agreement—the tenant terminates the agreement and vacates the premises under section 46B because the lessor is offering the premises for sale; (da) if the ACAT terminates the agreement under division 4.3, division 4.4 or division 6.5A; (db) if a tenant terminates the agreement in accordance with division 4.3A;	This covers minor and technical amendments that clarify when a tenant may terminate a tenancy agreement under sections 46A and 46B (see clauses 65 and 66) and to the introduction of the new family violence termination provisions under new division 4.3A (see clause 67).

Current RTA Provisions	The changes in the Bill	Explanatory Statement Content & Shelter Comments
d) if the ACAT terminates an agreement under division 4.3, division 4.4 or division 6.5A; e) if the ACAT makes a termination and possession order in relation to the premises that are the subject of the agreement under division 4.4 , division 4.5, division 6.5 or division 6.5A; f) if the tenant abandons the premises that are the subject of the agreement; g) if a person takes action in accordance with section 64; h) if the tenant and lessor agree in writing to terminate the agreement and the tenant vacates the premises in accordance with the agreement to terminate; i) if the tenant and the lessor are the same person; j) if - i) a party to the agreement repudiates the agreement; and ii) the other party accepts the repudiation; and iii) the tenant vacates the premises; k) for crisis accommodation—if the lessor— i) gives the tenant 4 weeks notice to terminate the agreement; and ii) has given the tenant information about alternative accommodation; and iii) needs the premises to use as crisis accommodation for someone other than the tenant; l) if a party to the agreement terminates the agreement under section 64AA because the premises are affected residential premises; m) if a party to the agreement terminates the agreement under section 64AB because the premises are an eligible impacted property; n) if the agreement contains a posting termination clause—a party to the agreement terminates the agreement in accordance with the clause		
Division 4.3 Termination initiated by tenant	**Clause 65** **Section 46A (3) and (4) and note**	Current section 46A allows a tenant to end a fixed term tenancy agreement early where they have accepted a place in residential

Current RTA Provisions	The changes in the Bill	Explanatory Statement Content & Shelter Comments
46A Termination of agreement for aged care or social housing needs (1) This section applies if a tenant under a residential tenancy agreement accepts accommodation in— (a) a residential aged care facility; or (b) a social housing dwelling. (2) The tenant may, by written notice to the lessor, terminate the agreement. (3) The tenant must give the lessor at least 14 days notice of the termination. (4) The tenancy ends on the date stated in the notice.	***Substitute*** (3) The tenant must— (a) state the date the tenant intends to terminate the agreement; and (b) give the lessor at least 14 days notice. (4) If the tenant vacates the premises on or before the date stated in the notice, the agreement ends on the date stated in the notice. (4A) However, if the tenant does not vacate the premises on or before the date stated in the notice— (a) the notice is taken to be withdrawn; and (b) the agreement continues. (4B) The break lease fee clause does not apply if a fixed term agreement is terminated under this section.	aged care or social housing. The purpose of this provision is to support vulnerable people to transition to appropriate forms of accommodation to better support their needs. The intention of the provision is to prevent a person from being penalised for ending their agreement early in such circumstances. At present, clause 46A indicates that the tenancy will end on the day the tenant has stated in their notice. It also contains a note which indicates that where the tenant ends a fixed term agreement early using this provision, they are not liable to pay compensation. The note refers the reader to section 84 (which relates to compensation for early termination of a fixed term agreement)). This clause updates section 46A in two different ways. Firstly, it clarifies that for a tenant to end a tenancy by way of notice under this provision, they must vacate the tenancy on or before the day of their notice. It also indicates that if the tenant does not vacate in accordance with their notice, then the notice is taken to have been withdrawn and the tenancy will continue. If this occurs, and the tenant still wishes to leave, then they would need to either issue a new notice or agree a new tenancy end date with the lessor. The second change is to implement a consequential amendment to the amendments in clauses 90 and 91. As noted above, this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements. To do this, clause 91 omits the break lease fee clause from schedule 2 of the RTA and clause 90 inserts it as new SRTT 89A in schedule 1. As the break lease fee clause is now a mandatory part of all fixed term tenancy agreements, this clause clarifies that the break lease fee clause does not apply where a tenancy agreement has ended early because the tenant has accepted a place in social housing or aged care.
46B. Termination of fixed term agreements if premises for sale (1) This section applies in relation to a tenant of premises that are the subject of a fixed term agreement, if the lessor offers the premises for sale and—	**Clause 66 Section 46B (3) and (4) and note *substitute*** (3) The tenant must— (a) state the date the tenant intends to terminate the agreement; and (b) give the lessor at least 14 days notice.	Current section 46B allows a tenant to end a fixed term tenancy agreement early where the lessor offers the premises for sale and either: • the sale offer is made within the first 6 months of the agreement and the lessor did not disclose the intended sale before entering the agreement, or

Current RTA Provisions	The changes in the Bill	Explanatory Statement Content & Shelter Comments
(a) the sale offer is made within 6 months after the start of the agreement and the lessor did not disclose the intended sale before entering into the agreement; or (b) the lessor requires the tenant to permit access to the premises to allow inspections by a prospective buyer (a ***buyer inspection request***) and— (i) the lessor makes more than 1 buyer inspection request; and (ii) a subsequent buyer inspection request is made more than 8 weeks after the day the lessor made the first buyer inspection request. (2) The tenant may, by written notice to the lessor, terminate the agreement. (3) The tenant must give the lessor at least 14 days notice of the termination. (4) The tenancy ends on the date stated in the notice.	(4) If the tenant vacates the premises on or before the date stated in the notice, the agreement ends on the date stated in the notice. (5) However, if the tenant does not vacate the premises on or before the date stated in the notice— (a) the notice is taken to be withdrawn; and (b) the agreement continues. (6) The break lease fee clause does not apply if a fixed term agreement is terminated under this section.	• the process of sale is taking an extended period of time and the lessor has requested access to the premises for the purposes of allowing prospective buyers to inspect the premises and the inspection requests have been more than 8 weeks apart. The intention of section 46B is to prevent a tenant from being penalised for ending their agreement early when their quiet enjoyment of the property has been unduly disrupted by the sales process (either because they should have been advised that a sale may occur early in the fixed term period or because the sales process has become burdensome by taking longer than 8 weeks). Given this, the intention is that the tenant should not be penalised for ending the agreement early. This clause updates section 46B in two different ways. Firstly, it clarifies that for a tenant to end a tenancy by way of notice under this provision, they must vacate the tenancy on or before the day of their notice. It also indicates that if the tenant does not vacate in accordance with their notice, then the notice is taken to have been withdrawn and the tenancy will continue. If this occurs, and the tenant still wishes to leave, then they would need to either issue a new notice or agree a new tenancy end date with the lessor. The second change is to incorporate the break lease fee clause, a mandatory part of all fixed term tenancy agreements. ************************ The clarification of break lease fees not applying is essential.
Note - different formatting for this Division because there is no existing content in the RTA		
Clause 67 Insert **New division 4.3A** **46D Termination for family violence** (1) This section applies to a tenant under a residential tenancy agreement if— (a) the tenant, or a dependent child of the tenant, has experienced family violence; and (b) the tenant has not sublet the premises.		These new provisions are a vast improvement on the existing regulations Currently people must apply to ACAT using the significant hardship (s44RTA) or threats by lessor (s 45 and 454A RTA) provisions to terminate their tenancy agreement. They can also apply to ACAT seeking orders under s85A:

<table>
<tr><th>Current RTA Provisions</th><th>The changes in the Bill</th><th>Explanatory Statement Content & Shelter Comments</th></tr>
<tr><td colspan="2">
(2) Despite any other territory law, the tenant may terminate the agreement or, if the tenant is a co-tenant, stop being a party to the agreement, by—
(a) giving the lessor written notice that the tenant is vacating the premises because of family violence (a family violence termination notice); and
(b) vacating the premises in accordance with the notice.
(3) A family violence termination notice must—
(a) state the day the tenant intends to vacate the premises (the vacating day); and
(b) be accompanied by at least 1 of the following documents (a supporting document):
(i) a family violence order protecting the tenant or child;
(ii) an injunction made under the Family Law Act 1975 (Cwlth), section 68B or section 114 in relation to the tenant or child;
(iii) a competent person declaration relating to the tenant or child;
(iv) any other document prescribed by regulation.
(4) For subsection (3) (a), the vacating day must be on or after the day the tenant gives the notice to the lessor.
(5) The break lease fee clause does not apply if a fixed term agreement is terminated under this section.

Explanatory statement: Sets out the process for a tenant in a residential tenancy agreement to seek to terminate their residential tenancy agreement early, where either they, or their dependent child, have experienced family violence.
The provision clarifies that the new termination process does not apply where the tenant has sublet the premises. The Bill expressly excludes sub tenancies from the new rules, because if a head tenant experiencing family violence were permitted to immediately terminate their tenancy, this would automatically terminate at law the sub tenancy and amount to an eviction of the sub-tenant without notice. This would raise issues of compatibility with human rights.
A tenant may terminate the agreement by giving the lessor written notice that they are vacating the premises because of family violence (a family violence termination notice) and vacating the premises in accordance with the notice. A co-tenant may stop being a party to their agreement by doing the same.
The family violence termination notice must state the day the tenant or co-tenant intends to vacate the premises (the vacating day). The vacating day must be on or after the day the tenant gives the notice to the lessor.
The family violence termination notice must be accompanied by at least one of the listed documents.

It also confirms that the break lease fee clause does not apply to a residential tenancy agreement terminated because the tenant has experienced family violence.

46E. Sole tenancies—effect of serving family violence termination notice
If a sole tenant terminates a residential tenancy agreement in accordance with section 46D, the agreement is terminated on the vacating day stated in the family violence termination notice.
</td>
<td>
• terminating the existing residential tenancy agreement;
• terminating the existing residential tenancy agreement; and requiring the lessor to enter into a residential tenancy agreement with the protected person and any other person mentioned in the application;
• terminating a residential tenancy agreement or occupancy agreement and granting vacant possession of the relevant premises to the lessor.

Applications require protection orders under the Family Violence Act. The bar is very high, requiring the tenant to go to court. This does not recognise that many victims/survivors are fearful or do not have the resources to go to court. Additionally, the provisions require applications to ACAT. Another time consuming hurdle.

The changes reflect provisions in some other jurisdictions in relation to terminating without needing a protection order; they also provide that the tenant can terminate by giving notice, not needing to make a formal application to ACAT.

Importantly there is clarification that a lease break fee does not apply.

The new provisions go on to consider different types of tenancies and related issues.

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46E. Sole tenancies are the most straightforward because there are no other legal relationships.

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Current RTA Provisions	The changes in the Bill	Explanatory Statement Content & Shelter Comments
Explanatory statement: *Confirms that the legal effect of serving a family violence termination notice if the leaving tenant is a sole tenant is that the agreement is terminated on the vacating day stated in the notice. As noted above (new section 46D), the leaving tenant must vacate the premises in accordance with the notice.*		
46F. Co-tenancies—lessor to give notice to Territory and other co-tenants (1) This section applies if a co-tenant gives a family violence termination notice to the lessor for a residential tenancy agreement. (2) The lessor must, within 7 days after the vacating day stated in the family violence termination notice—(a) tell the Territory— (i) the name of the co-tenant; and (ii) that the lessor has received a family violence termination notice from the co-tenant; and (b) give each of the remaining co-tenants a notice (a ***notice of continuing tenancy***) about the matters mentioned in section 46G (2) to (5). (3) However, the lessor must not give any of the remaining co-tenants the notice of continuing tenancy until after— (a) the vacating day; and (b) telling the Territory about the matters mentioned in subsection (2) (a). (4) The lessor must not give any of the remaining co-tenants a supporting document for the family violence termination notice. **Explanatory statement:** *Is intended to provide flexibility for the remaining co-tenants to determine if they wish to stay in the property, noting that they will have assumed liability to cover the leaving co-tenant's share of the rent.* *If the remaining co-tenants wish to remain in the property, it would be open to them to use the co-tenancy rules in Part 3A to join a new person to the tenancy to replace the leaving tenant.* *It requires a lessor to notify the Territory and any remaining co-tenants that a co-tenant has given a family violence termination notice for their residential tenancy agreement.* *A lessor must, within seven days after the vacating day stated in the family violence termination notice, tell the Territory the name of the leaving co-tenant and that the lessor has received a family violence termination notice from them. A lessor must also, within seven days after the vacating day stated in the family violence termination notice, give each of the remaining co-tenants a notice of continuing tenancy outlining the details of the agreement.* *However, the lessor must not give the remaining co-tenants a notice of continuing vacancy until after the vacating day stated in the family violence termination notice, and after the lessor has notified the Territory of the family violence termination notice. This ensures the Territory receives information at least as early as the remaining co-tenants, to enable the Bonds Office to respond to any communication with sensitivity. The lessor must also not give the remaining co-tenants a supporting document for the family violence termination notice. This is intended to protect the safety and privacy of the leaving co-tenant.*		**46F.** Co-tenancies are complex due to the inherent nature of individual and shared relationships and responsibilities. This is why tenancy law has stayed away from regulating it for so long. It is commendable that the government has included it in these reforms. Many co-tenants as well as landlords, agents and other housing providers are not fully aware of even current protections and responsibilities. This is an area where effective communication and even training is essential. A matter for consideration is training for support service worker training. This provision recognises that a tenant must be able to move out of their home in these circumstances and not be bound by their ongoing responsibilities to the other tenants as well as the landlord. The requirement for the lessor to advise Territory needs clarification and the process must be clear and easy or it won't happen. This is a new obligation on lessors and it is essential that they play their role in these circumstances. The government must ensure this occurs. This includes awareness of the requirements regarding protecting safety and privacy. ************************

<table>
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<tr><td colspan="2">46G. Co-tenancies—effect of serving family violence termination notice
(1) This section applies if a co-tenant stops being a party to a residential tenancy agreement in accordance with section 46D.
(2) On the vacating day stated in the family violence termination notice—
(a) the co-tenant stops being a party to the agreement; and
(b) the co-tenant's rights and obligations under the agreement end.
(3) The residential tenancy agreement continues in force between the lessor and the remaining co-tenants on the same terms that existed on the vacating day (the continuing agreement).
(4) Any of the remaining co-tenants may terminate the continuing agreement for all remaining co-tenants by giving the lessor a notice to vacate—
(a) at least 3 weeks before the day they intend to vacate the premises; and
(b) if the agreement is a fixed term agreement—not later than 4 weeks after the day the notice of continuing tenancy is given to the co-tenants.
(5) The break lease fee clause does not apply if a fixed term agreement is terminated under this section.

Explanatory statement: Outlines the legal effects of a co-tenant serving a family violence termination notice. The leaving co-tenant stops being a party to the residential tenancy agreement on the vacating day stated in the family violence termination notice. On this day, their rights and obligations under the agreement come to an end. However, the residential tenancy agreement continues in force between the lessor and the remaining co-tenant(s) on the same terms in force on the vacating day (the continuing agreement). One or more of the remaining co-tenants may terminate the continuing agreement for all remaining co-tenants by giving the lessor a notice to vacate. 46G (4) outlines specific times for providing a notice to vacate. The notice to vacate must be given at least 3 weeks before the day they intend to vacate the premises. For a fixed term agreement, it must be given no later than 4 weeks after the day the notice of continuing tenancy is given to the tenants.</td><td>46G. This provides clarity in relation to the effect of the above notice. Importantly setting out that the applicant's rights and obligations end, also that the agreement remains in force and that any of the remaining co-tenants can terminate the agreement completely for all.

Once again, effective communication ensuring awareness is critical.

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<tr><td colspan="2">46H. Lessor not to require other information
If a lessor receives a family violence termination notice from a tenant, the lessor must not ask the tenant to give the lessor, or any other person acting for the lessor, any other information not already given as part of the notice.

Explanatory statement: If a lessor receives a family violence termination notice from a tenant, they must not ask (and their agent or other person acting on their behalf must not ask) for any other information which is not already given as a part of the notice. This is intended to prevent the tenant from having to justify or prove their experience of family violence if they have obtained one of the permissible forms of supporting document under new section 46D.</td><td>46H. This is a crucial element addressing a very likely scenario. Once again, effective communication ensuring awareness is critical.

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<tr><td colspan="2">46I. Competent person declaration
(1) A person (a competent person) may make a declaration stating that a tenant, or a dependent child of the tenant, has experienced family violence (a competent person declaration).</td><td>46I. This provision is very important as noted above, making steps to leave a tenancy much more accessible.</td></tr>
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(2) However, the competent person must not make a competent person declaration in relation to the tenant or child unless the tenant or child has previously consulted the competent person as part of the competent person's professional practice. (3) The declaration must include any information prescribed by regulation. (4) A regulation may prescribe a person, or a class of people, to be a competent person. (5) For subsection (1), a competent person may collect, hold, use or disclose personal information about a person who is or was— (a) a co-tenant of the tenant; or (b) a family member of the tenant or child. (6) In this section: ***family member***—see the *Family Violence Act 2016*, section 9. **Explanatory statement:** *Outlines the requirements for a competent person declaration, which is a form of evidence a tenant can use as a supporting document when serving their family violence termination notice.* *A competent person may make a declaration stating that a tenant or their dependent child has experienced family violence. This is known as a competent person declaration. The tenant or child must have previously consulted the competent person in their professional practice before the competent person may provide a competent person declaration.* *It provides that a regulation may prescribe a person, or a class of people, to be a competent person. The Government will consult further before prescribing competent people, for the purposes of this Division. Examples may include health practitioners, care and protection workers, people who work in organisations that are funded to provide services in relation to domestic violence or sexual assault or refuge or emergency accommodation, and people who work in Aboriginal community-controlled organisations.* *A competent person may need to use personal information about a tenant's co-tenant or family member when preparing a competent person declaration. New section 46I authorises a competent person to collect, hold, use or disclose personal information about a tenant's co-tenant or family member, for the purposes of preparing a competent person declaration.*		The details relating to development of the regulations are crucial and it is hoped that consultation will be timely and wide-ranging. ************************
46J. Offence—using or disclosing information in supporting documents without authorisation (1) A person commits an offence if— (a) the person uses, or discloses to someone else, any information contained in a supporting document for a family violence termination notice; and (b) the use or disclosure is not authorised or required under a law applying in Australia. Maximum penalty: 20 penalty units. (2) Subsection (1) does not apply if the use or disclosure— (a) is between 2 or more of the following: (i) the lessor; (ii) the lessor's agent; (iii) an employee of the lessor's agent;		**46J.** The introduction of an offence for these actions is welcomed and crucial to provide a disincentive.

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(iv) the Territory; or (b) is reasonably necessary to obtain legal advice from a lawyer. *Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58). (3) In this section: ***agent of*** a lessor—see section 87. **Explanatory statement:** *makes it an offence for a person to use or disclose any information contained in a supporting document for a family violence termination notice, other than in accordance with an Australian law.* *However, there are exceptions to the offence for the use or disclosure of information as between the lessor, their agent or an employee of their agent, the Territory, or a legal adviser.*		
46K. Supporting documents to be securely stored or destroyed (1) A person who has possession or control of a supporting document for a family violence termination notice must take all reasonable steps to ensure that the document— (a) if the document is to be used under a law applying in Australia—is securely stored; and (b) in any other case—is destroyed. (2) In this section: ***supporting document***, for a family violence termination notice, includes a copy of the document or part of the document. **Explanatory statement:** *requires any person who has possession or control of a supporting document for a family violence termination notice (including copies of a document or parts of the document) to take all reasonable steps to ensure the document is securely stored (if it is to be used under a law applying in Australia) and in, any other case, is destroyed.*		**46K.** This is useful and important. ***********************
46L. ACAT not to decide if family violence happens (1) This section applies if, in a proceeding before the ACAT, a question arises as to whether a notice given by a tenant is a family violence termination notice. (2) The ACAT— (a) may consider whether— (i) the notice contains the information required under section 46D; or (ii) a document accompanying the notice is a supporting document; but (b) must not consider— (i) whether the tenant, or a dependent child of the tenant, experienced family violence; or (ii) the tenant's belief as to whether they or their dependent child could safely continue to occupy the premises. **Explanatory statement:** *creates specific requirements for ACAT processes, where ACAT is asked to consider whether a notice given by a tenant is a family violence termination notice. ACAT may consider whether the notice contains the information required by section 46D, or whether a document accompanying the notice is a supporting document. However, ACAT must not consider whether the tenant or their dependent child experienced family violence, or the tenant's belief as to whether they could safely continue to occupy the premises.*		**46L.** This provision exists to clarify that it is not ACAT's role to make any determination about the actions relating to the need to move. It is clear that ACAT sought this clarification. ***********************

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This provision is intended to prevent ACAT from needing to 'look behind' the family violence termination notice and make findings about whether (and if so, what) violence has occurred. **46M. Offences—giving false or misleading information** (1) A person commits an offence if— (a) the person gives information to a competent person; and (b) the information is given to obtain a competent person declaration; and (c) the information is false or misleading in a material particular. Maximum penalty: 50 penalty units. (2) A person commits an offence if— (a) the person represents to another person that a document is a competent person declaration; and (b) the document is not a competent person declaration. Maximum penalty: 50 penalty units. **Explanatory statement:** *creates two new offences:* • *if a person gives information to a competent person for the purpose of creating a competent person declaration and the information is false or misleading in a material particular.* • *if a person makes a representation that a document is a competent person declaration, and the document is not a competent person declaration.* *The penalty is within the range of penalties for other offences in Territory laws concerning false or misleading information and is commensurate with the seriousness of a person seeking to misuse the new family violence termination regime.*		**46M.** Nothing to note in relation to this provision We do note that we defer to experts such as support services and Canberra Community Law in relation to these matters.
Division 4.7 Miscellaneous **64AA Termination—affected residential premises** (1) This section applies if premises that are the subject of a residential tenancy agreement are affected residential premises. *Note* ***Affected residential premises***—see the dictionary. (2) A party to the residential tenancy agreement may, by written notice to the other party, terminate the agreement. (3) If the tenant terminates the agreement, the tenant must give the lessor at least 2 days notice of the termination. (4) If the lessor terminates the agreement, the lessor must give the tenant at least 1 week's notice of the termination. (5) The tenancy ends on the date stated in the notice.	**Clause 70 Section 64AA (3) to (5)** *substitute* (3) If the tenant terminates the agreement, the tenant must— (a) state the date the tenant intends to terminate the agreement; and (b) give the lessor at least 2 days notice. (4) If the lessor terminates the agreement, the lessor must— (a) state the date the lessor intends to terminate the agreement; and (b) give the tenant at least 1 week's notice. (5) If the tenant vacates the premises on or before the date stated in the notice, the agreement ends on the date stated in the notice. (6) However— (a) if the tenant gives notice and does not vacate the premises on or before the date stated in the notice—	The purpose of this provision is to enable parties to end a tenancy early where loose-fill asbestos has been found in the property due to potential impacts on the tenant's health if they remain in the premises. The provision also prevents a tenant from being penalised for ending their agreement early under this clause. At present, clause 64AA indicates that the tenancy will end on the day the tenant has stated in their notice, however it does not contemplate what happens if the tenant does not vacate in accordance with the notice. This clause updates section 64AA in two different ways. Firstly, it clarifies that for the tenancy to end by way of notice under this provision, the tenant must vacate the tenancy on or before the day of their notice. It also indicates that if the tenant does not vacate in accordance with their notice, then the notice is taken to have been withdrawn and the tenancy will continue. If this occurs, and the tenant still wishes to leave, then they would need to either issue a new notice or agree a new tenancy end date with the lessor.

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	(i) the notice is taken to be withdrawn; and (ii) the agreement continues; or (b) if the lessor gives notice and the tenant does not vacate the premises on or before the date stated in the notice— (i) the notice remains in force; and (ii) the lessor may apply to the ACAT under section 55A for a termination and possession order in relation to the premises. (7) The break lease fee clause does not apply if a fixed term agreement is terminated under this section.	If it is the lessor who issues the notice, but the tenant does not move out in accordance with the notice, then section 64AA indicates that the notice remains in force and the lessor can apply to ACAT for a termination and possession order under section 55A. The second change is to implement a consequential amendment to the amendments in clauses 90 and 91. As noted above, this Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements. To do this clause 91 omits the break lease fee clause from schedule 2 of the RTA and clause 90 inserts it into the SRTTs in schedule 1 as new SRTT 89A. As the break lease fee clause is now a mandatory part of all fixed term tenancy agreements, this clause clarifies that the break lease fee clause does not apply where a tenancy agreement has been ended early because the premises has been affected by loose-fill asbestos. *********************** A useful provision for a small number of properties.
64AB. Termination—eligible impacted property (1) This section applies if premises that are the subject of a residential tenancy agreement are an eligible impacted property. (2) A party to the residential tenancy agreement may, by written notice to the other party, terminate the agreement. (3) The party terminating the agreement must give the other party at least 28 working days notice of the termination. (4) The tenancy ends on the date stated in the notice.	**Clause 71 Section 64AB (3) and (4)** ***substitute*** (3) The party terminating the agreement must (a) state the date the party intends to terminate the agreement; and (b) give the other party at least 28 working days notice. (4) If the tenant vacates the premises on or before the date stated in the notice, the agreement ends on the date stated in the notice. (5) However— (a) if the tenant gives notice and does not vacate the premises on or before the date stated in the notice— (i) the notice is taken to be withdrawn; and (ii) the agreement continues; or	The purpose of this provision is to allow parties to end a tenancy early where loose-fill asbestos may impact the property. The provision also prevents a tenant from being penalised for ending their agreement early under this clause. At present the clause indicates that the tenancy will end on the day the tenant has stated in their notice, however it does not contemplate what happens if the tenant does not vacate in accordance with the notice. This change clarifies that for the tenancy to end by way of notice under this provision the tenant must vacate the tenancy on or before the day of their notice. It also indicates that if the tenant does not vacate in accordance with their notice, then the notice is taken to have been withdrawn and the tenancy will continue. If this occurs, and the tenant still wishes to leave, then they would need to

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	(b) if the lessor gives notice and the tenant does not vacate the premises on or before the date stated in the notice— (i) the notice remains in force; and (ii) the lessor may apply to the ACAT under section 55B for a termination and possession order in relation to the premises. (6) The break lease fee clause does not apply if a fixed term agreement is terminated under this section	either issue a new notice or agree a new tenancy end date with the lessor. As the break lease fee clause is now a mandatory part of all fixed term tenancy agreements, this clause clarifies that the break lease fee clause does not apply where a tenancy agreement has been ended early because the premises is an eligible impacted property (affected by loose-fill asbestos). ************************ A useful provision for a small number of properties.
Part 5 Rental rate increases	Clause 71A insert 64AE Meaning of rental rate increase—pt 5 In this part: rental rate increase, for premises, means either of the following: a. an increase in the rental rate for the premises under a residential tenancy agreement (including an existing consecutive tenancy agreement); b. an increase in the rental rate for the premises that will take effect under a proposed consecutive tenancy agreement.	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), 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' . The insertion of this definition will ensure provisions operate uniformly across fixed-term and periodic tenancy agreements, including consecutive tenancy agreements.

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	Clause 73 substitute Pre-amendment fixed term agreements—increase in rent 1) (This section applies only in relation to a fixed term agreement entered into before the commencement of the Housing and Consumer Affairs Legislation Amendment Act 2024, section 76. 2) The rental rate under the agreement must not be increased during 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 across tenancy types in how rent increases are regulated, 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.**
64A Standard residential tenancy term—increase in rent Under a fixed term agreement 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.	**Clause 74 New sections 64AAA and 64AAB** *after section 64A, insert* **64AAA Limitation on rent increases—frequency** (1) A lessor must not increase the rental rate under a residential tenancy agreement unless the increase takes effect at least 12 months after— (a) for the first increase under the agreement—the day the residential tenancy agreement started; or (b) for a later increase under the agreement—the day the last increase in rental rate took effect. (2) However, for a consecutive tenancy agreement, the lessor may increase the rental rate only if the increase takes effect at least 12 months after the day the last increase in rental rate took effect, whether under the consecutive tenancy agreement or a terminated residential tenancy agreement.	**64AAA** amends the rules in relation to rent increases so that rent cannot be increased at intervals of less than 12 months, even where the parties enter a new fixed term tenancy agreement. Generally, the SRTTs prevent rent from increasing at intervals of less than 12 months (see SRTTs clause 35). However, there are currently two minor loopholes that could allow a lessor to increase the rent more frequently than 12 months. These are where: • the parties to the tenancy agreement seek ACAT endorsement of a term that is inconsistent with clause 35 and which allows rent increases to occur more regularly than at 12 months intervals; or • the lessor and tenant enter into a series of short-term tenancy agreements over the same premises (e.g. two agreements of 6 months' duration). In the first situation, lessors and tenants could potentially "contract out" of the prohibition on increases occurring at intervals of 12 months or more, by seeking an endorsed term which permitted increases more frequently. This is because the section 10 of the RTA currently allows parties to a tenancy agreement to apply for endorsement of a residential tenancy term that it is inconsistent with the SRTTs

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		In the second situation, the current rent increase rules do not apply where the lessor and tenant(s) agree to enter into a new tenancy agreement over the same premises. Where a new agreement is entered into, the rent can be increased from one agreement to the next. In circumstances where the lessor and tenant have a series of short-term tenancies over the same rental premises (e.g., a series of four 3-month, fixed term agreements) this could mean that the rent increases 4 times in a 12-month period. The new section works to close those loopholes. Firstly, by including the prohibition on increasing rent at intervals of less than 12 months in the main body of the RTA, this prevents parties from being able to contract out of this protection. Secondly, it will prevent rent increases at intervals of less than 12 months, even where the parties enter new short-term tenancy agreements over the same premises during that 12-month period. To implement this change, this provision draws on the concept of a consecutive tenancy agreement. It provides that a lessor may only increase the rent under a tenancy agreement if the rent increase takes effect 12 months after the tenancy began, or for a later increase, 12 months after the last rent increase took effect. It also clarifies that where the tenancy is a consecutive tenancy agreement, the lessor may only increase the rent it has been at least 12 months since the rent was increased under the previous tenancy agreement. This ensures that short-term tenancies of less than 12 months cannot be used as a means to circumvent the protection for tenants against having the rent increased at intervals of 12 months only. ************************ A useful provision in relation to timing and frequency of increases addressing the loopholes.
	64AAB Rent increases—housing commissioner (1) This section applies if the housing commissioner—	**64AAB** carries over the exemption for the housing commissioner that currently exists in clause 36 of the SRTTs into the main body

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	(a) is the lessor under a residential tenancy agreement (including a consecutive tenancy agreement); and (b) has decided to increase the rental rate after a review under the *Housing Assistance Act 2007*, section 23. (2) Despite section 64AAA, the housing commissioner may increase the rental rate under the residential tenancy agreement. (3) However, if a previous review of the rental rate has been undertaken, the increase under subsection (2) must not take effect earlier than 12 months after the day the last increase in rental rate took effect.	of the RTA (given that the prohibition on increasing rent at intervals of less than 12 months has also been brought across). This ensures the housing commissioner may conduct rent reviews under the Housing Assistance Act 2007 as required, whilst also protecting the tenant from having rent increases take effect at intervals of less than 12 months ********************************** Consistency for Housing ACT
64B. Limitation on rent increases (1) A lessor may increase the rental rate under a residential tenancy agreement by an amount that is more than the amount prescribed by regulation only if— (a) the residential tenancy agreement allows the lessor to increase the rental rate by the amount; or (b) after the lessor gives notice under subsection (2), the tenant agrees, in writing, to the increase; or (c) the lessor obtains the ACAT's prior approval. (2) For subsection (1) (b), the lessor must give the tenant a written notice stating (a) the day the proposed increase takes effect (being a day at least 8 weeks after the day the notice is given); and (b) the amount of the proposed increase; and (c) whether the amount of the proposed increase is more than the amount prescribed under subsection (1); and (d) if the proposed increase is more than the amount prescribed under subsection (1)—that if the tenant does not agree to the increase, the lessor may only make the proposed increase with the prior approval of the ACAT.	**Clause 75 Section 64B (1) (a)** ***substitute*** ***(1) A rental rate increase for premises must not be more than the amount prescribed by regulation unless—*** (a) ***for a fixed term agreement to which section 64A applies—the agreement allows the lessor to increase the rental rate by the higher amount; or***	This clarifies that parties can only include a provision to increase the rent by a specified amount in a fixed term agreement. This is to prevent parties agreeing to include a rent increase amount in a periodic tenancy (which could continue indefinitely and may, overtime, significantly disadvantage a party to the tenancy agreement). It clarifies that a lessor can increase the rental rate where their agreement provides for this 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. ********************************** The intention to prevent increases above the prescribed amount as noted above is useful.

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		The outstanding issue for rent increases remains - it still provides that a landlord can propose and amount above the prescribed amount. There have been many instances since the introduction of these limitations where a landlord proposes an amount above that prescribed and the tenant/s do not know or even feel they can refuse it. The same issue applies in relation to increases written into a fixed term agreement.
84. Notice of intention to vacate—award of compensation (1) If a lessor received a notice of intention to vacate before the end of a fixed term agreement, and the date nominated in the notice as the date when the tenant intends to vacate is a date before the end of the agreement, the lessor may— (a) accept the notice; or (b) if the agreement does not include a break lease fee clause, apply to the ACAT for compensation for— (i) the loss of the rent that the lessor would have received had the agreement continued to the end of its term; and (ii) the reasonable costs of advertising the premises for lease and of giving a right to occupy the premises to another person. (2) On application, the ACAT may award compensation of the kind mentioned in subsection (1) (b). (3) The amount of compensation the ACAT may award— (a) under subsection (1) (b) (i) must not be more than the lesser of the following: (i) 25 weeks rent; (ii) rent in relation to the unexpired part of the agreement; and (b) under subsection (1) (b) (ii) must not be more than 1 week's rent.	**Clause 80 New section 84 (5) (e) and (f)** *insert* e) section 46D (Termination for family violence); f) (f) section 46G (Co-tenancies—effect of serving family violence termination notice).	Currently section 84 of the RTA provides that, where a lessor receives a notice of intention to vacate before the end of a fixed term agreement, and the date nominated in the notice is before the end of the fixed term agreement, the landlord may apply to ACAT for compensation for lost rent and the costs of readvertising the property. This Bill makes the currently optional break lease fee clause a mandatory part of all fixed term tenancy agreements (see clause 90). Given this, section 84 will not be needed in future. However, given that some existing fixed term agreements may not contain the break lease fee clause, section 84 has been retained and amended (through this clause and clauses 79 to 81) to clarify that it applies only in relation to fixed term. Subsection 84 (5) provides that no compensation may be awarded to the lessor if the agreement is lawfully terminated under specified sections of the RTA. This clause inserts two new sections, section 46D (Termination for family violence) and 46F (Co-tenancies—effect of serving family violence termination notice) into subsection 84 (5). This means that where a tenancy is terminated because of family violence, the landlord will not be able to apply to ACAT for compensation for the early termination. ***********************************

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(4) In deciding the amount of compensation that may be awarded in relation to the reasonable costs of advertising, the ACAT must have regard to when, apart from the vacation of the premises— (a) the agreement would have ended; and (b) the lessor would have incurred the costs. (5) No compensation may be awarded to the lessor if the agreement is lawfully terminated under the following sections: (a) section 46A (Termination of agreement for aged care or social housing needs); (b) section 46B (Termination of fixed term agreements if premises for sale); (c) section 64AA (Termination—affected residential premises); (d) section 64AB (Termination—eligible impacted property). (6) In this section: break lease fee clause means the clause in schedule 2, section 2.1		The explanation above highlighting that s84 will no longer be needed demonstrates the loss to tenants due to the introduction of the now **mandatory** break lease fee into the standard terms. Currently s84 (and cl84 of the standard terms) provides that a tenant can serve notice and a landlord can accept that notice and that the tenancy will end without any further cost to the tenant/s. The onus is on the landlord to decide to take action and seek compensation. It is obviously anticipated that once the changes come into effect this will rarely occur. That said, the section does still provide that the landlord may accept the notice.
Schedule 1 Standard residential tenancy terms **Condition Report** 23 The lessor must keep the condition report for a period of not less than 1 year after the end of the tenancy.	**Clause 82** ***Substitute*** 22A However, for a consecutive tenancy agreement, the lessor and tenant need not comply with clause 21 and clause 22 if an original condition report or subsequent condition report exists for the premises (the meanings of consecutive tenancy agreement, original condition report and subsequent condition report are set out in the Residential Tenancies Act). 23(1) The lessor must keep the condition report for a period of not less than 12 months after the end of the tenancy. (2) However, if a condition report is not completed because of clause 22A, the lessor must keep the original condition report, and any subsequent condition report, for a period of not less than 12 months after the end of the consecutive tenancy agreement.	Clause 21 requires the lessor to give the tenant 2 copies of a condition report completed by the lessor within 1 day of the tenant taking possession of the premises. Clause 22 requires the tenant to examine the report and to indicate whether they agree or disagree with the report. It also requires that the tenant return a copy of the report to the lessor signed by the tenant indicating whether or not they agree with the report. Clause 23 currently requires the lessor to keep the condition report for at least a year after the tenancy has ended. This clause of the Bill amends the SRTTs to accommodate the concept of a consecutive tenancy agreement. It inserts new SRTT 22A which indicates that the lessor need not comply with clauses 21 and 22 if an original condition report or subsequent condition report exists for the premises. It also amends existing clause 23 to clarify that if a condition report is not completed because of 22A, the lessor must keep the original condition report and any subsequent condition report for a

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		period of not less than 12 months after the end of the consecutive tenancy agreement. ********************************** Clarification of situation for consecutive agreements.
End of tenancy—inspection and condition report 23A (1) At the end of the tenancy, an inspection of the premises must be carried out in the presence of the lessor and tenant. (2) A condition report based on the inspection must be completed in the presence of, and signed by, the lessor and tenant. (3) A party may complete and sign a condition report in the absence of the other party if the party has given the other party a reasonable opportunity to be present when the report is completed and signed.	**Clause 83 Schedule 1, new clause 23A (4)** ***insert*** (4) However, for a consecutive tenancy agreement, the lessor and tenant need not comply with subclauses (1) to (3) if an original condition report or subsequent condition report exists for the premises (the meanings of consecutive tenancy agreement, original condition report and subsequent condition report are set out in the Residential Tenancies Act).	Clause 23A requires the lessor and tenant to jointly inspect the premises at the end of the tenancy and to complete and sign a condition report. It also allows the parties to complete and sign the condition report without the other party being present if the other party was given a reasonable opportunity to be present when the report is completed and signed. This amends clause 23A to clarify that where there is a consecutive tenancy agreement, the lessor and tenants may, but need not, comply with the rest of clause 23A if there is an original condition report or a subsequent condition report for the premises. ********************************** The potential problems for tenants are already outlined above regarding s29 and the possibility of landlords and agents still requiring a vacant property for an inspection.
Increase in rent 35 The rent may not be increased at intervals of less than 12 months from either the beginning of the tenancy agreement for the first increase, or after that, from the date of the last increase.	**Clause 84** ***substitute*** 35(1) The rent may not be increased at intervals of less than 12 months from either the beginning of the tenancy agreement for the first increase, or after that, from the date the last increase took effect. (2) However, for a consecutive tenancy agreement, the rent may not be increased at intervals of less than 12 months from the date the last increase took effect, whether under the consecutive tenancy agreement or a terminated residential tenancy agreement (the meaning of consecutive tenancy agreement is set out in the Residential Tenancies Act).	This clause relates to the changes outlined in clause 73 above. Those changes are intended to close minor loopholes in the general rule that prevents rent increases from occurring at intervals of less than 12 months. One loophole is that the current rent increase rules do not apply where the lessor and tenant(s) agree to enter into a new tenancy agreement over the same premises. Where a new agreement is entered into, the rent can be increased from one agreement to the next. In circumstances where the lessor and tenant have a series of short-term tenancies over the same rental premises (e.g., a series of four 3-month, fixed term agreements) this could mean that the rent increases 4 times in a 12-month period. This clause prevents rent increases at intervals of less than 12 months, even where the parties enter new short-term tenancy

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		agreements over the same premises during that 12 month period. To implement this change, this provision draws on the concept of a consecutive tenancy agreement. It provides that where the tenancy is a consecutive tenancy agreement, the lessor may only increase the rent if it has been at least 12 months since the rent was increased under the previous tenancy agreement. This ensures that short-term tenancies of less than 12 months cannot be used as a means to circumvent the protection for tenants against having the rent increased at intervals more frequently than 12 months. *********************************** This change relating to the frequency of increases is positive. However, the issue with a landlord proposing any amount remains.
37 The restriction on increase in rent applies provided the identity of at least 1 of the tenants who occupy the premises remains the same as at the time of the last increase.	*substitute* 37. The restrictions on the amount and frequency of rental rate increases apply provided the identity of at least 1 of the tenants who occupy the premises remains the same as at the time of the last increase (the meaning of rental rate increase is set out in the Residential Tenancies Act)	This reflects the change in the Act 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. *********************************** This is important because the standard terms now clarify the restrictions and they are generally the only part of the law that tenants or landlords go to.
Review of excessive rent increases 38 The lessor must give the tenant 8 weeks written notice of intention to increase the rent and include in the notice the amount of the increase, and the date when it is proposed to increase the rent.	*substitute* 38 (1) The lessor must give the tenant 8 weeks written notice of an intended: (a) increase in the rent under a residential tenancy agreement (including an existing consecutive tenancy agreement); or (b) increase in the rent that will take effect under a proposed consecutive tenancy agreement. (2) The notice to the tenant must include the date when the increase is proposed to take effect, the amount of the proposed increase, whether the amount of the increase is more than the	38 is 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)**. *********************************** This is a significant change for the standard terms because they will now clarify if a tenant does not agree to an excessive increase the landlord must go to ACAT for

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	prescribed amount, and that ACAT's prior approval must be obtained for an increase that is more than the prescribed amount if the tenant does not agree to the increase.	approval. The change was included in the second round of amendments. The only matter that muddies this is that clause 39 goes on to refer to a tenant applying for a review of the increase. While it remains true it is very unlikely that a tenant would ever need to do this because the onus is clearly on the landlord to make the application.
Notice of intention to vacate by tenant 84 (1) If the tenant serves a notice of intention to vacate and vacates the premises in accordance with the notice, the tenancy terminates on the date of vacating the premises. (2) On receiving a notice of intention to vacate, the lessor may— a) accept the notice and accept that the tenancy ends on the date nominated in the notice; or b)apply to the tribunal for confirmation of the tenancy agreement, an order for compensation or both.	**Clause 87. *substitute*** 84 (1) If the tenant serves a notice of intention to vacate and vacates the premises on or before the date stated in the notice, the tenancy terminates on the date stated in the notice.	This clarifies that for a notice of intention to vacate given by a tenant to a lessor to have effect, the tenant must vacate the premises on or before the date stated in the notice. ********************************* This issue is discussed above. The clause will no longer provide that a landlord can accept the notice. While, the landlord can of course still do this under s36, the removal of this from the standard terms is concerning because few renters look to the RTA to clarify their rights. They will just go to the standard terms, if that.
85 The notice of intention to vacate must be in the same form and contain the same information as a notice to vacate from the lessor except the notice must contain the statement that the tenant intends to vacate the premises on a certain date and the tenancy terminates on that date	**Clause 89 *substitute*** 85(1) The notice of intention to vacate must be in writing, in the form required by the Residential Tenancies Act, and must include the following information: (a) the address of the premises; (b) the ground(s) on which the notice is issued, together with sufficient particulars to identify the circumstances giving rise to the ground(s); (c) the date the tenant intends to terminate the tenancy. (2) If the tenant vacates the premises on or before the date stated in the notice, the tenancy terminates on the date stated in the notice. (3) However, if the tenant does not vacate the premises on or before the date stated in the notice, the notice	This clause substitutes existing clause 85 to improve readability of the section and to clarify that for a notice to vacate to take effect, the tenant must vacate the premises on or before the date stated in the notice. It sets out the requirements for the notice of intention to vacate including that it must be in writing. It also confirms that if the tenant vacates the tenancy in accordance with the notice, the tenancy will end on the date stated in the notice. Finally, it indicates that if the tenant does not vacate the tenancy in accordance with the notice, the notice is taken to be withdrawn and the tenancy continues. If this occurs, and the tenant still wishes to leave, then they would need to either issue a new notice or agree a new tenancy end date with the lessor. *********************************

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	is taken to be withdrawn and the tenancy continues.	This change is sensible and makes the content of a notice clearer. The only outstanding issue is the somewhat common practice of using SMS for communication. A standard form would assist with this issue and ensure consistency and inclusion of all relevant details.
Termination of tenancy by tenant **Termination on or after end of fixed term** 89 (1) The tenant may give notice to terminate a fixed term tenancy at or after the end of the tenancy by giving 3 weeks notice of the date when the tenant intends to vacate the premises. (2) Tenancy ends on the date specified by the tenant.	**Clause 90** **Schedule 1, new clause 89A** ***insert*** **Termination before end of fixed term—fee for breaking lease** 89A (1) If a tenant ends a fixed term agreement before the end of the fixed term (other than for a reason provided for by the Residential Tenancies Act or the agreement), the lessor may require the tenant to pay a fee (a ***break fee***) of the following amount: (a) if the fixed term is 3 years or less— (i) if less than half of the fixed term has expired—6 weeks rent; or (ii) in any other case—4 weeks rent; (b) if the fixed term is more than 3 years—the amount agreed between the lessor and tenant. (2) If the lessor requires the tenant to pay the break fee, the lessor agrees to take reasonable steps to find a new tenant for the premises. (3) The lessor agrees that the compensation payable by the tenant for ending a fixed term agreement before the end of the fixed term— (a) is limited to the amount of the break fee specified in subclause (1); and (b) is not payable until the defined period after the tenant vacates the premises has ended. (4) However, the lessor and tenant agree that if, within the defined period after the tenant vacates the premises, the lessor enters into a residential tenancy agreement with a new tenant, the amount payable by the tenant is limited to—	This clause inserts the previously optional break lease fee clause into the SRTTs. This makes this provision a mandatory term of all ACT tenancy agreements. The new break lease fee clause inserted in SRTT 89A has been amended slightly from its current form, to improve its operation: ● to clarify that the lessor has the option not to charge the fee. ● places an obligation on the lessor to take reasonable steps to find a new tenant since it is reasonable to require the lessor to minimise any loss they may incur from the tenant breaking the lease. ● It clarifies that the fee is not payable until the end of the defined period, since the quantum of the fee payable depends on what happens in this period. This is because the break lease fee amount is reduced if the lessor enters into a tenancy agreement with a new tenant during the defined period. This means that until the defined period has passed, neither party can be certain of the amount of the break fee. This clarification about when the break fee is payable will assist in ensuring the correct amount of break fee is paid by the tenant. Lessors or agents may not lawfully insist on payment of the full free upfront by the tenant. The break lease fee clause has been amended to not apply in a range of circumstances in which a tenant may end a tenancy agreement early in which the Government has determined that the tenant should not be penalised for leaving the agreement early. Presently, the RTA provides that for these specified circumstances, no compensation is payable to the lessor for early termination,

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	(a) the amount of the break fee under subclause (1) less the amount of rent payable by the new tenant for the defined period; and (b) if the tenant vacates the premises more than 4 weeks before the end of the fixed term—the lessor's reasonable costs (not exceeding the defined cost limit) of advertising the premises for lease and of giving a right to occupy the premises to another person. (5) This clause does not apply to a residential tenancy agreement ended by the tenant under any of the following provisions of the Residential Tenancies Act: (a) section 46A; (b) section 46B ; (c) section 46D; (d) section 46G); (e) section 64AA ; (f) section 64AB. (6) In this clause: ***defined cost limit*** means— (a) if at least half of the fixed term has expired—an amount equal to $^{2}/3$ of 1 week's rent; or (b) if less than half of the fixed term has expired—an amount equal to 1 week's rent. ***defined period*** means— (a) if subclause (1) (a) (i) applies—6 weeks; or (b) if subclause (1) (a) (ii) applies—4 weeks; or (c) if subclause (1) (b) applies—N weeks. ***N*** is the number worked out as follows: $\frac{\text{break fee}}{\text{weekly rent payable at the time the tenant ends the agreement}}$	where existing Government policy is that the tenant should not be penalised for early termination. ********************************** The inclusion of the "break fee" in the standard terms has already been addressed above. It is disappointing that this practice is now standard and while the ES statement above notes that the landlord has the option not to charge the "fee" and the clause provides that the landlord "may require" the payment, in fact according to the explanatory terms, mandatory. This is more likely to be the practice as adopted by landlords and their agents and possibly other housing providers. It is very disappointing that while the new clause does refer to compensation, the language has not been changed to accurately reflect this. The use of the term "fee" rather than payment continues to support the long-held opinion that tenants should pay a penalty for terminating an agreement early. It would be preferable to refer only to a compensation payment. The inclusion of the limits on the compensation in relation to the requirement to seek a new tenant and that it is not immediately payable is positive. However, the language is quite dense and not accessible. An issue that is not addressed is that it is common practice for landlords and agents to claim these payments out of bond. It would be useful if this was addressed.