



Civil Law Team
ACT Justice and Community Safety Directorate
Via civilconsultation@act.gov.au

22 October 2021

Dear Civil Law Team

Submission to ACT Government consultation on improving residential tenancies

Thank you for the opportunity to present a submission in respect of consultation on the proposed changes to the *Residential Tenancies Act 1997* to ensure better protection for tenants in the ACT.

The enclosed submission primarily reflects the views of the President and Human Rights Commissioner, Dr Helen Watchirs OAM, and the Discrimination, Disability, Health and Community Services Commissioner, Ms Karen Toohey. This submission focuses solely on the removal of no cause terminations from the Act, and the proposed approach to enacting minimum rental standards in the ACT. We would be pleased to discuss the issues we have raised, including as part of any further ongoing consultation regarding the proposed reforms.

In preparing our submission to the present consultation, the Commission has benefited from the opportunity to consider the practical insights, views and recommendations of Canberra Community Law, which we are pleased to endorse as consistent with our own position.

Our submission should not be considered confidential; please be aware that we intend to make our feedback publicly available on our website at the time that it is provided to government.

Yours sincerely

Dr Helen Watchirs OAM
President and Human Rights Commissioner

Karen Toohey
Discrimination, Health Services, and Disability
and Community Services Commissioner

About the ACT Human Rights Commission

The ACT Human Rights Commission is an independent agency established by the *Human Rights Commission Act 2005* (HRC Act). Its main object is to promote the human rights and welfare of people in the ACT. The HRC Act became effective on 1 November 2006 and the Commission commenced operation on that date. Since 1 April 2016, a restructured Commission has included:

- The President and Human Rights Commissioner
- The Discrimination, Health Services, Disability and Community Services (DHSDCS) Commissioner
- The Public Advocate and Children and Young People Commissioner (PACYPC); and
- The Victims of Crime Commissioner (VOCC)

Changes to improve tenancy laws to strengthen rights and protections for tenants, including establishing minimum rental standards and ending no-cause evictions, engage several human rights protected in the ACT by the *Human Rights Act 2004* (HR Act). While the HR Act does not presently recognise a specific right to housing, a number of important human rights are engaged in the application of residential tenancy laws including, most relevantly, the:

- right to recognition and equality before the law, including the right to non-discrimination
- right to privacy (including not to have one's home unlawfully or arbitrarily interfered with)
- right to protection of families and children
- right to a fair hearing (including in determining housing matters);

The Commission accordingly has a broader interest in the operation of the *Residential Tenancies Act 1997* (RTA) insofar as it often relates to complaints received by the Commission, across a number of our jurisdictions. These include complaints alleging unlawful discrimination in the provision of accommodation or services (eg on the basis of race, disability, age, association, accommodation status, experience of domestic or family violence etc.) and complaints about disability services or services for older people. Such complaints have, for example, often concerned alleged discrimination in the proposed or actual termination of a tenancy or unsatisfactory conditions in rental properties and their disproportionate impacts on families with children, persons with disability and older Canberrans. From 3 March 2021, the Commission has also had jurisdiction to handle complaints about occupancy disputes under the RTA.¹

In particular, the uniform application of the RTA to both private and public lessors remains of special interest to the Commission. The Commission has long held concerns about whether the RTA pays sufficient attention to the different obligations that apply to private and public lessors and whether it is appropriate for the RTA to continue to treat public lessors in the same way as other lessors. As public authorities under the HR Act, public lessors are required to act consistently with human rights and properly consider relevant rights when making decisions, including about exercising a right of termination.² We note that some private providers of affordable housing options (for example, under HomeGround-type real estate models) may also qualify as functional public authorities for the purpose of the HR Act, although this has not yet been settled.

While it must not be assumed that tenants in the private market do not experience similar vulnerabilities to those accessing social housing, ACT Housing and other social housing providers in the ACT provide services to people with disabilities, single parents and families, older persons, people escaping family or personal violence, and those reliant on social support payments. Coupled with an undersupply of public housing stock and pressures of a highly competitive rental market in the ACT, it is imperative that proposed reforms contemplate and embed adequate and tailored safeguards for tenants who are accessing social housing and that accord scope to consider their personal circumstances and backgrounds.

¹ *Residential Tenancies Amendment Act 2020 (No 2)*.

² *Human Rights Act 2004*, s 40B.

Ending No Cause Evictions

Do you think no cause terminations should be removed from the Act?

The Commission welcomes the proposal to remove existing provision for a landlord to terminate a tenancy without cause. Ensuring that tenancies may only be terminated for defined reasons promotes greater security of tenure for both private and public tenants and, in this manner, better protects tenants' rights to privacy and home against arbitrary interference.

Though strongly supportive of this objective, we appreciate that supplementary grounds for termination will be necessary to accommodate other legitimate purposes for ending a tenancy that are not presently reflected in the RTA. Any new grounds must, however, be cautiously considered and narrowly circumscribed to their intended purpose so as to guard against their misuse by private or public lessors. It is further essential that any new grounds oblige a lessor to adduce sufficient evidence that satisfies the ACAT that the ground is enlivened. Whether a statutory declaration ought to be supplemented by additional documentary evidence, in our view, may most appropriately be determined by the ACT Civil and Administrative Tribunal (ACAT) on the facts of the individual matter. New grounds for termination ought to also retain a notice period of 26 weeks, noting the difficulty a vulnerable individual is liable to face in either contesting a notice of termination or finding alternative accommodation in the presently narrow affordable rental market.

Moreover, adequate and effective safeguards must be reflected to ensure lessors do not adopt more zealous or opportunistic approach to enforcing standard residential tenancy terms or failure to pay rent in the absence of an ability to terminate without cause. In this regard, consistency with the HR Act will, in our view, turn on the ACT Civil and Administrative Tribunal (ACAT) retaining a discretion to decline to grant a termination and possession order, including where existing grounds for termination are established.³

A proportionality test of general application across all grounds of termination, akin to that introduced by the Victorian Parliament in 2018, in our view, merits consideration and adoption. The *Residential Tenancies Act 1997* (Vic) authorises the Victorian Civil and Administrative Tribunal (VCAT) to make a possession order only where satisfied, among other things, that it is reasonable and proportionate to do so in the circumstances of the particular application.⁴ This determination involves consideration of the interests of, and impact on, the lessor, tenant and any other affected person (eg co-tenants, occupants, neighbours). Section 330A, in turn, outlines a series of considerations that VCAT must regard in determining whether making a possession order is reasonable and proportionate. These include:

- the nature, frequency and duration of the tenant's conduct and whether it constitutes a recurring breach of their obligations;
- whether the breach is trivial;
- whether the conduct of someone other than the tenant caused the breach;
- whether the tenant has applied for a family violence order, including whether an order is in force and, if so, whether it contains an exclusion condition, as well as any other relevant family or personal violence matter;
- the extent to which, as far as practicable, the breach has been remedied;
- the effect of the tenant's behaviour on other tenants or occupants;
- whether there is a reasonably available alternative order or approach to making a possession order;
- as the case requires it, the behaviour of the lessor; and

³ Recognised, for example, in *Commissioner for Social Housing v Jones* [2016] ACAT 75 (15 July 2016) at [11]-[13], *Commissioner for Social Housing v Cook* [2020] ACAT 36 (28 May 2020) at [23].

⁴ *Residential Tenancies Act 1997* (Vic), s 330(1)(f).

- any other matter the Tribunal considers relevant.⁵

The intent of these provisions, introduced to accompany the removal of no-cause terminations in Victoria,⁶ is to ensure that tenants are not evicted for trivial or easily remediable reasons.⁷ Such assessment provides a vital safeguard against disproportionate or overzealous enforcement of tenancy agreements and forced eviction of vulnerable or marginalised individuals, including people reliant on social housing for shelter, security and wellbeing.⁸

Despite the Victorian reforms (including ss 330 and 330A) having formally commenced on 29 March 2021, the reasonable and proportionate test was replicated in a temporary procedure for evictions passed by the Victorian Parliament in response to the COVID-19 pandemic in April 2020.⁹ Consequently, factual considerations that have since informed VCAT in assessing whether making a possession order would be reasonable and proportionate in the circumstances have included:

- relationship breakdown between the tenant and lessor.¹⁰
- the availability of other accommodation for the tenant.¹¹
- demand for accommodation by others in need.¹²
- for public housing, the lessor’s need to ensure it has revenue to fulfil its “role as a provider of well-maintained, safe and habitable public housing stock” and “the effect of significant amounts of unpaid rent on the lessor’s public housing operations”.¹³
- whether the lessor is in a particularly precarious position, such as in substantial debt,¹⁴ or living in temporary accommodation like a caravan park.¹⁵
- the impact of eviction on the tenant’s children.¹⁶
- in cases of damage or misconduct, whether the tenant has expressed remorse.¹⁷
- in cases of the lessor seeking to sell the property, whether the sale is motivated by purely economic considerations.¹⁸
- in cases of the lessor seeking to move in, whether the lessor owns a number of other properties.¹⁹
- whether the lessor ambushed the tenant or offered assistance and support.²⁰

It must be emphasised that a single factor, such as the lessor’s need to effectively manage public housing stock, would not alone justify termination, but would rather inform the Tribunal’s decision among other relevant considerations. Notwithstanding, these Victorian decisions emphasise the value of a ‘reasonable and proportionate’ test in directing the Tribunal’s attention to, among other factors, the human rights

⁵ Ibid, s 330A.

⁶ [Residential Tenancies Amendment Act 2018](#) (Vic).

⁷ Victorian Parliament, *Parliamentary Debates*, Legislative Assembly, [9 August 2018](#), 2736 (The Hon. Marlene Kairouz MP).

⁸ The Hon Justice Kevin Bell, ‘[Protecting public housing tenants in Australia from forced eviction: the fundamental importance of the human right to adequate housing and home](#)’ (2012) 39(1) *Monash University Law Review* 1.

⁹ *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic); *Residential Tenancies (COVID-19 Emergency Measures) Regulations 2020* (Vic).

¹⁰ *Towt Bros Pty Ltd v Clissold* [\[2020\] VCAT 1116](#), [42].

¹¹ Ibid

¹² Ibid.

¹³ *Director of Housing v Nguyen* [\[2020\] VCAT 1018](#).

¹⁴ *Reich v Power* [\[2020\] VCAT 1232](#).

¹⁵ *Struth v Thwaites* [\[2020\] VCAT 788](#).

¹⁶ *LVM v Salvation Army* [\[2020\] VCAT 1209](#).

¹⁷ Ibid.

¹⁸ *Phan v Gunaraathna* [\[2020\] VCAT 1185](#).

¹⁹ *Mikho v Burgess* [\[2020\] VCAT 691](#); *Rizio v XEP* [\[2020\] VCAT 882](#).

²⁰ Above 16, at [28]-[30].

implications of a decision to terminate without constraining its existing discretion to consider such matters.²¹ In this regard, we submit that the insertion of additional new provisions modelled on ss 330 and 330A of the Victorian legislation would significantly contribute to the proposed reforms' aims of strengthening tenant's rights in the ACT. Enabling further consideration of proportionality in respect of private proprietary interests would not set a new precedent for the ACT. In this regard, the *Unit Titles (Management) Act 2005* already presently requires owners corporations to consider the human rights of residents when establishing alternative rules for their respective premises.²² To this end, we note that international human rights law recognises a duty on States to prevent arbitrary interference with human rights by third parties.

By way of example addressing the need for such provisions in the ACT, the Commission has previously expressed concern about terminations of tenancy without cause by public housing providers in response to a tenant's incarceration at the Alexander Maconochie Centre. In particular, use of s 47(1) of the RTA, enabling terminations without cause, by public housing providers may amount to a breach of public authority duties under the HR Act in circumstances where (i) the tenant has a high likelihood of imminent release from incarceration (eg on remand, shortly eligible for parole); (ii) the tenant has an exceptionally high level of vulnerability; or (iii) children are involved or affected.²³

In respect of the proposed new grounds of termination articulated in the consultation paper, including 'effective management of social housing stock' and 'loss of eligibility for accommodation assistance' the Commission is pleased to endorse the views and recommendations of Canberra Community Law.²⁴

Termination at the end of a fixed term tenancy

It is not, in our view, clear that retaining scope for a lessor to end a fixed-term tenancy without reason will support the intent of the proposed reforms. In practice, the Commission anticipates that lessors may adopt a precautionary approach to ending fixed term agreements in order to avoid the need to later establish a ground of termination under Division 4.4 of the RTA. Such an approach would also serve to enable a lessor to increase the rental rate for the premises beyond that prescribed in regulation without risking disallowance by the ACAT under Part 5 of the RTA. In this regard, we are concerned that preserving the potential for no cause terminations of fixed term agreements may be counterintuitive to increased security of tenure for tenants and, in some cases, authorise arbitrary limitations of tenant's rights, including to privacy and home.

Under the Victorian legislation, the only situation in which a residential tenancy may be ended without a specified reason is at the end of the initial term of a fixed term tenancy agreement.²⁵ In such circumstances the lessor may terminate the agreement by providing notice either 60 or 90 days before the end of its fixed term, depending on the length of the agreement. Such notices will not, however, have effect insofar as giving of the notice would constitute direct discrimination within the meaning of the *Equal Opportunity Act 2010* (Vic)²⁶ or if given in response to the exercise, or proposed exercise, by the tenant of a right under the Act.²⁷

Should the ACT Government elect to retain scope for lessors to terminate fixed term leases, the Commission recommends that this be restricted to a first term only or, at a minimum, that lessors be obliged to provide reasons for termination at the end of a second or subsequent fixed term lease, as is presently required in Victoria.²⁸ In addition, we recall our recommendation that all grounds of termination must be subject to a 'reasonable and proportionate' test, akin to that which applies in Victoria, and further recommend that any

²¹ Above 4 (Jones, Cook).

²² *Unit Titles (Management) Act 2005*, s 108(3)(c).

²³ *Commissioner for Social Housing v Kennedy* (Residential Tenancies) [2018] ACAT 22 at [71].

²⁴ Canberra Community Law, *Submission to Consultation Paper: Ending no Cause Evictions and Other Measures – Proposed Reforms to the Residential Tenancies Act 1997 (ACT)* (October 2021), 4-11; 13-20.

²⁵ *Residential Tenancies Act 1997* (Vic), s 91ZZD.

²⁶ *Ibid*, s 91ZZI(2).

²⁷ *Ibid*, s 91ZZI(4).

²⁸ *Ibid*, s 365A.

provision for termination of a fixed term lease also be subject to this requirement. However, as above, the Commission's broad view is that fixed term terminations without cause should not be retained.

Minimum Standards

The Commission supports the introduction of a regulation-making power to prescribe minimum standards for residential tenancies in the ACT. Between 1 July 2019 and 30 June 2021, the Commission received 52 complaints regarding public, social and private rental properties. These raised a diverse range of issues, including:

- mould and damp in habitable areas and with significant water leaks and plumbing problems;
- delays in maintenance and modifications related to adjustments for disability;
- delays in installing air conditioning, insecure property due to locks not being fixed or inadequate fitting of security doors and window screens;
- delays in property transfers required due to family violence issues; and
- inadequate maintenance affecting property egress, for example repairs to driveways and stairs causing significant risk to the tenant accessing the property.

The following case studies are based on enquiries and complaints received by the Commission and illustrate the experiences of tenants living in poor housing conditions.

Case study 1 – Black mould

An advocate for an older person residing in public housing contacted the Commission to complain about the person's lessor having failed to address extensive damp and black mould issues at the premises. The older person had been hospitalised with a serious fungal lung infection, which they allege was caused by the black mould. The complainant asserted that the older person had been living with black mould for many years and had, during that time, made multiple requests to the lessor to rectify the problem.

Case study 2 – Black mould

A person residing in public housing contacted the Commission to seek urgent assistance with a transfer request. As the complainant had needed housing, they had moved into the premises despite knowing it was covered in black mould. The complainant said that their housing provider had informed them they would be required to clean it. After moving in and cleaning the black mould, the complainant realised that there was no ventilation in the bathroom, leading to significant moisture build-up and mould. The complainant also discovered a rodent infestation, which had led to a build-up of faecal matter in the wall of the bathroom. Within five months of residing at the premises the complainant's health deteriorated to the point where they were throwing up large amounts of blood. Their mental health was also significantly adversely affected. The Commission worked with the complainant to assist and expediate the tenant's transfer to other social housing premises. Following the transfer, the complainant's housing worker acknowledged the premises were unfit for habitation and that the complainant should not have moved into them in the first place.

Case study 3 – Weatherproof

A person living in public housing contacted the Commission to seek assistance with ongoing maintenance issues affecting their premises. The complainant had made multiple requests to ACT Housing to undertake urgent repairs to the roof. The complainant was unable to sleep in any of the bedrooms in the property due to the damp and mould and was sleeping and living in the lounge room. Video footage provided to the Commission revealed a significant amount of water flowing into the premises during a period of rain. Delay on the part of ACT Housing in weatherproofing the premises adversely affected the complainant's mental health and quality of life.

Case study 4 – Delayed maintenance

A woman contacted the Commission regarding concerns about her parents' rental property. As her parents were of Chinese national origin, English was not their preferred language for communication and so she was listed as the contact for their rental property. The property was affected by significant weather damage with part of the ceiling drooping and significant amounts of water leaking through the ceiling whenever it rained. This made one bedroom of the premises uninhabitable and caused water damage to carpets and property, presenting a trip risk and source of mould. Both parents were elderly with cardiac and respiratory concerns. The Commission received video footage of the water damage and the water falling through the roof during rain. The woman was concerned for her parents' health noting delays in repairs, and the multiple requests from maintenance staff to attend the property to inspect the damage without the work being completed.

Case study 5 – Child safety concerns

A woman contacted the Commission about concerns regarding an apartment she rented. The apartment was on the second storey of a unit complex. Some windows had fly screens and could be opened but windows in the bedrooms, lounge room and bathroom did not have screens. The woman had two children and was concerned about their safety were the windows ever opened. Being unable, in effect, to open the windows reduced air circulation and increased the temperature in the unit. The landlord had advised at the time she leased the property that the screens would be replaced but had not done so.

What minimum standards relating to physical accessibility, safety and security, sanitation and amenity should be implemented as a priority in the ACT? How prescriptive should the standards be?

Minimum standards for rental premises would target these types of housing deficiencies and particularly benefit low-income and vulnerable tenants with limited bargaining power. Moreover, prescribing minimum standards covering physical accessibility, safety and security, sanitation and amenity would assist to reduce the social, health and economic disadvantage arising from poor housing. Low-income and vulnerable households are more likely to live in poor-quality rental accommodation and this cohort will particularly benefit from improvements to housing standards.

The Commission supports the introduction of *prescriptive* minimum standards along the lines of the Victorian model, to be contrasted with the model in operation in New South Wales. Prescriptive minimum standards would offer a clear guide as to what is required to ensure compliance and provide often vulnerable tenants with a more meaningful tool to assert their rights in the event of a breach of those standards.

The Commission recommends the following minimum standards be implemented as a matter of priority (mainly reflecting a combination of those already in Victorian, Tasmanian, and South Australian residential tenancy legislation):²⁹

- all external entry doors, excluding screen doors, must have a functioning deadlock or locks that can be unlocked with a key from the outside and unlocked without a key from the inside
- all premises must be fitted with an external light
- the premises must have a functioning toilet connected to an appropriate sewerage/wastewater treatment system. The toilet must be in a private room intended to be used as a toilet area either separately or in a bathroom or laundry
- the premises must have a bathroom that has a supply of cold and hot water, has a washbasin, and has a shower or a bath

²⁹ See *Residential Tenancies Regulations 2021* S.R. No. 3/2021 (Vic) Schedule 4; *Housing Improvement Regulations 2017* (SA) Part 3; *Residential Tenancy Act 1997* (Tas) Part 3B.

- the premises must have a dedicated area for cooking and food preparation. It must have a sink that has cold and hot water supply and a cooktop with two or more burners. If there is an oven it must be in working order
- the premises must have a sufficient and continuously available supply of electricity. All power outlets and lighting circuits must be connected to a switchboard type circuit breaker and residual current device and gas installation (if applicable) must be compliant
- if there is a laundry, it must have a reasonable supply of cold and hot water
- the premises must be weatherproof, draught proof and structurally sound
- the premises must be free from mould and damp caused by the building structure
- all external windows that can be opened must have functioning latches and be able to be set in a closed or open position
- interior rooms, corridors and hallways should have access to sufficient light and all habitable rooms must have access to sufficient natural light during the day and artificial light during the evening
- the premises must have adequate ventilation in all rooms that meets the Building Code of Australia standard (for all rental properties, not just new builds or renovated properties)
- residential premises meet fire safety standards
- residential premises must be free from materials or substances that pose a material or serious risk of harm
- the premises must be maintained to prevent the infestation of vermin and contain a vermin proof rubbish and recycling bin that meets regulatory standards
- the grounds of the residential premises must be effectively drained
- the residential premises must provide reasonably free and unimpeded access to and from the premises
- the premises be fit with a heater in the living area to a reasonable minimum level for the area it is heating. The heater must also meet energy efficient standards
- premises be fit with air conditioning in the living/lounge room given the health and economic risks associated with high heat in the ACT; and
- the premises must have curtains or blinds covering each window in the bedrooms and living/lounge room.

In January 2020 the Commission was contacted by a number of tenants in public and private rental properties regarding excessive heat. Due to the age and construction of some of the properties that were not insulated, internal temperatures were measured at 45 - 50 degrees as the property heated up over the day. A number of the tenants with children had spent periods of time in hotels due to the excessive heat. In some cases tenants had offered to co-fund fixed air conditioning systems but these proposals were rejected by the landlord. With increased occurrences of high temperatures in the ACT consideration should be given to arrangements where the landlord refuses to make reasonable adjustments for the tenant to make those modifications without penalty or to enable the tenant to break the lease without penalty where a property effectively becomes uninhabitable.

How much time should landlords be allowed to implement the minimum standards? What would be the optimal transition period for some or all minimum standards?

The Commission strongly supports the application of all minimum standards to residential tenancies in the ACT no matter their start date (unlike Victoria where some of the minimum standards do not apply to

properties subject to a tenancy agreement that commenced prior to 29 March 2021). That said, the Commission recognises the cost to landlords in implementing the full suite of minimum standards and accordingly recommends a staged implementation process for standards. The time allowed for implementation ought to reflect the likely cost and difficulty of compliance with required standards. A staged implementation may also mitigate the risk of landlords passing some of the costs to tenants by way of rent increases.

The Commission recognises that some properties may require significant structural and building works to meet the required standards, and this may particularly be the case for some social housing properties. Any disruption to a person's tenancy in this regard ought to be considered in advance, and if necessary social housing tenants should be offered alternative accommodation on a temporary or permanent basis.

Should there be certain exemptions to minimum standards allowed? If so, on what basis?

The Commission recommends that exemptions to minimum standards be allowed in certain circumstances. This could include where the application of a minimum standard would have the effect of breaching the *Heritage Act 2004* (such is the case in Victoria) or where the property does not meet the wording of a minimum standard but demonstrates that it meets the intent (for example a property powered solely by solar power) and the tenant would not be unfairly disadvantaged by the exemption (such is the case in Tasmania).³⁰

The Commission suggests that discretion be given to an appropriate regulatory body (eg ACT Commissioner for Fair Trading) to consider applications made for an exemption (and revocation of the exemption) on the specific circumstances of the property and tenancy.

Do you agree with the enforcement mechanisms for minimum standards? Do you consider further mechanisms are required to enforce minimum standards? If so, what further mechanisms are required?

The Commission strongly agrees with a regime being established to enforce minimum standards in the ACT; without sufficient enforcement mechanisms it will be difficult to ensure landlords comply with these standards. The Commission considers a combination of the Victorian and NSW models would achieve an enforcement mechanism which is accessible and fair.

ACT Human Rights Commission

The Commission currently receives complaints alleging unlawful discrimination in the provision of accommodation or services (eg on the basis of race, disability, age, association, accommodation status, experience of domestic or family violence etc.) and complaints about disability services or services for older people. Such complaints have, for example, often concerned alleged discrimination on the basis of unsatisfactory conditions in rental properties and their disproportionate impacts on families with children, persons with disability and older Canberrans.

The Commission is of the view that a breach of minimum standards could be the basis for a complaint of discrimination on the basis of accommodation status as the standards will only apply to rental properties and tenants. This gives the parties the option of utilising the Commissions complaint process to try to resolve the concerns through conciliation and the option of having the matter heard and determined by ACAT where the complaint is not able to be resolved.

Other oversight mechanisms

To make it as accessible to tenants to enforce their rights, the Commission supports reforms giving power to an appropriate administrative or regulatory body (such as the ACT Commissioner for Fair Trading, akin to

³⁰ See *Residential Tenancy Act 1997* (Tas), s 36Pl and Tasmanian Government (Consumer, Building and Occupational Services, 'Exemptions from minimum standards for rental properties' <<https://cbos.tas.gov.au/topics/housing/renting/beginning-tenancy/minimum-standards/exemptions>>

the NSW model) to investigate alleged breaches of the landlord's general obligation to maintain the premises in accordance with the prescribed standard. If a breach is established, orders ensuring the repairs are carried out could be issued. If the landlord does not agree with the rectification order they may seek an internal review of the decision. If the landlord does not comply with orders, this monitoring body could be given powers to issue fines.

The Commission recommends also giving tenants the following additional rights under the RTA in the event the property does not meet minimum standards (similar to the Victorian model):

- if a rental agreement has been signed but the renter has not moved in and the property does not meet the minimum standards, the renter can:
 - end the rental agreement immediately without fees by notifying the rental provider that the property does not meet minimum standards.
 - move in and make a request for urgent repairs
- if the property falls below minimum standards at any time during a rental agreement, the tenant can make a request for urgent repairs to meet the standards. If the landlord does not respond to the urgent repair request or an order has been issued by the relevant monitoring body, the tenant could apply to ACAT for compensation and/or to terminate the lease.

Are there any other issues you would like to raise for consideration?

As noted earlier, the HR Act does not specifically recognise the right to adequate housing, although it acknowledges that it is not exhaustive of the rights an individual may have under domestic or international law.³¹ In broad terms, the right to adequate housing is viewed as a 'right to live somewhere in security, peace and dignity',³² and has been interpreted as including several key elements: adequacy, protection from forced evictions, prohibition against discrimination, and the provision of emergency housing for vulnerable groups. Adequacy for the purpose of the right to adequate housing has been taken to capture the following:

- *Legal security of tenure*: Adequacy requires a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats;
- *Availability of services and infrastructure*: Adequacy requires the availability of certain essential facilities, including safe drinking water, heating and lighting, and sanitation;
- *Affordability*: Adequacy requires that housing costs do not threaten or compromise the satisfaction of other basic needs;
- *Habitability*: Adequacy requires sufficient space and protection from environmental, health and structural hazards;
- *Accessibility*: Adequacy requires that housing policies and laws must give priority to the ability of disadvantaged groups to access housing;
- *Location*: Adequacy requires that housing must be in a location which allows access to employment, healthcare, education and social facilities; and
- *Cultural adequacy*: Adequacy requires that housing construction, building materials and supporting policies must appropriately enable the expression of cultural identity and diversity of housing.³³

The Commission recalls the report of the ACT Economic, Social and Cultural Rights Research Project, which recommended the adoption of several economic, social and cultural rights, including the right to adequate

³¹ *Human Rights Act 2004*, s 7.

³² UN Economic, Social and Cultural Rights Committee, *General Comment No. 4: The Right to Adequate Housing (art 11)*, 1991, [7].

³³ ACT Economic, Social and Cultural Rights Research Project, [Final Report](#), (September 2010), [4.10].

housing.³⁴ Although not adopted at that time, we note that the ACT Government has, more recently, shown willingness to expressly enact economic, social and cultural rights as manifest in the recognition of the right to work and work-related rights in the HR Act in May 2020³⁵ and a commitment in the Parliamentary and Governing Agreement for the 10th Assembly to Consider introducing the “right to a healthy environment”, which could be implemented as a subset of the right to health.³⁶ Insofar as enacting minimum rental standards and adopting safeguards against arbitrary eviction support progressive realisation of the right to adequate housing in the ACT, the Commission notes that these reforms may better position the ACT to expressly recognise this right in the HR Act in future. Accordingly, we strongly encourage ACT Government to bear in mind the core content of the right to adequate housing in the design of the proposed minimum standards, and the proposed reform package more broadly.

³⁴ Ibid.

³⁵ [Human Rights \(Workers Rights\) Amendment Act 2020](#); *Human Rights Act 2004*, s 27B.

³⁶ [Parliamentary & Governing Agreement for the 10th Legislative Assembly of the Australian Capital Territory](#) (October 2020).