



30 May 2024

Executive Director
Consumer, Building and Occupational Services
Department of Justice
attn: Brad Wheeler

cbos.comms@justice.tas.gov.au

To Brad Wheeler,

Re: Consultation on proposed amendments to the *Residential Tenancy Act 1997*

We welcome the opportunity to provide comment on the proposed amendments to the *Residential Tenancy Act 1997* (Tas) ('the Act'). Allowing pets in rentals and providing renters with the ability to affix furniture to the wall are reforms that almost all Australian jurisdictions have introduced and are welcomed. However, we believe the State Government can go much further in prioritising the needs and protections of renters as was promised in Tasmania's Housing Strategy.¹

PETS IN RENTALS

Most Australian States and Territories allow pets in rentals or have committed to the reform. Victoria, the Australian Capital Territory, Queensland, the Northern Territory and South Australia have reformed their laws to all allow pets in rental properties.² As well, the Governments of Western Australia³ and New South Wales⁴ have committed to law reform to allow pets in rental properties.

- *Onus on landlord to challenge right of renter to have pet within 14 days*

In Victoria, the Australian Capital Territory, South Australia and the Northern Territory renters are allowed to have pets. In circumstances where a landlord wants to refuse consent, the landlord must apply for an order from a Tribunal/Court within 14 days of

¹ Tasmanian Government, *Tasmanian Housing Strategy* (November 2023) at 27.

² Sections 71AE and 71AF of the *Residential Tenancies Act 1997* (ACT); Section 65A of the *Residential Tenancies Act 1999* (NT); Division 5B of the *Residential Tenancies Act 1997* (Vic); sections 184A-G of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld). The reforms in South Australia were passed by both Houses of Parliament in late 2023 but have not yet come into force: Division 6A of the *Residential Tenancies Act 1995* (SA).

³ Government of Western Australia, WA tenancy laws modernisation to strike a balance between tenants and landlords (Department of Mines, Industry Regulation and Safety: May 2026). As found at <https://www.commerce.wa.gov.au/announcements/wa-tenancy-law-modernisation-strike-balance-between-tenants-and-landlords> (accessed 28 May 2024).

⁴ In January 2023, the then ALP Opposition announced that it would change the law if they won the State election. They won the State election in March 2023: <https://www.abc.net.au/news/2023-01-08/nsw-labor-plan-to-help-renters-have-pets/101835684> (accessed 28 May 2024).

receiving the renter's request to keep a pet.⁵ If the landlord declines or fails to make application within 14 days, they are taken to have consented to the request. 14 days is a reasonable timeframe to allow the landlord to dispute the request, and aligns with most other Australian jurisdictions.

- **Definition of 'pet'**

There is a lack of definition of 'pet' in the South Australian, Northern Territory or Victorian legislation. In the Australian Capital Territory, 'animal' is used rather than 'pet'.⁶ Whilst the term 'pet' is widely understood, there may be circumstances where 'animal' is less ambiguous. An example could be where a renter living on a rural property wants to keep livestock. Queensland uses a definition that includes both livestock and pets:

184A Definitions for part

In this part pet –

(a) means

(i) a domesticated animal; or

(ii) an animal that is dependent on a person for the provision of food or shelter; but

(b) does not include—

(i) a working dog; or

(ii) an animal prescribed by regulation not to be a pet.

working dog means—

(a) an assistance dog, guide dog or hearing dog under the Guide, Hearing and Assistance Dogs Act 2009, schedule 4; or

(b) a corrective services dog under the Corrective Services Act 2006, schedule 4; or

(c) a police dog under the Police Powers and Responsibilities Act 2000, schedule 6.

It is recommended that a definition of 'pet' is set out in the Act and that it includes both a "domesticated animal" and "an animal that is dependent on a person for the provision of food or shelter". We encourage the Tasmanian Government to consider adopting the Queensland definition of 'pet'.

- **acceptable pet numbers**

We do not support any legislative restriction on the number of pets a renter may have. The number of pets in a rental property should be determined on a case-by-case basis. A tenant may have an aquarium with multiple species of fish or a chicken coop with chickens. Importantly, many rental properties comfortably house multiple pets. As a result, our Act should not seek to be proscriptive about the total number of pets. In our opinion, the landlord should be required to establish that it is reasonable to refuse the request for a pet based on the type of pet requested, the suitability of the pet for the premises or the number of pets proposed.⁷ We would also note that this reform was a Tasmanian Liberal policy commitment during the recent State Election campaign:⁸

⁵ Section 71C(2) of the *Residential Tenancies Act 1997* (Vic); Section 71AE(5) of the *Residential Tenancies Act 1997* (ACT); section 65A(3) of the *Residential Tenancies Act 1999* (NT); section 66C(4) of the *Residential Tenancies Act 1995* (SA).

⁶ Section 71AE of the *Residential Tenancies Act 1997* (ACT).

⁷ Section 71C(1) of the *Residential Tenancies Act 1997* (Vic). Similarly, in the Northern Territory, the landlord must satisfy the Tribunal that the refusal was "reasonable": section 65B(1) of the *Residential Tenancies Act 1999* (NT).

⁸ Letter from Jeremy Rockliff to Tenants' Union of Tasmania (15 March 2024). As found at <https://tutas.org.au/state-election-2024-answers-from-parties-and-candidates/>

*Under our Strong Plan a re-elected majority Liberal Government will change the laws to allow renters to keep a pet, as a right. We will immediately amend the Residential Tenancy Act 1997 to ensure Tasmanian renters can keep their treasured family pet living with them. Under these changes, landlords will only be able to refuse a pet if they have permission from the TASCAT. **The changes also mean landlords will not be permitted to unreasonably reject applications from prospective tenants, on the basis that they'll be accompanied by a pet. The only reasonable grounds for refusal would be pets causing a nuisance, damaging the property or endangering the safety of neighbours, as determined by TASCAT.** [emphasis added]*

- how issues of damage to property should be resolved

We do not believe any amendment is required to the Act to resolve damage to the property caused by the renter's pet. This is because section 53 of the Act requires the renter "to leave the premises as nearly as possible in the same condition, apart from reasonable wear and tear" as when they moved in:

53. Responsibility of tenant for cleanliness and damage

(1) A tenant of residential premises –

(a) is to keep the premises in a reasonable state of cleanliness having regard to the condition of the premises at the beginning of the tenancy; and

(b) at the end of the tenancy, is to leave the premises as nearly as possible in the same condition, apart from reasonable wear and tear –

(i) as set out in the condition report; or

(ii) if there is no condition report, as the premises were at the start of the tenancy.

If a renter's pet causes damage to the property during a tenancy, the landlord can issue the renter with a Notice to Vacate, or if the damage is serious, make an application under section 41 of the Act for an immediate termination of the lease. At the end of the tenancy, the landlord can recover the cost of repairing the damage through the bond.

We are not aware of any jurisdiction that has sought to expressly address issues of damage to property in relation to pets. Instead, a number of States and Territories have addressed concerns about damage by providing landlords/Tribunals with an inclusive list of conditions that may be imposed which will likely reduce the risk of damage. For example, in Queensland, approval for a pet may be subject to reasonable conditions including:⁹

(2) Without limiting subsection (1)(b), the following conditions of the lessor's approval are taken to be reasonable—

(a) if the pet is not a type of pet ordinarily kept inside—a condition requiring the pet to be kept outside at the premises;

(b) if the pet is capable of carrying parasites that could infest the premises—a condition requiring the premises to be professionally fumigated at the end of the tenancy;

⁹ Similarly, in the Australian Capital Territory, there is an express provision allowing a landlord to impose "a reasonable condition about... the cleaning or maintenance of the property": section 71AE(4)(ii) of the *Residential Tenancies Act 1997* (ACT).

(c) if the pet is allowed inside the premises—a condition requiring carpets in the premises to be professionally cleaned at the end of the tenancy.

Another condition that could be considered as part of an inclusive list is found in South Australia which relevantly provides that the pet/s must be properly restrained by the renter when the landlord is exercising their right to enter the property.¹⁰ We are not opposed to this condition as such, but the existing provisions of the Act that concern right of entry will need to be amended so as not to impose an unreasonable burden on renters.

For instance, a landlord currently only needs to give a tenant 24 hours' notice before they conduct a routine inspection – given that there must be at least three months between inspections, there is no good reason why this period could not be significantly longer.

Further, when a rental premises is for sale or rent, a landlord can carry out one viewing a day for a prospective purchaser or tenant, five days out of the week, with 48 hours' notice. This is already invasive, and if a tenant also needed to be present to restrain their pet, it could result in hardship (if they, for instance, have to turn down casual employment). In Victoria, a landlord may only carry out two sales inspections per week, must make every reasonable effort to agree on appropriate times and dates with the tenant, and must compensate the tenant with \$30.00 or half a days' rent (whichever is larger) for each inspection.¹¹

Clarity around the 'reasonable conditions' that a landlord may impose is encouraged so that all parties to a residential tenancy agreement are aware of the conditions that are likely to be accepted by either the Residential Tenancy Commissioner/Magistrates Court. We therefore strongly recommend the incorporation of an inclusive list of reasonable conditions.

- ***Any property owner responsibilities regarding security for pets***

Although the State Government has committed to law reform which will allow renters to have a pet, landlords will retain the ability to refuse a pet on reasonable grounds. Instead of amending the law to make clear that landlords are not responsible for additional security measures, the proposed legislation should instead clarify that a lack of security is a reasonable ground for refusing the pet. In the Australian Capital Territory for example, the Tribunal may accept the landlord's refusal if satisfied that:¹²

- (a) the premises are unsuitable to keep the animal; or*
- (b) keeping the animal on the premises would result in unreasonable damage to the premises; or*
- (c) keeping the animal on the premises would be an unacceptable risk to public health or safety; or*
- (d) the lessor would suffer significant hardship; or*
- (e) keeping the animal on the premises would be contrary to a territory law.*

¹⁰ Section 66C(9)(a) of the *Residential Tenancies Act 1995* (SA).

¹¹ Section 86(2) of the *Residential Tenancies Act 1997* (Vic).

¹² Section 71AF(3) of the *Residential Tenancies Act 1997* (ACT). Also see 184E(1)(b) of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) which provides that a reasonable ground is that "the premises are unsuitable for keeping the pet because of a lack of appropriate fencing, open space or another thing necessary to humanely accommodate the pet".

Similarly, a local government by-law which prohibits the keeping of a pet would also be a reasonable ground for refusing the pet with all jurisdictions that allow pets in rentals noting this in their legislation.¹³

However, the landlord will be obligated to maintain and repair any security features that already form part of the premises, such as gates, fence, and doors. We suggest that the maintenance and replacement of these features should be elevated to the status of urgent repairs.

- ***Rights of body corporates to retain by-laws in relation to pets***

We strongly believe that renters in strata title properties should have the same right to have pets as other renters. Model By-Laws for strata title properties in Tasmania are contained in the *Strata Titles Act 1998* (Tas) which relevantly provide:

7. Keeping of animals

(1) Subject to subclause (2), the occupier of a lot must not, without the body corporate's written approval –

- (a) bring an animal onto, or keep an animal on, the lot or the common property; or*
- (b) permit an invitee to bring an animal onto, or keep an animal on, the lot or the common property.*

(2) If a person reasonably requires the assistance of a guide-dog by reason of impairment of sight or hearing, the person is entitled to be accompanied by a guide-dog while on a lot or the common property and, if the person is the owner or occupier of a lot, is entitled to keep a guide-dog on the lot.

Allowing renters to have pets in strata title properties means that the *Strata Titles Act 1998* (Tas) will have to be amended. The best model that we have been able to find is New South Wales which expressly provides that body corporates are unable to completely exclude the keeping of a pet:¹⁴

137B Keeping of animals

(1) Each of the following has no force or effect to the extent that it would unreasonably prohibit the keeping of an animal on a lot—

- (a) a by-law,*
- (b) a decision by an owners corporation under a by-law.*

(2) It is taken to be reasonable to keep an animal on a lot unless the keeping of the animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property.

(3) The regulations may specify circumstances in which the keeping of an animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property.

¹³ Section 71AF(3)(f) of the *Residential Tenancies Act 1997* (ACT); section 65B(2)(d) of the *Residential Tenancies Act 1999* (NT); section 66D(d) of the *Residential Tenancies Act 1995* (SA); Section 71E(2)(d) of the *Residential Tenancies Act 1997* (Vic); section 184E(1)(e) of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld).

¹⁴ Section 137B of the *Strata Schemes Management Act 2015* (NSW).

Whilst a blanket ban on pets is prohibited in the NSW legislation, body corporates are able to exclude pets on a case-by-case basis where the pet “unreasonably interferes with another occupant’s use and enjoyment” of the property:

36A Keeping of animals—circumstances of unreasonable interference

For the purposes of the Act, section 137B(3), the circumstances in which the keeping of an animal unreasonably interferes with another occupant’s use and enjoyment of the occupant’s lot or the common property are—

- (a) the animal makes a noise that persistently occurs to the degree that the noise unreasonably interferes with the peace, comfort or convenience of another occupant, or*
 - (b) the animal repeatedly runs at or chases another occupant, a visitor of another occupant or an animal kept by another occupant, or*
 - (c) the animal attacks or otherwise menaces another occupant, a visitor of another occupant or an animal kept by another occupant, or*
 - (d) the animal repeatedly causes damage to the common property or another lot, or*
 - (e) the animal endangers the health of another occupant through infection or infestation, or*
 - (f) the animal causes a persistent offensive odour that penetrates another lot or the common property, or*
- ...

It is likely that most body corporates adopt the model by-laws rather than drafting their own rules. The NSW model by-laws expressly provide that owners or occupiers of body corporates are allowed to have a pet.¹⁵

5 Keeping of animals

Note— *Select option A or B. If no option is selected, option A will apply.*

Option A

(1) An owner or occupier of a lot may keep an animal on the lot, if the owner or occupier gives the owners corporation written notice that it is being kept on the lot.

(2) The notice must be given not later than 14 days after the animal commences to be kept on the lot.

(3) If an owner or occupier of a lot keeps an animal on the lot, the owner or occupier must—

- (a) keep the animal within the lot, and*
- (b) supervise the animal when it is on the common property, and*
- (c) take any action that is necessary to clean all areas of the lot or the common property that are soiled by the animal.*

Option B

(1) An owner or occupier of a lot may keep an animal on the lot or the common property with the written approval of the owners corporation.

(2) The owners corporation must not unreasonably withhold its approval of the keeping of an animal on a lot or the common property and must give an owner or occupier written reasons for any refusal to grant approval.

(3) If an owner or occupier of a lot keeps an animal on the lot, the owner or occupier must—

- (a) keep the animal within the lot, and*
- (b) supervise the animal when it is on the common property, and*

¹⁵ Schedule 3 of the *Strata Schemes Management Regulations 2016* (NSW).

(c) take any action that is necessary to clean all areas of the lot or the common property that are soiled by the animal.

(4) An owner or occupier of a lot who keeps an assistance animal on the lot must, if required to do so by the owners corporation, provide evidence to the owners corporation demonstrating that the animal is an assistance animal as referred to in section 9 of the Disability Discrimination Act 1992 of the Commonwealth.

We believe that renters living in strata title properties should not be excluded from proposed reforms to the Act. We therefore recommend amendment to the Act which will allow renters the right to have a pet unless there are reasonable grounds for their exclusion. These changes will also benefit owner-occupiers that live in strata properties.

- **Pet Bonds**

Most Australian jurisdictions allow pets as a right in rental properties. Importantly, none of these jurisdictions permit an additional pet bond to be paid.¹⁶ We would also note that residential tenants across Tasmania are already paying significantly more bond than five years ago. According to data collected by the Rental Deposit Authority and published by the Tenants' Union of Tasmania, bonds have increased by 40 per cent with the average residential tenant paying on average \$524.00 more bond than five years ago. The average Tasmanian tenant is required to pay around \$2,790, being the bond and two weeks rent, before being able to move into a rental property. This is already prohibitive for many people.

Weighted median rent for 3-bedroom properties in Tasmanian regions

Region	Rent March 2019	Rent March 2024	% Increase
Greater Burnie	\$260.00	\$395.00	52%
Central Coast	\$300.00	\$420.00	40%
Greater Devonport	\$295.00	\$423.00	43%
Rural North West	\$280.00	\$400.00	43%
West Coast	\$160.00	\$280.00	75%
Inner Launceston	\$353.00	\$500.00	42%
Outer Launceston	\$310.00	\$470.00	52%
North East	\$270.00	\$390.00	44%
Central North	\$300.00	\$465.00	55%
Central South	\$320.00	\$455.00	42%
South East	\$370.00	\$495.00	34%
Eastern Shore	\$400.00	\$530.00	32%
Hobart City	\$538.00	\$625.00	16%
Kingston Area	\$445.00	\$575.00	29%
Glenorchy City	\$400.00	\$520.00	30%
Far South	\$350.00	\$498.00	42%
Tas. Average	\$334.00	\$465.00	40%

Source: *Tasmanian Rents* March 2019; *Tasmanian Rents* March 2024. As found at <http://tutas.org.au/publications/tasmanian-rents/> (Accessed 26 May 2024).

¹⁶ Section 20 of the *Residential Tenancies Act 1997* (ACT); Section 29 of the *Residential Tenancies Act 1999* (NT); Section 31 of the *Residential Tenancies Act 1997* (Vic); section 112 of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld); section 66C(10)(d) of the *Residential Tenancies Act 1995* (SA).

Over the same five-year timeframe there has not been a concomitant increase in the quality of tenant accommodation, meaning that residential tenants are paying significantly more bond for no justifiable reason.

Finally, we would draw your attention to research carried out by the Australian Housing and Urban Research Institute (AHURI) which cited a study that found that property damage in households with pets was no more likely than damage caused in households without pets.¹⁷

- **Assistance animals**

We also note that the current exclusion of pets from rental properties does not apply to guide dogs.¹⁸ In our opinion, permission for pets should be broadened to include 'assistance animals'. This would make the Act consistent with the *Anti-Discrimination Act 1998* (Tas) and the *Disability Discrimination Act 1992* (Cth). The failure to expressly include 'assistance animals' creates uncertainty with many landlords and real estate agencies unaware that a failure to consent to assistance animals is a breach of anti-discrimination law. As a result, on a number of occasions we have had to file complaints with Equal Opportunity Tasmania on behalf of tenants who have required such animals for their medical conditions.¹⁹

As the Australian Human Rights Commission has observed, there are inconsistencies in the law between Australian jurisdictions meaning "that people who use assistance animals face discrimination, uncertainty and a range of associated challenges to accessing the community".²⁰

For all of these reasons we strongly recommend that the Act is amended to expressly provide for assistance animals as well as allowing residential tenants the ability to have a pet unless the landlord has reasonable grounds for their exclusion. At the same time, we strongly oppose any requirement that makes a pet conditional on the payment of a pet bond.

- **No grounds evictions**

It should also be acknowledged that residential tenants who choose to have a pet during their tenancy will still be able to be evicted at the end of their fixed-term lease agreement for 'end of lease' i.e. with the landlord being able to hide behind the genuine reason. We strongly recommend that the narrow range of reasons that apply to non-fixed term lease agreements (breach of lease agreement, sale, renovations or used for another purpose) should also apply to residential tenants on fixed-term lease agreements, and that retaliatory evictions are explicitly prohibited.

¹⁷ Australian Housing and Urban Research Institute, *Housing and housing assistance pathways with companion animals: risks, costs, benefits and opportunities* (AHURI Final Report No. 350 at 32). As found at https://www.ahuri.edu.au/_data/assets/pdf_file/0026/66455/AHURI-Final-Report-350-Housing-and-housing-assistance-pathways-with-companion-animals.pdf (accessed 28 May 2024).

¹⁸ Section 64B(2) of the *Residential Tenancy Act 1997* (Tas).

¹⁹ As defined in section 9(2) of the *Disability Discrimination Act* (Cth). Examples include a dog trained to predict when its owner was likely to have an epileptic seizure, a cat who reduced our client's Post Traumatic Stress Disorder and a pet bird who alleviated the side effects of its owner's mental illness.

²⁰ Australian Human Rights Commission, *Assistance animals and the Disability Discrimination Act 1992* (Cth). As found at <https://humanrights.gov.au/our-work/disability-rights/projects/assistance-animals-and-disability-discrimination-act-1992-cth> (accessed 28 May 2024).

- Standardised Application Forms

Finally, we strongly recommend that these reforms are introduced at the same time as standard application forms are mandated. In Queensland, recent reforms mean that a standard application form must be used by real estate agencies and landlords.²¹ Without standard application forms, real estate agents and landlords will continue to discriminate against prospective renters that disclose that they have a pet or intend to get a pet. This will incentivise tenants to hide the fact that they have a pet. Our colleagues interstate have identified this as the primary issue with the current model adopted by most jurisdictions.

To address this, we recommend that real estate agents and private landlords (different rules will need to apply in a social housing context, given how the allocation process operates) are prohibited from asking whether the renter has a pet or if the renter intends to get a pet, the type of pet. We also recommend that real estate agents and landlords be required to make clear that the Residential Tenancy Commissioner/Magistrates Court has allowed a condition to be attached to the keeping of a pet. A model that could be considered is found in the Australian Capital Territory:²²

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—

(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 unit

All private landlords should also have to provide a pet friendly policy when they list a property for rent, which states which pets a prospective renter can have without first seeking consent (though it would not prevent a renter from making a request that is inconsistent with the policy once they are in the property). This could be a proscribed form that operates similarly to pet friendly rules in the Australian Capital Territory:²³

(1) The owners corporation may, by special resolution, make a rule allowing an owner or occupier to keep an animal, or allow an animal to be kept, within a unit or the common property without the consent of the owners corporation (a pet friendly rule).

(2) A pet friendly rule may include conditions about—

(a) the number and type of animals that may be kept by a unit owner or occupier under the rule; and

²¹ Section 57B of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) was inserted into the Act after the passing of the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024* (Qld).

²² Section 11AA of the *Residential Tenancies Act 1997* (ACT).

²³ Section 112C of the *Unit Titles (Management) Act 2011* (ACT).

- (b) cleaning and maintenance requirements for keeping an animal under the rule; and*
- (c) providing written notice to the owners corporation about the keeping of an animal; and*
- (d) supervision requirements when an animal is on the common property; and*
- (e) requirements in relation to keeping an animal secure so that it does not escape a unit unsupervised; and*
- (f) any other matters that are reasonably necessary to ensure that an animal does not cause a nuisance or a risk to health or safety.*

- **Better regulate short-stay accommodation**

We are concerned that allowing tenants to have pets in rental properties will result in some landlords removing their investment properties from the private rental market and converting it to short-stay accommodation. The easiest way to address more long-term rental properties being lost is to immediately put in place a moratorium on the issuing of new entire-property short-stay accommodation permits.

TOPPLING FURNITURE

Since 2000, 28 people, including 17 children under five, have died in Australia from toppling furniture, and each year more than 900 Australians suffer injuries requiring medical assistance from toppling furniture.²⁴ It is likely that in most of these cases the deaths and injuries were preventable. We therefore welcome the Government's commitment to amending the law to allow renters to anchor furniture to the wall. However, we strongly recommend that the proposed reform go much further.

We strongly believe that all minor modifications, with a particular emphasis on safety, security and accessibility should be allowed. The most comprehensive model is the Australian Capital Territory where designated minor modifications include:²⁵

- putting up picture hooks;
- installing a shelf;
- fixing blinds to a window;
- painting a wall;
- planting vegetables, fruit, herbs, flowers or shrubs (under 2 metres), as long as existing vegetation (including mature lawns) or plants do not need to be removed;
- installing or placing a compost bin or tumbler in the garden if existing vegetation or plants do not need to be removed;
- **Safety modifications** – anything that promotes the safety of people on the property (e.g. furniture anchors or child safety gates);

²⁴ Australian Competition and Consumer Commission, 'New laws to increase awareness of the dangers of toppling furniture' (7 May 2024). As found at <https://www.accc.gov.au/media-release/new-laws-to-increase-awareness-of-the-dangers-of-toppling-furniture> (Accessed 26 May 2024).

²⁵ Section 71AA of the *Residential Tenancies Act 1997* (ACT). Also see Australian Capital Territory Government, *The Renting Book* (October 2023) at 47-48. As found at https://www.justice.act.gov.au/data/assets/pdf_file/0009/2333934/Renting-Book-October-2023-Update.pdf (accessed 27 May 2024).

- **Security modifications** – anything that improves the security of the property or people on the property (e.g. installing deadlocks or alarms);
- **Disability-related modifications** – anything that assists a tenant who has a disability (e.g. access ramps, safety rails). For this type of request, you must provide a written recommendation from a health practitioner in support of the request;
- **Energy-efficiency modifications** – anything that improves the energy efficiency of the property (e.g. switching to energy efficient lighting or putting glazing film on windows); and
- **Telecommunications modifications** – anything that enables access to telecommunication services (e.g. installing an internet, phone or cable television connection).

Renters in both Tasmania and the Australian Capital Territory require consent from their landlord before modifications can be made. The reason that the ACT's modification provisions are preferred, though, is that (1) they provide that a landlord cannot unreasonably refuse consent; (2) they clarify the types of modifications that will generally be allowed in rental properties; and (3) importantly, it is the landlord that is required to apply to the tribunal for an order approving their refusal (that is, the consent process operates similarly to the pet scheme recommended above).²⁶

In determining whether a modification should be refused, the ACT Tribunal must take into account the following considerations:²⁷

- whether the landlord would suffer significant hardship if the modification were made;
- whether the modification would be contrary to the law for any reason (e.g. it would not be permitted under planning or building laws);
- whether the modification is likely to require modifications to other residential properties or common areas (e.g. in apartment buildings); and
- whether the modification would result in additional maintenance costs for the landlord.

We would also note that in most jurisdictions where renters are able to make minor modifications to their homes, the landlord and/or Tribunal is able to impose reasonable conditions on consent, such as that a qualified tradesperson undertake the works or that the proposed modification be done in a particular way to minimise damage to the premises.²⁸

Finally, when the rental property is vacated at the end of the tenancy, we strongly believe that modifications that address safety, security and accessibility should remain at the premises as (1) they are likely to be an improvement to the premises; and (2) in order to protect themselves and their families (that is, address the purpose of the proposed amendments), tenants should not feel reluctant or hesitant to make these modifications.

²⁶ Section 71AC of the *Residential Tenancies Act 1997* (ACT).

²⁷ Section 71AC(3) of the *Residential Tenancies Act 1997* (ACT).

²⁸ Sections 71AB(4) and 71AC(2)(c) of the *Residential Tenancies Act 1997* (ACT); section 64(1E) of the *Residential Tenancies Act 1997* (Vic); section 55A(4)(c) of the *Residential Tenancies Act 1999* (NT); section 209C(3) of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld); Regulation 22(2) of the *Residential Tenancies Regulation 2019* (NSW).

For all other modifications, the renter will have to comply with the usual requirement that the property is returned in the same condition in which it was found but for fair wear and tear, unless the landlord agrees otherwise.

ON-FARM RESIDENCES

It is unclear whether renters living in accommodation provided by their employer are protected by the *Residential Tenancy Act 1997* (Tas). The lack of clarity has meant that some renters have been provided with short notice periods in which to vacate their homes following the ending of their employment contract. Clarity will provide certainty and we therefore welcome the Government's commitment to reform this area.

- ***Types of agricultural properties that should be covered by these amendments***

Whilst we accept that the most common type of employment in which accommodation is provided is likely to be farms, we do not believe that the Act should be restricted to agricultural properties. We believe that the Act should instead use the terminology used in New South Wales where any person given "the right to occupy premises in return for, or as part of remuneration for, carrying out work in connection with the premises or the person's employment" is protected by the Act.²⁹ This could include persons who are employed to work in a pub, café or other venue in which accommodation is provided.

- ***The extent to which minimum standards set out in the Act should continue to apply to on farm tenants***

We strongly recommend that persons whose accommodation is conditional on their employment should be recognised as having a residential tenancy agreement and retain the same protections as other renters. The minimum standards mandated by the Act are not onerous. A property that does not comply with those standards, particularly sections 36I (premises required to be weatherproof and structurally sound) and 36J (cleanliness and good repair), would not be safe for habitation. The only exception to the usual protections should be the notice period upon the expiration of the employment. In circumstances where an employer has ended the employee's contract of employment and they require the premises to accommodate another employee, a notice period of four weeks should be provided. In our opinion, four weeks' notice strikes the right balance between the likelihood that that the employee will need time to secure alternative premises and the landlord needing the premises for another employee. New South Wales has a model that could be considered:³⁰

85 Termination of periodic agreement—no grounds required to be given

(1) A landlord may, at any time, give a termination notice for a periodic agreement.

(2) The termination notice must specify a termination date that is not earlier than 90 days after the day on which the notice is given.

(2A) Despite subsection (2), in the case of an employee or caretaker residential tenancy agreement, the termination notice must specify a termination date that is—

(a) on or after the end of the period of notice for termination agreed to by the landlord and the employee or caretaker in that agreement or arrangement, or

(b) not earlier than 28 days after the day on which the notice is given, whichever is the later date.

²⁹ Section 9 of the *Residential Tenancies Act 2010* (NSW).

³⁰ Section 85 of the *Residential Tenancies Act 2010* (NSW).

Similarly, the Australian Capital Territory also requires that at least four weeks' notice is provided upon the expiration of the renter's employment.³¹

If you have any queries, or we can be of any further assistance please do not hesitate to contact us.



Benedict Bartl
Principal Solicitor
Tenants' Union of Tasmania



Adrienne Picone
CEO
TasCOSS



Ryan Gilmour
President
CLC Tas

³¹ Section 53 of the *Residential Tenancies Act 1997* (ACT).

