

Ms Sam Grundy

Civil and Regulatory Law Branch

Justice and Community Safety Directorate

GPO Box 158

Canberra ACT 2601

Via email: civilconsultation@act.gov.au

Dear Ms Grundy

Re: ACT Shelter Submission in response to the Your Say Consultation Paper: Ending no cause evictions and other measures – Proposed reforms to the Residential Tenancies Act 1997

Thank you for the opportunity to provide feedback on the Consultation Paper on Ending no cause evictions and other measures – Proposed reforms to the Residential Tenancies Act 1997.

ACT Shelter would welcome the opportunity to clarify or expand upon any of the content in the submission below at a later date should the Directorate feel that would add value to your deliberations.

Regards



Travis Gilbert, Chief Executive Officer, ACT Shelter

e: ceo@actshelter.net.au

M: 0437 166 610

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About ACT Shelter

[ACT Shelter](#) is an independent peak community organisation funded by the ACT Government to provide strategic advice and advocacy on housing policy and related issues.

ACT Shelter is a member-based organisation whose members include organisations and individuals who have an interest in ensuring affordable, appropriate, safe and secure housing is available in Canberra for all who need it.

Our work includes engagement with housing and homelessness peak bodies at both a national and State and Territory level, through the [National Shelter](#) network.

This submission

This submission responds to the 'Residential Tenancies Reforms' Consultation Paper which is the primary document guiding the Your Say Consultation 'Improving Residential Tenancies'.

Our submission begins by affirming the importance and relevance of the seven domains of the Right to Adequate Housing to these important reform proposals, our submission will address the four areas of reform proposed in the Consultation Paper by the Justice and Community Safety Directorate.

This submission is informed by recent surveys of our members specific to this consultation as well as past submissions to Residential Tenancies Act consultation processes made by ACT Shelter over the past decade and a half.

Our membership is diverse and includes tenants and their advocates as well as housing providers and homelessness services. This means there is divergence of opinion and where this has been identified through the surveys, it is noted in our submission.

From the outset however, we begin by reaffirming our 35 year commitment to adopting a rights based approach to our systemic advocacy for a fairer housing system here in the ACT. This is followed by asserting this consultation provides an important opportunity for the ACT Government to legislatively demonstrate it is taking steps to progress the realisation of the Right to Adequate Housing.

After reaffirming our endorsement of the seven domains of the Right to Adequate Housing, we discuss the potential that the four areas of reform outlined in the [Consultation Paper and supporting documents](#) offer in terms of making a tangible contribution to the ACT Governments

objective of improved health and wellbeing, as measured by a series of Wellbeing Indicators.

We then address a number of the consultation questions the paper invites answers to, with a heavy focus on ending no cause terminations, replacement clauses, and possible additional protections and minimum standards.

Finally, we offer a short conclusion.

Our recommendations are summarized at the front of the submission and incorporated throughout.

ACT Shelter thanks members who completed the surveys we disseminated that informed the content of this submission, as well as numerous members who provided advice and input.

We also thank ACTCOSS, ADACAS, Better Renting, Canberra Community Law, the Community Housing Industry Association, the Council on the Aging, the Mental Health Community Coalition of the ACT, Rights and Inclusion Australia, the Tenants' Union of the ACT and the Youth Coalition of the ACT for sharing their insights and expertise to inform this submission.

Recommendations

Ending no cause terminations and replacement clauses

Recommendation 1.1: ACT Shelter recommends the ACT Government proceed with its proposal to remove the ability of lessors to issue no cause terminations from the Residential Tenancies Act 1997

Recommendation 1.2: Terminations at the end of a fixed term tenancy **MUST NOT** be inserted into an amended Residential Tenancies Act.

Recommendation 1.3: That the ACT Government ensures that any replacement clauses are as specific and narrow as possible to provide greater clarity and certainty to landlords, tenants, and the ACT Civil and Administrative Tribunal (ACAT)

Recommendation 1.4: If the ACT Government proceeds with the insertion of clauses pertaining to terminations at the end of a fixed term tenancy, 'to facilitate the effective management of social housing stock' or on the basis of a broad determination about loss of eligibility for housing assistance, we recommend this be accompanied by the insertion of the following protections:

- a new provision requiring ACAT to consider whether a termination order would be “reasonable and proportionate”, following the lead of recent residential tenancy reforms in Victoria;
- ensuring that ACAT retains the discretion to consider the human rights of tenants pursuant to the *Human Rights Act 2004*; and
- retaining the current 26 week notice period to ensure current protections are not lessened.

Recommendation 1.5: ACT Government undertake further engagement with social housing and supported accommodation providers, their tenants, and tenants’ advocates on the need for any replacement clauses – especially in relation to loss of eligibility for accommodation assistance

Regulating Rent Bidding

2.1: ACT Shelter recommends the practice of ‘rent bidding’ be specifically prohibited with financial penalties (fines) payable and enforceable for soliciting both higher recurrent payments as well as higher upfront amounts than the maximum amount permitted to be lodged with the Office of Rental Bonds

2.2: That a new regulation prohibits the advertisement of properties using a range of asking rents and that advertisements include a notice to tenants that offering higher rent or security deposit bids is not permitted and will not improve allocation prospects

Minimum Standards

3.1: The ACT Government should introduce minimum standards with uniform applicability to all properties available for rent in the ACT regardless of who manages or owns them.

3.2 That these standards should be descriptive and guided by relevant domains (Access to facilities and services, adequacy and habitability) of the Right to Adequate Housing and the role of a home as a social determinant of better health, safety and wellbeing (we include examples)

3.3: That clear, unambiguous, and short time frames be set for new rental properties to meet prescribed minimum standards, and that all rental properties be required to meet minimum standards within a period not exceeding five years from the date at which legislation describing them is assented into law

Strengthening the right of tenants to grow food and to compost

4.1: ACT Shelter supports strengthening the right of tenants to grow food and to compost, noting These amendments should be clear and unambiguous. Clauses inserted to give effect to this proposed reform must leave no room for dispute when tenancies end.

The Seven Domains of the Right to Adequate Housing

Accessible, affordable, appropriate, safe and secure housing of adequate amenity is a human right. International covenants affirm realisation of the right to adequate housing is a prerequisite to achieve other human rights. The United Nations Committee on Economic, Social and Cultural Rights (ICESCR) has clearly outlined the characteristics of housing that meet human rights. These are expressed in the ICESCR as the seven domains of the Right to Adequate Housing, namely:

Legal security of tenure: All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

Availability of services, materials, facilities and infrastructure: All beneficiaries of the right to adequate housing should have sustainable access to nature and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site draining and emergency services.

Affordability: Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by State parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels;

Habitability: Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors;

Accessibility: Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. The disadvantaged groups such as the elderly, children, people with physical disabilities, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere.

Location: Adequate housing must be in a location offering access to employment, health-care services, schools, childcare centres, and other social facilities. Housing should not be built on polluted sites nor immediate proximity to pollution sources that threaten the right to health of the inhabitants; and

Cultural adequacy: The way housing is constructed, the building materials and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

ACT Shelter prefaces our submission by referencing the seven domains of the Right to Adequate Housing for three reasons.

Firstly, ACT Shelter adopts a rights-based approach to our systemic advocacy. It underpins everything we do. As a housing peak, in a human rights jurisdiction, we will continue to lobby for

the inclusion of housing rights in the *Human Rights Act 2004* in relevant consultations. Secondly, because it is directly relevant to the stated intent of the four areas of reform that are the focus of our submission in response to the Your Say Consultation.

Thirdly, because when we look at tenancy law in the ACT and other Australian jurisdictions, what stands out, it is the comparatively weak legal protections tenants are afforded, in comparison to most other nations in the Organisation for Economic Cooperation and Development (OECD), in terms of security of tenure, agency to modify properties and outdoor areas, minimum housing standards and other areas of law.

As noted by Dr Chris Martin from the University of NSW who was leader researcher for an Inquiry into the changing institutions of private rental conducted by the Australian Housing and Urban Research Institute:

"Australia lags behind most other places, in terms of the legal protections for tenants and legal assurance of security. In most of the other countries we looked at, there's provision for the termination of tenancies by landlords only on reasonable grounds. In Australia, generally, tenancies can be terminated by landlords without grounds. Most the countries we looked at, we saw examples of legal regimes where you had to have reasonable grounds for termination. But there's also a couple instances of countries where they use long fixed terms. That's not really the major way of providing security." Dr Chris Martin, speaking about the findings of an International Review of the Changing Institutions of Private Rental he undertook with Professor Kath Hulse from Swinburne University of Technology and Professor Hal Pawson in 2018.

While there will always be a power imbalance in favour of landlords in any landlord/tenant contractual relationship, reforms this imbalance can be ameliorated somewhat by amending our the contract law regulating agreements between lessors and tenants.

Similarly, legislating minimum standards and addressing practices that exacerbate an already difficult rental market, address the affordability and habitability domains of the Right to Adequate Housing, enshrined in the Universal Declaration of Human Rights and subsequent International Covenants to which Australia, and by the extension, the ACT is a signatory.

What a home affords: This consultation and the wellbeing indicators



The twelve domains of the ACT Wellbeing Framework:

ACT Shelter draws the Directorate’s attention to the relationship between two of the proposed areas of reform and the recently implemented [‘wellbeing domains and indicators’](#) that guide current and future budgetary, legislative and policy measures implemented by Government.

We welcomed the first reporting on the measurement of community wellbeing through indicators relating to healthy citizens and communities, housing and home, participation, productivity and social inclusion and other indicators in the October ACT Budget Outlook.

ACT Shelter recommends the ACT Government uses this consultation as an important opportunity to improve the health and wellbeing of Canberra’s 130,000 tenants.

Housing is bricks and mortar. A home is so much more. It is the dimensions of home, covered in the

seven domains of the Right to Adequate Housing outlined earlier, that directly relate the wellbeing indicators developed by the ACT Government, not only the housing and home indicator, but also indicators supporting improved physical and mental health, community participation and inclusion and connectivity, economic and social participation.

Removing no cause terminations enhances security of tenure for tenants and provides the ontological security that a home should afford and benefits that flow from that in the form of connection to people and place, identification with community and resultant social cohesion and the future planning and goal setting that security of tenure and stability of housing provide people the capacity to do.

Likewise, minimum housing standards offer the prospect that all tenants may find homes that enhance health and wellbeing and quality of life, rather than threaten or worsen it, as is the case for tenants in substandard properties with structural faults or that cannot be adequately sealed from the incursion of moisture, resulting in black mould infestations or living environments that damage the respiratory health of children.

The arrival of COVID19 in Canberra last year, and the recent lockdown triggered by the advent of local acquisition and community transmission have confirmed what ACT Shelter has long articulated, a safe and secure home is an enabler of better mental and physical health and wellbeing.

Indeed, ACT Shelter was pleased to note the ACT Government's demonstration that it also supports what housing advocates, most notably in the Aboriginal and Torres Strait Islander space, have long asserted:

Housing is a critical social determinant of better or poorer health and wellbeing, depending on things like security and stability of tenure, adequacy and amenity and access to facilities and services like hot and cold water, sanitation and sewerage, space to prepare fresh food and meals and ovens and stovetops in good working order – this is reflected in the [ACT Government's Wellbeing Framework](#) which notes that:

Access to secure, suitable, and affordable housing improves social inclusion, health, wealth, and welfare. It guards against future issues like climate change, economic changes, and health challenges.

ACT Shelter notes, in this context, adequate ventilation and the ability to self isolate, or at the very least physically distance in residential living systems, should be an important consideration for Government minimum standards for all residential tenancies in the ACTs be legislated as a result of the findings from the 'Improving Residential Tenancies' consultation.

Security of tenure, accessibility, adequacy and amenity are key dimensions that make a house

(bricks, internal fittings, mortar and a roof) a *home*.

In the lead up to the ACT election, ACT Shelter proposed that all candidates and parties support our proposal for a 'new build housing narrative'. One that reframes housing assistance, and direct and in-kind cash equivalents that enable affordable and social housing projects to be viable, as the critical economic, health and social infrastructure investment that it is.

Related to this is looking beyond seasoned arguments based on affordability to rent or buy or housing to end homelessness and looking at affordability to live in a dwelling over time, and the Return on Investment in terms of the role of a place to call home as an enabler of better health and wellbeing, including physical safety and ontological security and as a prerequisite for civic, economic, and social participation and social inclusion.

We therefore welcomed the recent expansion of data sources and indices the Territory will use to facilitate measuring progress towards the achievement of enhanced health and wellbeing for all Canberrans. Importantly, the wellbeing indicators focus on a series of life domains that are closely aligned with our proposed reframed analysis.

Similarly, while we are not aware of any clauses in the Act as currently prohibit tenants from growing food and compost - subject to returning the property in its original condition, sans 'fair wear and tear thresholds' at end of lease being met, strengthening their right to do so, can only enhance the prospects of improved health and wellbeing.

Redressing the power imbalance: Opportunity and Risk

The proposal to remove it creates an opportunity long advocated for by tenants, legal practitioners, [ACT Shelter](#), [AHURI](#), [Choice](#), the [National Shelter Network](#)

AHURI, the [Productivity Commission](#) and others have noted previously, private tenants endure comparatively weak security of tenure relative to comparable countries in the Organisation for Economic Cooperation and Development (OECD).

The ability to terminate tenancies without grounds is cited as a key reason for this assertion.

Lead researcher, Dr Chris Martin, whose comparative analysis on tenancy law we cited earlier, highlights the clear power imbalance that exists in the landlord/tenant relationship by virtue of tenants having significantly more to lose if contract law proceedings commence terminate a tenancy, resulting in their eviction into homelessness:

“...There are certainly some aspects of some countries overseas that we could look to and say they're doing it better -- places like Germany, Central Europe, Northern Europe, where tenants have got much better security of tenure, the landlord needs to really justify taking a property back from a tenant. And that's just not something that we have in Australia. People put up with high prices, all sorts of things that, in other countries, they might not have to, because they're worried about evictions without grounds...”

This proposal offers us the opportunity to improve perceived and actual security of tenure for all tenants, by requiring landlords to show cause for issuing Notices to Vacate. This thereby dramatically reduces the ability of lessors to launch ‘retaliatory evictions’ in response to actions by tenants who assert their rights or seek to have obligations conferred upon lessors for repairs and maintenance to be conducted within reasonable or specified timeframes, enforced.

It also invites the risk, replacement clauses to provide new cause for issuing Notices to Vacate and applying to the ACAT for Termination and Possession Orders to be enforced, invites the risk of undermining the security of tenure that is a critically important function of the social housing system, in light of the tenant profile that has changed significantly over the past two decades as a result of rationing finite assets by triaging to highest need, lowest income.

Ultimately, most of our members will not accept legislative reform that enhances security of tenure for private tenants but simultaneously undermines or weakens the comparatively greater security of tenure social tenants have long enjoyed.

Private Rental: Your keys to an insecure future

ACT Shelter agrees with the Better Renting submission which provides a comprehensive list of the financial and personal costs of moving house involuntarily.

We also agree with ACTCOSS, Better Renting, Canberra Community Law and others who have highlighted the high emotional and social costs of frequent house moves.

Indeed, many psychologists assert are among the most traumatic events a person will experience in their life.

For this reason, ACT Shelter has previously submitted to Government that our view is, , private rental is not an appropriate tenure option for most people with past experience of trauma, that is linked to housing insecurity and homelessness, or events that occurred while experiencing homelessness. This is primarily because it is a very insecure housing tenure and it is common for most tenants who rent medium or long term to frequently receive Notices to Remedy, either

erroneous or valid, that bring with them the threat to evict someone into homelessness if the alleged breach is not remedied within a fortnight.

Indeed, given the default to short term leases, the short Notice to Vacate periods attached to most grounds outlined in the Consultation Paper, the lessor profile and the tax treatment of private rental homes as a speculative asset class, namely the eligibility formula for the Capital Gains Tax which requires assets only be held for 12 months and one day from acquisition to disposal, the entire model encourages short selling which contributes to housing instability and worsens the emotional and psychosocial wellbeing of many tenants.

While ACT Shelter appreciates this is not within the powers of the Territory to influence it is pertinent to discourse around factors contributing to housing instability for private tenants.

Rebels evicted without a cause: Retaliatory evictions keep tenants quiet

ACT Shelter was pleased to see the issue of retaliatory evictions feature prominently in the Consultation Paper. The ability of lessors to terminate tenancies without showing cause, means the experience of finding yourself served with a Notice to Vacate, not too long after exercising your rights or applying to the ACAT for an order to require the lessor to make good on repairs of an agent to adhere to already inadequate notice periods is a common experience for many tenants, the probability of which increases for longer term tenants.

ACT Shelter welcomes any amendments to the Act that reduce the likelihood of such retaliatory abuse of the ACAT process to send a message to the minority of renters who do have a rudimentary understanding of their rights and/or a lessor or agent's obligations, to think twice before moving to exercise them again.

Combined with the added and associated threat/practice of blacklisting tenants who doth complain too much, it adds to the overall uneasiness of life as a tenant in a country that places so much status upon The Great Australian Dream, as evidenced by the existence of the often invoked Housing Continuum that stratifies Australians according to how close or how far they are on the linear model from the 'gold standard' of home ownership.

ACT Shelter agrees with submitters who assert there is a significant disparity – in terms of health, wealth and housing amenity and security that exists between people with the means to buy a home and people who will always be reliant on another party to provide them one.

These reforms move the needle somewhat and begin to redress the inherent power imbalance that exists between lessors and tenants, and we congratulate the ACT Government for proposing to do so, noting we are now in the seventh year of this round of reforms. We look forward to working with Government and other stakeholders, to progress this **work once** clear future directions are identified from this submission process.

Consultation Questions

Do you think no cause terminations from residential tenancies should be ended?

Consistent with our rights-based approach to housing advocacy, prior submissions to consultations on *Residential Tenancies Act* reform and the views expressed by a clear majority of respondents to dedicated recent member surveys to inform this submission, **ACT Shelter supports the removal of ‘terminations without cause’ from the *Residential Tenancies Act 1997*.**

Recommendation 1.1: ACT Shelter recommends the ACT Government remove the ability of lessors to issue no cause terminations from the Residential Tenancies Act 1997

Several respondents to surveys that informed this submission told us this reform was long overdue.

“...Yes. Let’s just get on with it and get it done...”

“...This tranche of reforms to the RTA started in 2014. If now is not the time to act on ‘controversial amendments. When will be? Shelter needs to lead on this. No grounds terminations undermine your sense of security...”

“...I think it is fair for a tenant to be given a reason as to why they are being made homeless. By not providing one the eviction FEELS illegitimate...”

“...Yes. This reform is one ACT Shelter has advocated for, for ages. We need to remove unfair grounds for termination and increase the length of notice period for some of the grounds that exist now...”

ACT Shelter agrees with the arguments outlined in the Consultation highlighting how no cause terminations undermine security of tenure and discourage tenants from exercising rights.

Dissenting views within our membership

We recommend the ACT Government remove ‘no cause terminations’ from the Act while noting a significant minority of our members whose business and service models either partly or wholly involve the provision of accommodation and housing do not support this.

ACT Shelter has previously provided advice to Government about the divergence of views among our members on a small number of housing related matters. Tenancy law being one

It is notable that in opposing removing the ability of lessors to terminate tenancies without cause, some informants told us it is not that they oppose doing so in principle.

Rather, they assert that in their experience, it is the only avenue available to them circumstances when anti-social behaviour and threats and acts of violence are committed against co-tenants, staff, or neighbours in multiunit complexes or neighbouring houses.

Further, they note when matters go to the ACAT for decision, they are confounded and confronted by what they tell us are inconsistent and unfathomable rulings, depending on the view adopted by the presiding member on the day.

What is notable about this feedback is, ACT Shelter also hears this criticism from Community Legal Centres who provide advice, advocacy and legal representation to tenants when disputes reach the unpleasant point at which matters are referred to the ACAT for decision.

Similarly, tenants and their advocates have also expressed concerns about inconsistent interpretation when matters go to ACAT, as well as the absence of knowledge held by tenants and landlords as to the rights and obligations conferred to them in the Act.

This speaks to the ambiguity of the Act as it currently stands and this key feature informs our responses to the following consultation questions.

Do you think lessors should be able to terminate tenancies at the end of a fixed term?

No.

Let us be unambiguously clear. An end of fixed-term, termination, is a cause eviction by another name and may in fact weaken the already modest security of tenure, the Residential Tenancies Act 1997 affords tenants, particularly tenants in the private rental market if its replacement clause has a shorter notice period for compliance.

If the ACT Government is serious about acting to end unfair, no cause evictions, it must not provide recourse for them to be rebranded to placate the real estate industry or other lobbyists.

Such a ground would leave tenants open to retaliatory evictions when fixed term tenancies end and defeat the purpose of removing terminations without grounds.

Recommendation 1.2: ACT Shelter rejects the proposal to insert a clause permitting lessors to terminate tenancies at the end of a fixed term

Do you have any views in relation to the introduction of a termination ground based on the effective management of social housing stock?

Yes. By virtue of the multiple barriers people need to demonstrate to have any chance of securing a social housing property in an intensely rationalised and triaged housing allocations policy landscape, people in this housing tenure realistically have no alternative housing options available to them. For this reason, we must in good conscience oppose the insertion of replacement clauses for ‘terminations without cause’ specific to social housing providers that are too broad.

As the Justice and Community Safety Directorate would be aware, we are in the early stages of the second tranche of the most ambitious and extensive renewal of our public housing portfolio since self-government. While we are on the public record welcoming the modest growth the ‘Growing and Renewing Public Housing’ program provides for, we are equally conscious of how the additional homes will be financed by Housing ACT.

While ACT Shelter supports the broad intent and projected outcomes of the program, we are aware fiscal realities may necessitate coercive and in a minority of cases, involuntary forced relocations from detached homes on high value inner suburban blocks to attached dwellings elsewhere to finance the purchase and/or construction of new properties, as outlined in the ‘Growing and Renewing Public Housing’ documentation.

In good conscience, ACT Shelter cannot support the insertion of a new ground for termination and possession on the basis, such an order is required to facilitate the ‘*effective management of social housing stock*’. In our view the wording of such a clause is too broad and subjective and invites the risk social housing tenants will be forcibly relocated, or worse, evicted into homelessness, at the discretion of the social housing commissioner as per relevant clauses in *The Housing Assistance Act 2008*.

There is also future risk invited, should growth of social housing become increasingly predicated on a debt-leverage model, as debt servicing and even solvency requirements could be readily interpreted as ‘effective management’, leading to the eviction of social tenants in favour of tenants with capacity to pay sub-market affordable rent. Again, this is a hypothetical, but it underscores the need for more specificity.

Do you think there should be a general ground covering management of housing stock or more specific grounds related to transfer, withdrawal of housing assistance, extended absence from

the property etc?

No. ambiguity is the hallmark of too many elements of tenancy law with predictable results for both tenants and lessors. ACT Shelter cautions there is a need for specificity to be the hallmark of any replacement clauses, to provide greater certainty to all parties including ACAT members.

Recommendation 1.3: That the ACT Government ensures that any replacement clauses are as specific and narrow as possible to provide greater clarity and certainty to landlords, tenants, and the ACT Civil and Administrative Tribunal (ACAT)

If a termination ground or grounds based on the effective management of social housing stock were to be introduced, what is the appropriate notice period for such a ground?

ACT Shelter recommends that notice period between the issuance of a Notice to Vacate and the enforcement of a Termination and Possession order remain 26 weeks.

What are your views in relation to the introduction of a termination ground based on continuing eligibility for accommodation assistance?

On this question it is fair to say, our membership is polarised.

[The growing gap between demand/supply, funding challenges](#), policy goals, and triaging mean there is tension between the strengths based aims and objectives of goals two and three of the ACT Housing Strategy and the economic and [fiscal realities](#) of housing people on the lowest incomes in housing stock that is on average [getting older and more expensive](#) to maintain and repair.

ACT Shelter is nervous about the potentially broad application of this proposed replacement clause and cannot support its insertion into the *Residential Tenancies Act 1997*, in the wording proposed in the Consultation Paper and Summary Page.

That said, we note there was support for its insertion expressed by a significant minority of respondents to surveys we commissioned to inform this submission.

This was evidenced by responses such as:

“...As housing providers, we are not in the business of making people homeless. However, unless replacement clauses are inserted providing for us to evict people from properties they are clearly

not eligible for, such as male perpetrators of violence occupying properties designated for women's housing programs, I am increasingly convinced we will need to the Act to retain our ability to issue terminations without grounds..." Survey respondent 11

Providers of homelessness accommodation, HAAP properties and other supportive housing owned by Government were told they would lose funding unless steps were taken to remove persons currently residing in the properties and replacing them with 'appropriate tenants for the program/service model'.

While the ACT has operated a segmented, 'one social housing system' since 2007, we are concerned by reports providers may feel coerced or pressured into commencing tribunal proceedings due to the threat of funding being withdrawn if they do not.

As one respondent noted:

"...It's very hard for our workers. On the one hand, they know. If they seek an order be made by ACAT to evict a person, the lack of exit points and alternative affordable accommodation options means that person is in dire straits. On the other hand, it is equally devastating for people in desperate need of the accommodation occupied by the person who is no longer eligible for it. Additionally, when you have the Government reminding you that the person in there is not from the intended target group and there are funding implications if the program objectives are not met, what do you do? Who would you choose? The problem, ultimately is, there is not enough houses, so there are no equivalent properties to transfer people to, when they cease to be eligible for our programs. And we need ACT Shelter to keep raising this until the Government recognises the serious consequences..." Respondent 14

ACT Shelter notes that for many of our members this question is vexatious, for others it is offensive, and for some organisational members and probably the Government landlord too, it is viewed as essential in the event the ability to issue 26-week Notices to Vacate without cause.

It is important that we are honest with Government and the broader community when there are divergent views among our broad membership.

ACT Shelter notes there are existing clauses that provide for the termination of occupancy rights to crisis accommodation, but housing providers are unable to use this provision in particular circumstances because some ACAT members will rule it applies, while other ACAT members will take a different position. Some seek the inclusion of new clauses or retaining a 'no cause' clause.

Social housing providers, specifically, registered tier three Community Housing Providers who headlease properties via the Housing Asset and Assistance Program and other providers of

accommodation and housing in which occupants and tenants are in very close proximity expressed serious disquiet about the application of matters referred to ACAT for dispute resolution.

ACT Shelter recommends the Directorate take their concerns seriously and notes the Community Housing Industry Association will be making a submission that will no doubt address these concerns.

On the other hand, we have been privy to submissions by Community Legal Centres and other member organisations that confirm our concern about the ambiguity of the wording as it is currently proposed.

If a termination ground or grounds based on eligibility for accommodation assistance were to be introduced, what would be an appropriate notice period for such a ground?

26 weeks

What is the justification for the suggested notice period?

We cannot in good conscience support the insertion of amendments to the Act that improve weak security of tenure private tenants endure, if the price for that is weakening the relatively better security of tenure public tenants enjoy. It is fundamentally at odds with our founding principles and enduring values of equity, advocacy and tenacity, laid out in our Strategic Plan

Do you think there should be a built-in 'right to review' process as part of a termination ground based on loss of eligibility for accommodation assistance?

Yes. This is a critical safeguard afforded to public tenants via the *Housing Assistance Act 2008* and to retain the ability for any decisions affecting housing status to subject to review to determine their human rights implications. In the absence of housing rights, it critical.

Recommendation 1.4: That a Proportionality and reasonableness test for enforcement of Notices to Vacate issued to tenants, regardless of who owns or manages their property

The ACT Government should introduce a standalone test that any Termination and Possession Order (TPO), related to any prescribed ground for termination, must be reasonable and proportionate, as is the case in Victoria.¹²

This would enable the ACAT to consider tenant circumstances and the implications of a TPO. The existence of such a test would also be of comfort to tenants who may be threatened with eviction

for minor breaches such as “failing” a routine inspection, subletting, or having a pet without lessor consent.

We note Community Legal Centres are subject matter experts in matters of law and would be much better placed than ACT Shelter to provide specific advice about wording.

What do you think about the proposed new protections?

Ultimately, ACT Shelter does not want to see the unintended outcome of the removal of terminations without cause from the *Residential Tenancies Act 1997* being that security of tenure is undermined by the insertion of new causes that are too broad or subjective in their interpretation or undermine the security of tenure of social tenants, who by virtue of their eligibility for rebated rental housing, have demonstrated they will not be housed in the private rental market, nor ever have the opportunity to fulfil an aspiration to buy a home.

If the ACT Government proceeds with the insertion of clauses pertaining to terminations at the end of a fixed term tenancy, ‘to facilitate the effective management of social housing stock’ or on the basis of a broad determination about loss of eligibility for housing assistance, we recommend this be accompanied by the insertion of the following protections:

- a new provision requiring ACAT to consider whether a termination order would be “reasonable and proportionate”, following the lead of recent residential tenancy reforms in Victoria;
- ensuring that ACAT retains the discretion to consider the human rights of tenants pursuant to the *Human Rights Act 2004*; and
- retaining the current 26 week notice period to ensure current protections are not lessened.

Should there be other permissible reasons for ending a tenancy?

ACT Shelter is not an expert on the specific grounds lessors may require in the event legislation requires that they provide tenants with a valid reason for evicting them into homelessness. We note other submitters may provide more concrete answers to this question.

We note several our members assert they find it hard to remove people from properties they own or manage even when these properties are head leased or otherwise provided to them on the proviso they are utilised to accommodate Canberrans with defined characteristics.

We therefore make the following recommendation:

Recommendation 1.5: ACT Government undertake further engagement with social housing and supported accommodation providers, their tenants, and tenants’ advocates on the need for any replacement clauses – especially in relation to loss of eligibility for accommodation assistance

Relevant Domains of the Right to Adequate Housing

(1) Legal security of tenure and (3) Affordability – through fewer, less frequent moves.

Relevant Domains of the ACT Wellbeing Framework

Improving security of tenure and reducing the frequency and number of moves may contribute to improvements in housing and home (obviously) but also access and connectivity, health, identity and belonging, living standards and social connection.

2. Regulating Rent Bidding

ACT Shelter does not believe the practice of rent bidding should be tolerated nor accepted, much less regulated. It should be outlawed, with clauses inserted into the *Residential Tenancies Act 1997* that make it clear the practice is unlawful.

Furthermore, a specific offence category should also be inserted into the *Residential Tenancies Act 1997* that explicitly prohibits the related practice of soliciting a higher lump sum up front from prospective tenants than the maximum permitted to be charged to a tenant for a security deposit (rental bond).

To remove ambiguity, financial penalties should apply to lessors or agents who are caught soliciting amounts more than the advertised asking rent or maximum equivalent weeks rent permitted to be taken as a security deposit.

Such a penalty would be imposed on landlords who are found guilty of rent bidding or soliciting higher bond amounts than the maximum required to be lodged with the Office of Rental Bonds.

To strengthen the efficacy of the threat of financial penalties, paid positions should be created, whereby people attend advertised inspections under the guise of expressing an interest in applying for rental properties. They would fulfil a similar compliance role to environmental health, ‘mystery shoppers’, and workplace health and safety inspectors.

They could be deployed randomly, or their deployment could be triggered by advertisements that

contain red flags indicative of the practice.

ACT Shelter acknowledges the compliance burden of monitoring advertisements may be more onerous in terms of compliance costs and suggests randomised deployment may be administratively more efficient for the Directorate.

Ultimately, we are keen to ensure that the private rental market does not go the way of the purchase market, where auctions now dominate, resulting in people paying significantly more to purchase properties than they had intended due to the competitive nature of many humans and the fervor of such events.

It is important to remain conscious of the fact people reliant on the private rental market to provide homes, are significantly less well-off in terms of both asset and income wealth, than people who have demonstrated capacity to save a six-figure income for a home deposit.

Most Canberrans who rent privately earn less than both the mean and median income of ACT households. About half, earn significantly less. These renters are already facing a big competitive disadvantage in our high cost, low vacancy private rental market.

Competition is even greater at the lower cost end of the market. This is in part, because many people looking to buy, 'rent down', to increase their capacity to save for a deposit to buy, while a significant number of renters who would be housed in social or sub-market affordable rental homes, if not for the dearth of supply and triaging to highest need.

ACT Shelter frequently hears from tenants and legal practitioners that one of the many shortcomings of the current Act, is the absence of tangible penalties for Agents and Lessors on any enforcement of the few that are in the current version. This creates a perception among agents and lessors that they can and will get away with unscrupulous conduct.

We therefore recommend the following:

2.1: ACT Shelter recommends the practice of 'rent bidding' be specifically prohibited with financial penalties (fines) payable and enforceable for soliciting both higher recurrent payments as well as higher upfront amounts than the maximum amount permitted to be lodged with the Office of Rental Bonds

2.2: That a new regulation prohibits the advertisement of properties using a range of asking rents and that advertisements include a notice to tenants that offering higher rent or security deposit bids is not permitted and will not improve allocation prospects

Relevant domains of the Right to Adequate Housing

Outlawing 'rent bidding' and soliciting a higher amount as a security deposit pertains directly to progressing the realisation of the following two domains:

(3) affordability; and (5) accessibility.

Relevant Domains of the ACT Wellbeing Framework

Outlawing the practice of rent bidding is unlikely to make a measurable difference to the overall wellbeing of Canberrans, but is relevant to the Housing and Home domain.

3. Minimum Standards for Residential Tenancies

More often than not, when ACT Shelter invites or responds to requests to make public commentary on housing matters, it is to highlight the consequences of a housing market here in Canberra that has priced out large sections of its customer base.

This submission provides the opportunity to reaffirm our belief that housing is so much more than bricks and mortar, and that the answers to affordability questions are not solved by simply lowering asking rents or purchase prices.

Findings from recent member surveys we designed and disseminated to inform the content of our submission, confirm there is broad support among our members for the insertion of minimal standards for residential tenancies in ACT tenancy law.

ACT Shelter is proud to be an active supporter of the Everybody's Home campaign and an active participant in the Healthy Homes for Renters campaign.

As we asserted earlier in our submission, ACT Shelter recommends priority effort be directed towards inserting minimum standards in the Residential Tenancies Act 1997, that practically strengthen the Right to Adequate Housing and will make a measurable difference to the health (physical, emotional, and social) and wellbeing of tenants.

In so doing, this will ensure the proposed four areas of reform contribute to supporting the ACT Government's objectives of a more economically diverse, socially inclusive Canberra and an overall improvement in community wellbeing evidenced by the indicators that will guide current and future budgets.

ACT Shelter notes the distinction in the Paper about the types of Standards inserted interstate and makes the following recommendation:

3.1 ACT Shelter supports the inclusion of prescriptive, rather than descriptive minimum standards for Residential Tenancies in the *Residential Tenancies Act 1997*

The absence of minimum standards from the *Residential Tenancies Act 1997* further entrenches the disparity between the adequacy, amenity, safety and utility of homes occupied by people who rent, and homes occupied by people with the means to buy.

While media attention disproportionately highlights the consequences of living in homes of inadequate amenity, or worse, serious structural faults on the health, safety and wellbeing of public tenants, the brutal reality is far too many renters are living in homes that compromise or threaten their health, safety and wellbeing.

While there is little in the way of reliable hard data on the proportion of homes rented privately that are inadequate or unsafe, recent publications by consumer advocacy and rights body, *Choice*, in collaboration with the National Association of Tenant Organisations are both insightful and instructive.

It is worth noting upfront the relationship between inadequate, substandard or unsafe housing circumstances and the ability of lessors to terminate tenancies without cause.

Too often, tenants in both social and private rental homes, put up with minor and major amenity flaws and structural faults because of the trepidation that comes with making requests for repairs, and the inherent risk of retaliatory eviction that is a not infrequent consequence of seeking an order be made by ACAT if maintenance and repairs requests are not adequately responded to, in a timely manner.

As we have spoken and written about previously however, housing must be seen as essential economic, health and social infrastructure and an enabler of better life outcomes for tenants as well as owner-occupiers.

A decent home, of good amenity, that has a working cooking facility, taps and toilets in good working order to provide clean water and sanitation, is readily securable (doors and windows), sealed well enough to keep draughts, heat and moisture out and modulate temperature within a narrow range, all year round, seems a sensible starting point upon which to build minimum standards for Residential Tenancies and enshrine them in law.

We are aware the real estate industry has disagreed with these modest proposals in previous consultation and submission processes.

On behalf of Canberra's 63,000 tenants, we are pleased to report most survey respondents (83%) supported the introduction of minimum standards for Residential Tenancies in the ACT.

This is consistent with our longstanding advocacy around the importance of access, adequacy and amenity as critical dimensions of what makes a house, a home.

Raising the standard: Housing as a social determinant of health and an enabler of participation and productivity

There are few upsides to the COVID19 pandemic. For housing advocates, who have long tried to get to decision makers to accept and appreciate that housing adequacy and amenity are cornerstones of better health outcomes, and that a home is essential health infrastructure in addition to a foundation for economic and social participation however, it has vindicated our long-held claims.

How so? When a novel coronavirus, with no known effective treatment or vaccination, arrived in Canberra on Friday the 13th of March 2020, the health advice was simple. Stay home, stop the spread, save lives.

A week later, the Prime Minister emerged from his first National Cabinet meeting to a waiting press pack and declared, there would be a moratorium on evictions from private and social rental homes for all households unable to make rent, due to loss of income from the economic fallout of COVID.

With that, the argument many housing advocates, particularly Aboriginal and Torres Strait Islander People, had been making for years, was confirmed true. An affordable, safe, and secure home that is not crowded and is of sufficient amenity to enable constant modulation of inside temperature, is a critical social determinant of better health for tenants.

ACT Shelter asserts that evidence of high levels of rapid household transmission of COVID19 from the far west in NSW, Melbourne's growth corridors and western Sydney, affirms the importance of homes of adequate amenity that are not overcrowded to the role of homes as enablers of better health, in this case, in terms of infection control.

ACT Shelter is not a subject matter expert in epidemiology or virology. We have however, kept our eye on the emerging evidence base domestically and internationally that affirms correlation, if not causation between housing amenity, quality and safety and risk of transmission of the airborne virus that has occupied a relentless presence in our lives for the past eighteen months.

When progressing work towards the adoption and insertion of minimum standards for Residential Tenancies in ACT legislation, ACT Shelter recommends close attention be paid to the role they could play in reducing or mitigating risk of infectious disease transmission, not only of COVID, but of other potentially harmful or life threatening bacterial or viral infections and pathogens.

In addition to emerging evidence that LGAs with higher rates of overcrowding, also reported higher rates of rapidly escalating COVID case numbers, linked to rapid household transmission, there is evidence our own quarantine system that lack of ventilation, and resulting poor air quality, is an identifiable contributor to increased risk of acquisition and transmission of COVID19.

Recommendation 3.1 ACT Shelter supports the introduction of descriptive minimum standards for residential tenancies in the ACT. The requirement to meet minimum standards should apply uniformly to all rental properties in the ACT regardless of who the landlord/lessor or manager is (amateur, community or public)

This will afford greater certainty to Lessors and Tenants

Minimum standards for residential tenancies must prioritise those that ensure housing is a social determinant of better health, safety, and wellbeing of tenants.

This will ensure the introduction of minimum standards makes a meaningful contribution towards improving the overall health and wellbeing of the Canberra community.

Minimum Standards the ACT should consider including in a reformed Act

Properties should enhance, not threaten, or worsen, health and safety

- Properties must be weatherproof and structurally sound
- They must be free from mould and damp caused by the building structure. This means all properties for let should have good ventilation in kitchens and bathrooms and provide opening windows with screens to allow adequate airflow and ventilation.
- In light of the evidence of the greater incidence of transmission of COVID through hotel quarantine sites that were characterised by poor ventilation and the absence of windows that could be opened to enable outside air flow, ACT Shelter recommends adequate ventilation be front-of-mind when designing, drafting and consulting further on specific minimum standards for insertion

in the Act.

- 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 (this will mitigate risk of death if tenants need to evacuate urgent in case of fire or other emergencies)
- All external windows that can be opened must have functioning latches and be able to be set in a closed or open position

Sanitation & running hot and cold water

- To meet minimum standards rental properties in the ACT should be required to have a working toilet connected to an appropriate sewerage/wastewater treatment system at the time of letting. 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 sink or vanity unit, and a shower or a bath.
- If there is a laundry, it must have a reasonable supply of cold and hot water.

Food preparation and an oven and stove in good working order

- At the time of letting, to meet minimum standards for residential tenancies, all properties must have a kitchen that includes adequate space for food preparation and a minimum of two burners on a stove top and an appropriately sized oven, both in good working order.

Temperature Modulation

- When determining what minimum standards for residential tenancies in the ACT should look like, an important focus should be upon the interior temperature of the property and the ability to modulate the internal temperature within a narrow range of (e.g., ten degrees)

Timeframes for Implementation

In addition to clarity about the types of standards, ACT Shelter supports short timeframes for all new advertised properties to meet minimum standards.

Additionally, all properties should be required to meet minimum standards within five years of an

amended Act being assented into law.

It is tempting to believe providing longer timeframes for compliance will increase its likelihood.

There may be circumstances in which lessors should be permitted to apply for exemptions with commensurate concessions or a clear statement to this effect when new ads are placed.

Furthermore, there may be a need for financial support from Government to support not-for-profit providers to meet the costs of upgrades. Notwithstanding, assets Housing ACT owns and manages or headleases, may require substantive new investment to comply.

Ultimately, there is a trade-off between aging and substandard assets, particularly in the private rental market being held for many years by lessors without the means or intent to fund upgrades, being withdrawn in a few years, or many years when the end date nears.

ACT Shelter suggests it may be better if substandard dwellings, particularly those with mould, rising damp, structural faults, and other threats to safety (serious) are disposed of or recycled sooner, rather than later. To this end we make the final recommendation:

3.3: That clear, unambiguous, and short time frames be set for new rental properties to meet prescribed minimum standards, and that all rental properties be required to meet minimum standards within a period not exceeding five years from the date at which legislation describing them is assented into law.

Relevant Domains of the Right to Adequate Housing

Introducing minimum standards for residential tenancies, progresses the realisation of the following domains of the Right to Adequate Housing:

(2) Availability of services, materials, facilities, and infrastructure

(4) Habitability

Relevant Domains of the ACT Wellbeing Framework

Introducing minimum standards for residential tenancies has the potential to make measurable difference to the overall wellbeing of Canberrans through improved wellbeing in the following domains:

Access and connectivity, Health, Housing and Home, Living Standards, Safety and Social Connection.

4. Strengthening the Right of Tenants to Grow Food and to Compost

The proposal to strengthen the right of tenants to grow food and to compost seems sensible enough given quiet enjoyment and minor modifications provisions the Act provides for now.

We are conscious, however, that as with many clauses in the *Act*, our experience is without clarity, problems arise when tenancies end and disputes arise around questions pertaining to what constitutes returning the property to its original condition, sans, fair wear, and tear.

These costs can be financial (contracting the services of professional gardeners or landscapers) or in-kind, in terms of the many days spent gardening and remedying changes made to outdoor areas.

ACT Shelter therefore applies the following caveat to our endorsement of proposed amendments to the Act to strengthen the right of tenants to grow food and to compost.

Recommendation 4.1: ACT Shelter supports strengthening the right of tenants to grow food and to compost, noting These amendments should be clear and unambiguous. Clauses inserted to give effect to this proposed reform must leave no room for dispute when tenancies end.

This will prevent the unintended consequence of increasing costs borne by tenants at the end of a tenancy or lessors who were not fully informed of the nature and extent of changes they were asked to approve, feeling compelled to outlay significant outgoings to restore gardens and outdoor areas to their desired state before re-letting, re-purposing, or selling their asset.

Relevant Domains of the Right to Adequate Housing

(4) Habitability and potentially (7) Cultural Adequacy

Relevant Domains of the Wellbeing Framework

There is the potential for this proposed reform to have a modest positive impact on environment and climate, health, housing and home and potentially social connection through the informal exchange of food grown by tenants, but whether this is measurable is unlikely.

Conclusion

ACT Shelter welcomes the opportunity to provide the above submission in response to the Your Say: Improving Residential Tenancies: Removing 'no cause terminations and other measures' Consultation Paper.

For our members, the removal of 'no cause terminations' and what, if any clauses are inserted into an Amended *Residential Tenancies Act 1997*, *their specificity and the notice periods for remedy or compliance* and the proposal to introduce minimum standards for all residential tenancies in the ACT were of greatest interest to members who responded to our surveys and from whom we consulted verbally to inform the content of this submission.

ACT Shelter's tagline, *Working Together for Housing Justice* seems vague to some and 'very 1970s' to others. For us however, it means a rights-based approach to systemic advocacy underpins everything we do and say.

We thank the Justice and Community Safety directorate for the level of detail in the Consultation Paper, including comparative analysis of notice periods and recent amendments to include standards provide for in other jurisdictions and hope we have been helpful.