

To whom it may concern,

Thank you for the opportunity to provide feedback on the Residential Tenancies Amendment Bill 2019 (No 2). We appreciate the work of the ACT Government in continuing to review and improve tenancy law to improve the functioning of the private rental sector in Canberra.

Over the last two years, we have observed significant dismay from renters in Canberra who have been surprised by the difficulty of transitioning between co-tenants in a share house. The inability to effect a partial tenancy transfer, or even to update an existing rental bond, has frustrated people who rent. At times, it has meant that agents have asked remaining tenants to fully vacate a property so that an end of lease inspection may be conducted before a new person moves in and a new lease is created. This effect, surely an unintended consequence of earlier changes, is unnecessary and disruptive.

Better Renting is broadly supportive of proposed changes that would simplify the transition of individual tenants into and out of co-tenancies. These changes would bring the ACT into better alignment with other Australian jurisdictions that already have systems for the transfer or partial transfer of tenancies. This would simplify and streamline the renting experience, especially for vulnerable renters who are unlikely to be able to afford to rent independently.

We also value the inclusion of clear time frames in the proposed legislation. This creates greater clarity and accountability for both lessors and tenants. However, as discussed in our response below, we suggest that some of these time frames should be shortened, and that additional time frames should be instituted for a response to a consent application.

Regards,

Joel Dignam
Executive Director
Better Renting

35A Co-tenant may leave residential tenancy agreement

In general, we see value in a mechanism for a co-tenant to leave a co-tenancy without initiating the termination of the tenancy and the creation of a new tenancy. It is reasonable that this requires consent from other co-tenants.

(3) (a): refusal of consent should be reasonable

However, we have concerns about the practical function of section 35A (3) (a), which allows the lessor and remaining co-tenants to refuse consent whether or not it is reasonable to do so. This would potentially create a situation where a co-tenant is forced to remain part of the tenancy against their will. In this situation, it is possible that the frustrated co-tenant may elect to leave regardless and stop paying rent. This would place the remaining co-tenants in a challenging position. Compelling a co-tenant to remain part of a co-tenancy would not necessarily compel the responsible behaviour needed to sustain a co-tenancy.

As such, we suggest that (a) and (b) be combined so that in a periodic or fixed-term tenancy the lessor or remaining co-tenants must not unreasonably refuse consent. This would make it less likely that a co-tenant who wants to move is unreasonably prevented from exiting a tenancy. A situation where remaining tenants might face financial difficulties, as countenanced in the explanatory statement, would be reasonable grounds to deny consent.

(4): consent response should be required within 7 days

21 days seems a reasonable time to give notice of an intention to stop occupying the premises. However, it is an unreasonable and excessively long period of time before a response is required from the lessor and remaining co-tenants. As proposed, a co-tenant might give notice on 1 July of an intention to move out on 22 July. The leaving co-tenant could begin to make plans for their move, only to hear back on 21 July that consent has been refused.

In reality, the co-tenant would not be able to act on their intention to vacate until they were confident that the consent application had not been refused. As such, we suggest a shorter time window for a response to the consent application. This time window would be separate from the minimum notice described in (2) (b).



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We suggest a time window of 7 days. With this model, the leaving co-tenant would make their consent application, specifying a proposed leaving day at least 21 days in the future. At that point, the lessor and remaining co-tenants would have 7 days to respond. If that period elapsed with no response, the leaving co-tenant would then have at least 14 days to act before the proposed leaving day.

(4): clause should be clarified

In addition to substantive concerns with clause (4), we find the proposed wording confusing, primarily due to the use of negative phrasing such as “does not respond”. As written, the lessor or remaining co-tenant is taken to consent if they don’t respond and don’t apply to the ACAT.

A simpler and clearer way of phrasing this could use “unless” instead of “if”. The lessor and remaining co-tenants would thus be taken to consent *unless* they either (a) responded otherwise *or* (b) applied to the ACAT. The use of positive phrasing and “or” instead of “and” may assist with making this clause simpler to understand.

Further, (4) (b) refers to section 35E (1) (b). This clause seems to apply only to applications by a co-tenant, not applications by the lessor. This seems to contradict the intention of (4) (b).

35C Becoming a co-tenant under an existing residential tenancy agreement

In general, we see value in a mechanism for new co-tenants to join an existing residential tenancy agreement. This would bring the ACT into line with other jurisdictions and help to formalise the widespread practice of new tenants joining a co-tenancy in a *de facto* sense.

(4) (b): only 7 days’ notice should be required.

We object to the 14 day notice period described in section 35C (4) (b). It is unclear what benefit this offers the lessor, and it would create significant friction and difficulties for tenants.



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The movement of tenants between share houses is often fluid. People may find themselves in need of new housing with little notice and, as such, need to rapidly confirm a new tenancy. Similarly, existing co-tenants may need to find a new tenant with short notice in order to cover rental costs and prevent arrears. Two weeks is a very long time for a prospective renter to wait when they may be sleeping on a couch or hoping to leave a dangerous environment.

We propose that a 7 day notice period aligns better with the needs of renters and the realities of the rental market at present.

(7): response window should be shorter than 14 days

It is impractical and unnecessary that existing co-tenants (and the new potential tenant) may have to wait up to 14 days to know where they stand.

For example, two co-tenants in a three bedroom property may be seeking a third co-tenant to move in. They may meet someone who is interested in joining in about 14 days. The co-tenants could contact their lessor and receive no response for 13 days. Meanwhile, the new person is on tenterhooks. They can't be confident that they'll be able to move in. They can't give notice for their existing tenancy. And then the day before the proposed moving date they could receive notice that the lessor has refused consent.

Again, it makes sense to specify a response period (in this case, for the lessor) that is shorter than the required notice (in this case, from the existing co-tenants). In most situations, a single co-tenant will be leaving and being replaced by a single individual. It is unclear why a lessor would need 14 days to respond to such a request. As the new person is looking for housing, they may be in a difficult situation, and it seems arbitrary and unhelpful to make them wait 14 days. We thus suggest a response period of 3 days for the lessor.

(As discussed above, we propose a 7 day notice period before the proposed joining date. Clearly, if the notice period were changed from 14 days to 7 days, the need for a shorter response window would not be *as* great. However, it would still make sense to specify a shorter response window in order to facilitate the movement of tenants into housing.)

(7): clause should be clarified

As discussed above, the use of “if”, negative phrasing, and “and” makes it harder to understand the meaning of this clause. We suggest the use of “unless”, positive phrasing, and “or”. We note also that section 35E (1) (d) seems to apply only to applications from co-tenants, not lessors.



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