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Ms Sam Grundy
Civil and Regulatory Law Branch
Justice and Community Safety Directorate
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Canberra ACT 2601

Via email: civilconsultation@act.gov.au

Dear Ms Grundy

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 Council of Social Service (ACTCOSS) advocates for social justice in the ACT and represents not-for-profit community organisations. Housing is critical to achieving social justice – ensuring people have adequate incomes and affordable housing is fundamental to reducing poverty and inequality in the ACT. ACTCOSS has advocated for the ACT Government to enact a right to housing in the ACT in alignment with international human rights frameworks.

Housing is also a key social determinant of health and wellbeing – 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.

The ACT is experiencing a housing affordability crisis which has resulted from a chronic lack of affordable housing in both the social housing and private rental sectors. [Our research](#) has found that:

- Canberra is currently the most expensive capital city in which to rent
- the ACT had the highest rate of rental stress among lower income private rental households at 73%
- Since 2016, Anglicare Australia's annual Rental Affordability Snapshot has consistently found a severe shortage of affordable and appropriate private rental properties on the market for low-income households in Canberra – in March 2021, out of 1,002 private rental properties advertised in Canberra none were affordable for households on working age social security payments
- There is a shortfall of over 3,000 social housing dwellings in the ACT
- Since 2014, the social share of social housing has declined from 7.6% to 6.7%
- The 2016 Census counted 1,600 people experiencing homelessness in the ACT
- As of 4 October 2021, there were 2,965 households on the ACT's social housing waiting list. The average wait time for standard housing is now over 4 years (1,472 days).

This lack of affordable rental properties creates even greater need for adequate protections that ensure tenants have *security of tenure in affordable and appropriate homes that are safe and healthy*.

As demonstrated in Better Renting's submission, lack of security of tenure resulting in the frequent need to move home comes with a significant financial and non-financial cost to tenants, reducing their wellbeing. As ACT Disability, Aged and Carer Advocacy Service (ADACAS) note in their submission, people with disability, people with mental ill health and older Canberrans face even greater challenges to access affordable accommodation that also meets their accessibility requirements.

ACTCOSS welcomes the ACT Government's engagement with the community on measures to improve residential tenancies. This aligns with our advocacy to strengthen the ACT's *Residential Tenancy Act 1997* to provide increased protections for renters. We welcomed the ACT Government's commitment under the Parliamentary and Governing Agreement for the 10th Legislative Assembly to amend the *Residential Tenancies Act 1997* to end no cause evictions. We welcome the further consideration of measures through this consultation process to improve residential tenancies in relation to:

- end no cause evictions
- rent bidding
- the right to grow food and to compost
- minimum standards.

Our submission has drawn heavily on discussions and the sharing of ideas with housing and tenant advocates and community housing providers. Our recommendations are aligned with those provided in submissions by these organisations, including ACT Shelter, ADACAS, Better Renting, Canberra Community Law, Community Housing Canberra, Community Housing Industry Association ACT, and Tenants' Union ACT.

Summary of recommendations

End no cause evictions

- no cause termination of tenancies be removed from the Act
- end of a fixed term should not be grounds for termination without cause
- 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
- ensure 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)
- ensure the notice period for any replacement clauses for no cause terminations remains at 26 weeks
- the onus be placed on the lessor to evidence the basis for any claimed ground of termination.
- introduce a 'reasonable and proportionate' test for terminations as included in recent residential tenancy reforms in Victoria.

Rent bidding

- prohibit rent bidding and introduce financial penalties for landlords or agents found to have solicited and/or accepted an offer to pay above the advertised rent or to make a security deposit greater than the maximum number of weeks permitted.

Minimum standards

- introduce best practice, prescriptive minimum standards for all residential tenancies
- ensure timeframes for compliance with minimum standards regulations are clear, reflective of cost and effort required, yet timely – with compliance to be achieved within five years of the regulation taking effect

- undertake engagement with the disability community around the introduction of minimum accessibility standards.

Right to grow food and to compost

- strengthen the rights of tenants to grow food and to compost.

End no cause evictions

As set out in the Consultation Paper, currently under the *Residential Tenancies Act 1997*:

- A landlord can end a tenancy with ‘no cause’ by issuing the tenant a notice to vacate (NTV) at least 26 weeks before the tenancy end date. If it is a fixed term agreement, the tenancy end date must be after the end of the fixed term
- If the tenant does not move out after receiving a NTV, the landlord can apply to the ACT Civil and Administrative Tribunal (ACAT) for an order terminating the tenancy
- The tenant can challenge the termination if they believe the NTV was issued in retaliation against them for having asserted their tenancy rights.

ACTCOSS has long advocated for the elimination of the ‘no-cause’ eviction clause to strengthen legislation to limit the scope of landlords to retaliate against tenants. We support the removal of no cause evictions for the reason stated on page 7 of the Consultation Paper:

Removing no cause terminations from the Act will give tenants the certainty their tenancy can only be ended for a proper reason, as well as giving them greater confidence that they will be able to assert their rights under the agreement without fear that this may lead to their eviction.

There is a clear power imbalance between landlords and tenants and the threat of no cause termination of a tenancy can have a chilling effect on tenants’ assertion of their rights as there is not an adequate barrier to retaliatory eviction where the tenant is not at fault.

Potential additional prescribed grounds for termination

The Consultation Paper seeks feedback on potential additional prescribed grounds for termination that could cover reasons that a landlord may need to terminate a tenancy which is not currently a prescribed ground and for which they currently rely on no cause termination. We share the concern of other housing and tenant advocates that that by bringing an end to no cause terminations this reform process may inadvertently introduce regressive provisions to replace it. This would be in contradiction with the purpose of achieving progressive residential tenancy reform to strengthen all tenants’ rights and protections.

ACTCOSS's view on the addition of new prescribed grounds for termination is closely aligned with the principles outlined by Canberra Community Law in their submission. We recommend that:

- no additional prescribed grounds for eviction be introduced that only apply to social housing tenancies unless they address a clearly identified essential requirement that is unique to social housing and where social housing landlords are currently reliant on the 'no cause' termination provision in the Act to meet that requirement
- if additional prescribed grounds for eviction are introduced that only apply to social housing tenants, ensure that these grounds do not lessen or weaken social housing tenants' rights and protections when compared to those afforded to private rental tenants under the Act
- any new ground introduced be as narrow as possible and retain a 26 week notice period
- onus be placed on the lessor to evidence the basis for any claimed ground of termination
- any new ground for termination is incorporated in a way that ensures that there is consideration of whether an eviction being sought is proportionate to a legitimate aim. This means ensuring that ACAT retains discretion not to evict where the termination would result in unfair or unjust outcomes, or where termination is not proportionate to the outcome being sought. We recommend introducing a standalone provision requiring ACAT to consider whether the making of a termination and possession order is 'reasonable and proportionate' in the circumstances of each case
- any new measures introduced are compatible with the *Human Rights Act 2004*.

Use of the rental premises for a non-residential purpose

In principle, ACTCOSS is not opposed to adding 'use of the rental premises for a non-residential purpose' as a prescribed grounds for termination. However, if this is to be added there would need to be safeguards and monitoring to ensure that it is not mis-used by landlords. Our concern is that this 'with cause' termination could be used to evict tenants without the premises subsequently being used for a non-residential purpose and/or soon being returned to the residential tenancy market. The Consultation Paper provides the example of requiring the landlord to provide a statutory declaration as evidence of this – we recommend identifying a stronger evidence requirement as well as adequate monitoring for compliance and penalties for improper or misleading use of this clause. This might also be addressed through Better Renting's recommendation for restrictions on re-letting for a certain period if this ground was used to terminate a tenancy.

Effective management of social housing stock

ACTCOSS does not support the addition of ‘effective management of social housing stock’ as a prescribed grounds for termination of a tenancy. This is too broad and lacks adequate clarity and certainty for all parties – including landlords, tenants, and ACAT. We share the concern of other housing and tenant advocates that such a clause would have the potential to weaken protections for social tenants in a way that is potentially discriminatory, unfair, and unjust. Based on this we strongly prefer that no prescribed grounds for termination be added to the Act that would apply solely to social housing tenants where this can be seen as providing lesser or weaker rights and protections than those available to private rental tenants.

Loss of eligibility for accommodation assistance

ACTCOSS understands that there are specific challenges faced by some community housing providers where they manage properties under either Federal and/or ACT Government social housing schemes. Through these schemes community housing providers may be required to ensure tenants meet the eligibility requirements of the government agency through which the housing is funded. Our understanding is that this is one issue that has been managed using no cause evictions where a tenant no longer meets the eligibility requirements under a particular scheme. Examples we are aware of are the National Rental Affordability Scheme (NRAS), the ACT Government’s land tax exemption scheme, NDIS Supported Independent Living, and supported accommodation for people exiting the prison system.

These issues require further investigation to examine what, if any, additional prescribed grounds are required. These issues may also require engagement with agencies at the Federal or Territory level to explore ways in which tenancies can be managed without negatively impacting on the security of tenure for tenants. ACTCOSS recommends that the ACT Government undertake further engagement with social housing providers, their tenants, and tenants’ advocates on any replacement clause that might be required to address a tenant’s loss of eligibility for accommodation assistance.

Any additional prescribed grounds would need to be applied in line with the principles set out by Canberra Community Law as stated at the beginning of this section of our submission.

ACTCOSS shares the view of several housing and tenant advocates in support of the longstanding social housing policy in the ACT not to evict tenants when their income rises above the initial eligibility criteria. The benefits of this policy include increasing rental income for Housing ACT and avoiding a poverty trap for tenants who would be forced to trade off security of tenure against an opportunity to improve income – as well as being exposed to the risk of rental stress in an unaffordable private rental market.

Termination at the end of a fixed term tenancy

ACTCOSS supports the views of other housing and tenant advocates in opposing the addition of the end of a fixed term tenancy as a prescribed grounds for termination. If there is no reason for the landlord to evict a tenant at the end of a fixed term tenancy, then this is essentially a no cause termination and contrary to the fundamental purpose behind the ACT Government's commitment to end no cause evictions.

Rent bidding

As highlighted at the beginning of our submission, the ACT has a chronic lack of affordable rental properties both in terms of social housing and in the private rental market. Based on advertised private rents, Canberra is the least affordable capital city and has no affordable properties for people on low incomes. Rent bidding under these conditions can only push up prices and make housing even less affordable.

ACTCOSS supports the recommendation from Better Renting to prohibit rent bidding entirely, such that landlords must advertise a set rent and may not accept more than that price. We recommend that this also prohibit landlords from soliciting rent bids. We also support ACT Shelter's extension of this to prohibit landlords from soliciting or accepting a security deposit greater than the maximum number of weeks permitted.

Right to grow food and to compost

ACTCOSS supports measures to strengthen the right of tenants to grow food and to compost. As well as providing tenants with a right that aligns more closely with full enjoyment of their rental property, this right also supports food security and the reduction of food stress in our community.

Minimum standards

The Consultation Paper notes that the regulation-making power enables the ACT Government to introduce minimum standards in relation to:

- physical accessibility
- energy efficiency
- safety and security
- sanitation
- amenity.

ACTCOSS has long advocated for the introduction of minimum housing standards for rental properties in the ACT. The views we expressed 10 years ago in [our](#)

[response to introducing minimum housing standards under the Residential Tenancies \(Minimum Housing Standards\) Amendment Bill 2011](#) remain the same today:

With such a shortage of properties, especially affordable properties, tenants on low incomes have even less ability to choose properties with better ratings - rather they are forced to take any property that is available within their price range. In the current environment, often the only accommodation the most disadvantaged can afford to rent is of very poor quality.

It becomes increasingly important in a highly competitive rental market, to ensure government regulations remain appropriate. This is not about choice – it is about basic standards. If minimum standards of accommodation are not met, this could potentially impact on the health and welfare of tenants in the ACT.

While we must implement minimum standards, we must also address how tenants are empowered to access these provisions.

As we noted in that 2011 submission, there is a key link between the elimination of no cause evictions and the introduction of minimum standards in supporting tenants to be confident in asserting their rights without the fear of the threat of retaliatory eviction.

ACTCOSS recommends that:

- the ACT Government introduce national best practice minimum standards for rental properties while also looking at where it can achieve international best practice
- regulations implementing minimum standards for rental properties should be as prescriptive as practicable
- a clear and realistic timeframe be established that would see the development of regulations within the next two years and a deadline for compliance with those regulations within the following five years
- programs be implemented to raise awareness of minimum housing standards, especially among marginalised and disadvantaged groups.

We agree with ADACAS's view expressed in their submission on the Consultation Paper that,

as a human rights jurisdiction, the ACT should be planning and taking the lead in accessible housing in the rental market – with the aim of meeting the needs of all community members, including older people, others with mobility limitations or those who use mobility equipment such as wheelchairs.

And that,

at any point when renovations are being considered, landlords should be encouraged and incentivised to meet housing accessibility standards for rental

properties. Whilst the Silver level of the Liveable Housing Australia (LHA) Design Guidelines is being embedded in the National Construction Code, ADACAS strongly encourages landlords to work towards meeting LHA Gold or LHA Platinum.

ACTCOSS recommends that the ACT Government undertake specific engagement to introduce minimum accessibility standards with the disability community.

Further engagement

ACTCOSS welcomes the ACT Government taking this key step towards delivering on its commitment to end no cause evictions. We also welcome the attention it has given in the Consultation Paper to other critical areas that need to be addressed to ensure that everyone in the ACT has access to a safe, secure, healthy, and affordable home regardless of the type of tenure.

As indicated in this submission, we encourage further engagement on a number of these issues. If you have any questions or would like to discuss any of the issues raised or recommendations made in this submission, please do not hesitate to contact myself or Mr Geoff Buchanan, Senior Policy Officer, ACTCOSS at geoff.buchanan@actcoss.org.au or on 0415 082 701.

Thanks again for the opportunity to provide feedback on the Consultation Paper. We look forward to further engagement on these issues soon.

Yours sincerely,



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