

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)

### Residential Tenancies Legislation Amendment Bill 2019

In relation to its overall purpose, this Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Salient international instruments of relevance of the purposes of this Bill are:

1. The International Covenant on Economic, Social and Cultural Rights (ICESCR) done at New York on 16 December 1966 ([1976] ATS 5).
2. The International Covenant on Civil and Political Rights (ICCPR) done at New York on 16 December 1966 ([1980] ATS 23).
3. The Convention on the Rights of the Child (CRC) done at New York on 20 November 1989 ([1991] ATS 4).
4. The Convention on the Rights of Persons with Disabilities (CRPD) done at New York on 13 December 2006 ([2008] ATS 12).

### Overview of the Bill

The Bill has several salient purposes. It creates a general rebuttable presumption in favour of tenants keeping pets. It also prevents a property condition report being entirely image based to enhance reliability and effectiveness, and provides an offence if unreturned bond money is not deposited in the Tenancy Trust Account on behalf of the tenant within the legislative timeframe.

The Bill also provides for reasonable means that a landlord can utilise to give effect to an order for entry made by the Northern Territory Civil and Administrative Tribunal (NTCAT). It excludes physical contact between persons and for a landlord to provide compensation for any damage caused after entry, except to any item that was used to prevent entry and for the landlord to ensure that the premises are reasonably secured after effecting entry.

The Bill further facilitates the temporary relocation of CEO (Housing) tenants and the uptake of new tenancy agreements to enable rollout of the Government's public housing replacement and refurbishment program for the tenant's house, as well as the transfer of CEO (Housing) tenants to an alternative new premises and tenancy agreement where operationally required.

### Human rights implications

The Bill engages rights referred to in Article 14 of the ICCPR, however any potential adverse engagement is expected to be offset by the positive impact on human rights that the Bill has by advancing Article 11 of the ICESCR (the right to an adequate standard of living) and, in particular, the right to live somewhere in security, peace and dignity as set out in Article 17 of the ICCPR.

### Families and Persons with a Disability

Many families and children would consider a pet as part of their family and what is required to make a house into a home. There is medical literature that supports pets being beneficial to mental and psychological health and childhood development. However numerous landlords may perceive the presence of animals as posing an additional risk of property damage and unreasonably refuse tenants having a pet as part of their tenancy.

Article 23 of the ICCPR provides for the protection of family. Article 23 of the ICCPR provides for protection of children. Article 16 of the CRC protects against arbitrary or unlawful interference with the privacy, family, home or correspondence of a child. Permitting tenancy law with a rebuttable presumption in favour of pets is in accordance with these Articles.

This Bill also promotes Articles 1, 7, 19 and 28 of the CRPD in safeguarding the rights of persons with disabilities where an assistance animal is required for medical and psychological reasons, as is common with guide dogs for people with vision impairment.

### The right to adequate housing

Article 11 of the ICESCR provides that everyone has the right to an adequate standard of living including adequate food, water and housing and to the continuous improvement of living conditions.

In relation to housing, the United Nations Committee on Economic, Social and Cultural Rights (the Committee) has stated that housing must provide adequate shelter, which encompasses adequate privacy, space, security, lighting and ventilation, basic infrastructure and location with regard to work and basic facilities, all at a reasonable cost. The Committee has also stated all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

The Committee's view is that the right to housing is not narrow or restricted in the sense that adequate housing is satisfied merely through having access to shelter or a roof over one's head. Rather, the Committee considers that the right to adequate housing is integrally linked to the inherent dignity of the human person, upon which the principles set out in the ICESCR are premised.

The Bill positively engages Article 11 by providing for a process that guarantees a public housing tenant will not be homeless when the CEO (Housing) is undertaking activities that seek to improve the tenant's living conditions.

### The right to privacy

Article 17 of the ICCPR prohibits unlawful or arbitrary interference with a person's privacy, family, home and correspondence. It provides that persons have the right to the protection of the law against such interference. The Bill outlines the parameters of entry being ordered by the NTCAT where lawful entry has been unreasonably prevented. It protects the tenant by ensuring only reasonable means can be used to gain entry, excludes the physical contact between persons when effecting entry, and provides for compensation if any item is damaged other than an item used to prevent entry.

### **Conclusion**

Overall this Bill is compatible with human rights. Any potential incompatibility with human rights is outweighed by the positive promotion of human rights.