



21 June 2024

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attn: Isabella Comfort

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To Isabella Comfort,

**Re: Residential Tenancy Amendment Regulations 2024**

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We welcome the opportunity to provide comment on the proposed amendments to the *Residential Tenancy Regulations 2015* (Tas) ('the Regulations'). We strongly oppose the Bill in its current form because whilst the intent of the Bill is to "provide flexible housing options for primary production workers" in practice it will result in less protections for persons working in primary production whose accommodation is conditional on their employment.

#### **PRIMARY PRODUCTION RESIDENTIAL TENANCY AGREEMENT**

The *Residential Tenancy Act 1997* (Tas) ('the Act') expressly excludes a range of accommodation providers from the Act, including motels and hotels, premises used ordinarily for holiday purposes, aged care facilities and retirement villages.<sup>1</sup> The Act does not exclude employers who provide accommodation to their staff and as a result the Tenants' Union of Tasmania advises renters that they continue to have a valid lease agreement even in circumstances where the employer has terminated their employment.

The Bill, as it is currently drafted, will exclude employees who are subject to a 'primary production residential tenancy agreement' from section 11 and Part 4 of the Act. In other words, on-farm workers will not have fixed-term lease agreements that become non-fixed term lease agreements (section 11(2)) and will not need to be served with a Notice to Vacate upon the expiration/termination of their employment contract (Part 4).

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<sup>1</sup> Section 5(2) of the *Residential Tenancy Act 1997* (Tas).

The practical effect of the proposed amendments is that on-farm workers whose accommodation is conditional on their employment will be more vulnerable to exploitation. In a recently reported case about accommodation for 40 seasonal workers from Vanuatu the Tasmanian Civil and Administrative Tribunal observed that “not all of them spoke English” and “various workers described the living conditions as cramped, hot and too crowded”.<sup>2</sup> Whilst not all on-farm workers will be from overseas, vulnerabilities will remain as the workers are likely to be low-paid, far away from their homes and aware that at any time the employer can terminate their employment and ask that they vacate their home all on the same day.

In circumstances where the primary production employer has ended the employee’s contract of employment a notice period of four weeks should be provided. In our opinion, four weeks’ notice strikes the right balance between an employee being able to secure alternative accommodation and the employer requiring the premises to accommodate another employee. New South Wales has a model that should be considered:<sup>3</sup>

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

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

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

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

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

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

Similarly, the Australian Capital Territory also requires that at least four weeks’ notice is provided upon the expiration of the employee’s employment:<sup>4</sup>

**53 Employer-provided accommodation**

*(1) On application by a lessor, the ACAT may make a termination and possession order if satisfied that—*

*(a) the residential tenancy agreement was entered into as part of a contract of employment; and*

*(b) the tenant has, since the agreement was entered into, ceased to be employed by the lessor; and*

*(c) the lessor requires the premises to accommodate another employee.*

...

*(3) If the ACAT makes an order under subsection (1) or (2), the ACAT must give the tenant no less than 4 weeks notice of the termination of the tenancy.*

The advantage of the NSW model is that if the employee had not found alternative accommodation upon the expiration of the 28 day termination notice, the employer is required to make an application to the Court/Tribunal to have the employee evicted. This is likely to result in the employee receiving an additional 1-2 weeks in which to find alternative accommodation and vacate their home. The advantage of the ACT model is

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<sup>2</sup> *Insight (Tas) Pty Ltd v Latrobe Council (No 2)* [2024] TASCAT 78 at [10].

<sup>3</sup> Section 85 of the *Residential Tenancies Act 2010* (NSW).

<sup>4</sup> Section 53 of the *Residential Tenancies Act 1997* (ACT).

that each case is able to be assessed on a case-by-case basis with the Tribunal member able to weigh up the respective rights of the parties.

In summary, we strongly recommend that persons working in primary production whose accommodation is conditional on their employment should be afforded better protection against eviction. The NSW and ACT models provide these protections and a similar model should be incorporated into the Bill.

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



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