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Public Exposure Draft of the Residential Tenancies Amendment Bill 2022

MHCC ACT Submission

Mental Health Community Coalition ACT

Peak Body in the ACT for the Community Mental Health Sector

Room 1.06, Level 1, Griffin Centre

20 Genge Street, Canberra City, ACT 2601

t: (02) 6249 7756 **e:** admin@mhccact.org.au

w: www.mhccact.org.au **abn:** 22 510 998 138

About MHCC ACT

The Mental Health Community Coalition of the ACT (MHCC ACT) is a membership-based organisation which was established in 2004 as a peak agency. It provides vital advocacy, representational and capacity building roles for the Not for Profit (NFP) community-managed mental health sector in the ACT. This sector covers the range of non-government organisations (NGO) that offer recovery, early intervention, prevention, health promotion and community support services for people with a mental illness.

The MHCC ACT vision is to be the voice for quality mental health services shaped by lived experience. Our purpose is to foster the capacity of the ACT community-managed mental health services to support people to live a meaningful and dignified life.

Our strategic goals are:

- To support providers to deliver quality, sustainable, recovery-oriented services
- To represent our members and provide advice that is valued and respected
- To showcase the role of community-managed services in supporting peoples' recovery
- To ensure MHCC ACT is well governed, ethical and has good employment practices.

MHCC ACT Members

A Gender Agenda	Carers ACT	Nexus Human Services
Access Lifecare	CatholicCare	Perinatal Wellness Centre
ACT Shelter	Connections Case Management	Quest Group
ACT Disability, Aged and Carer Advocacy Service (ADACAS)	EveryMan Australia	Richmond Fellowship ACT
ACT Mental Health Consumer Network	Focus ACT	Rubies Nursing Care
Advocacy for Inclusion	Grand Pacific Health (headspace)	SiTara's Story
Anglicare	Koomarri	Stride (previously Aftercare)
ATODA	Livability Australia	Think Mental Health
Avenue Counselling	Making Connections Together	Toora Women
Barnados Australia Canberra	Marymead	Wellcare
BPD Awareness ACT	Menslink	Wellways
Canberra Youth Residential Services	Mental Health Foundation ACT	Woden Community Service
Capital Health Network	Meridian ACT	Xtend Yourself Life Coaching
Capital Region Community Services Ltd	Mental Illness Education (MIE) ACT	Youth Coalition ACT
		YWCA Canberra

Introduction

MHCC ACT welcomes the opportunity to provide this submission in response to the Exposure Draft of the Residential Tenancies Legislation Amendment Bill 2022 (the Draft Bill).

Housing security and stability are critical to supporting mental health. The ability to access secure, quality and appropriately located housing helps to prevent mental health issues from occurring and enables better management of, or recovery from, existing mental ill health. Indeed, for individuals with an experience of mental illness or distress, safe and secure housing is usually seen as an indispensable condition for recovery.¹

In the ACT, the lack of affordable and secure housing has a disproportionate effect on people with mental health challenges. According to the Australian Institute of Health and Welfare (AIHW), just over 50% of people accessing specialist homelessness services during 2020-21 had a mental health issue.²

In addition, the rate of people with a current mental health issue seeking help from specialist mental health services has increased each year from 2011–12 to 2019–20, with people with a current mental health issue representing one of the fastest growing sub-groups accessing specialist homelessness services.³

Private rental housing is the most common form of tenure for people with lived experience of more severe and complex mental health challenges⁴, yet this cohort is also more likely to experience discrimination, instability and eviction in the housing market.

MHCC ACT therefore strongly supports reforms to tenancy laws that will reduce the discrimination and housing insecurity disproportionately experienced by people with mental health challenges.

No cause evictions

MHCC ACT welcomes the ACT Government's aspiration to make "renting a secure and sustainable option for those who rely on it", and particularly welcomes the abolition of "no cause" evictions.

It is however of concern that the draft Bill replaces 'no cause' evictions for social housing tenants with several new grounds for eviction that are excessively broad, with many specifically exempt from administrative review.

'Behavioural grounds' for eviction

As noted above, people with lived experience of more severe and complex mental health challenges are more likely to experience discrimination, instability and eviction in the housing market.

MHCC ACT is therefore concerned that the proposed 'behavioural grounds' for eviction (new Section 51A) are subjective and speculative and will open tenants up to unreasonable risk of eviction, with a disproportionate effect on people with mental health challenges.

Of particular concern is the fact that many mental health challenges have an episodic nature, a factor that may not be given due consideration in any eviction process.

The Productivity Commission set out the following Action Points in its 2020 Mental Health Inquiry Report:

State and territory social housing authorities should review their policies relating to anti-social behaviour, temporary absences and information sharing between institutional care facilities and housing authorities to provide consideration for people with mental illness, to reduce the risk of eviction.⁵

The review of anti-social behaviour policies should take into account the episodic nature of mental illness and ensure a fair balance between the needs of the tenant experiencing mental illness and the needs of other tenants sharing a housing facility.⁶

As such, MHCC ACT believes the proposed new Section 51A in its current form is inappropriate and should be removed from the Bill.

Recommendations

MHCC ACT supports the following recommendations alongside other organisations including Canberra Community Law and ACT Council of Social Service:

1. That the ACT Government introduce a standalone 'reasonable and proportionate' test based on the Victorian provisions which requires the ACT Civil and Administrative Tribunal ('the Tribunal') to consider whether an eviction order would be reasonable and proportionate in the circumstances of each case, taking into account a mandatory list of considerations, *including issues relating to the mental health of the tenant*.
2. That the ACT Government limit the grounds for eviction rather than introduce a raft of broad grounds for eviction and set out the grounds in the *Residential Tenancies Act 1997*.
3. That the proposed 'behavioural grounds' for eviction (new Section 51A) be removed from the Bill.
4. That any new termination provisions should ensure that the landlord is required to apply to ACAT for an eviction order before a tenancy can be terminated (except where the tenant vacates the premises).

References

¹ Duff, C., Hill, N., Blunden, H. valentine, k., Randall, S., Scutella, R. and Johnson, G. (2021) Leaving rehab: enhancing transitions into stable housing, AHURI Final Report No. 359, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/359>, doi: 10.18408/ahuri53211.

² Australian Institute of Health and Welfare, (2022). Mental health services in Australia. AIHW: Australian Government. accessed 29 March 2022, at: <https://www.aihw.gov.au/reports/mental-health-services/mental-health-services-in-australia/report-contents/specialist-homelessness-services>

³ *Ibid.*

⁴ Duff et. al., *op.cit.*

⁵ Productivity Commission, Mental Health Inquiry Report: Actions and Findings, No. 95, 30 June 2020, page 46

⁶ *Ibid.*