

# RESIDENTIAL TENANCY ACT: OCCUPANCY LAW CHANGES



## FACT SHEET

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## Changes to Occupancy Law: Education provider occupancy agreements

### BACKGROUND

On 30 January 2022, changes to occupancy laws for education provider occupancy agreements (including most university student accommodation) commenced. Changes to all other types of occupancy agreements commenced on 3 March 2021 but education provider occupancy agreements were subject to transitional provisions until 30 January 2022.

This Fact Sheet is designed to help you understand the changes to education provider occupancy agreements. The information in this Fact Sheet is not legal advice. You should seek legal advice if in doubt about your individual circumstances.

The rights and obligations of the grantor and occupant depend on the *Residential Tenancies Act 1997* (the RTA) and on the individual occupancy agreement. You should always check your agreement as a starting point.

### WHAT ARE THE MAJOR CHANGES TO OCCUPANCY LAW?

As noted above, changes to the laws which apply to all occupancy agreements, apart from education provider occupancy agreements, commenced on 3 March 2021. Amongst other things, the changes created a new definition for occupancy agreements which sets out the circumstances where occupancy agreements may be used. They also set out mandatory occupancy principles (minimum terms) for occupancy agreements and created an enforceable conciliation of occupancy disputes through the ACT Human Rights Commission.

Changes to education provider occupancy agreements commenced on 30 January 2022. These applied the changes made to all other occupancy agreements since 3 March 2021, however there are some specific provisions that apply just to education provider occupancy agreements. This Fact Sheet explains the changes specific to education provider occupancy agreements. For more information about other changes to occupancy laws, see the Fact Sheet [Changes to Occupancy Laws: Overview](#).

### WHAT IS AN EDUCATION PROVIDER OCCUPANCY AGREEMENT?

An education provider occupancy agreement is defined as an agreement to reside in a residential facility associated with, on the campus of, or provided under an arrangement with an education provider (usually a university).

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Essentially, this definition covers student accommodation that is provided by a university or by a private operator that is contracted by, or otherwise associated with, the university (such as the Australian National University or the University of Canberra). It will **not** cover private operators that are not formally connected with a university.

University student accommodation exists for the purposes of accommodating students while they are studying, and the terms of these agreements are connected to the student's enrolment in the university. For this reason, there are some occupancy provisions that apply only to education provider occupancy agreements that are connected to university requirements.

### DO THE OCCUPANCY PRINCIPLES APPLY TO EDUCATION PROVIDER OCCUPANCY AGREEMENTS?

Yes, however there are some exemptions from, or alterations to, the operation of some mandatory occupancy principles for education provider occupancy agreements. These include changes to the operation of clauses related to lodgement of security deposits, penalties, termination and dispute resolution processes. Each of these alterations are outlined in more detail below.

For more information about the mandatory occupancy principles, see the Fact Sheet [Mandatory Occupancy Principles](#).

### IS THERE A REQUIREMENT TO LODGE A SECURITY DEPOSIT WITH THE ACT REVENUE OFFICE?

No, security deposits (sometimes referred to as a bond) for education provider occupancy agreements do not need to be lodged with the ACT Revenue Office (Rental Bonds) (please note, this requirement applies to security deposits for all other types of occupancy agreements).

### DO THE GENERAL OCCUPANCY PRINCIPLES APPLY TO EDUCATION PROVIDER OCCUPANCY AGREEMENTS IN RELATION TO PENALTIES AND CONSEQUENCES?

A university requirement is a statute, rule, or policy about student discipline or medical leave made by an education provider. For example, this may include policies regarding a code of conduct and breaches of that code. Or, if a student has a serious health condition, rules regarding the period of voluntary or involuntary leave and any conditions that may arise as a result.

In circumstances where a penalty or consequence arises because of a **university requirement**, the general occupancy principle that the penalty or consequence be reasonable and proportionate and that it not impose unreasonable hardship on the occupant **does not apply**. This is to ensure there are no inconsistencies between the operation of university requirements and occupancy laws.

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However, in circumstances where the penalty or consequence **does not** arise under a university requirement, students will still have protection under the generally occupancy principles and any penalties or consequences imposed for breach of a rule will need to be reasonable and proportionate to the breach and must not impose unreasonable hardship on the occupant.

For more information about the mandatory occupancy principles in relation to penalties and consequences, see the Fact Sheet [Mandatory Occupancy Principles](#).

### TERMINATION OF AN EDUCATION PROVIDER OCCUPANCY AGREEMENT

The general occupancy principles provide that an occupancy agreement may only be terminated under circumstances that are reasonable having regard to the nature of the occupancy. This general occupancy principle **does not** apply to a termination made under a **university requirement** (see above for how this is defined). This is to ensure there are no inconsistencies between the operation of university requirements and occupancy laws. For example, for a student to be eligible to benefit from university provided accommodation, they are generally required to be enrolled in a program of study. Where a student is no longer enrolled in a program of study, the university requirements may allow for the termination of the education provider occupancy agreement on that basis.

In circumstances where the termination does not arise due to a university requirement (i.e., a breach of an occupancy principle or the agreement has occurred), the agreement should state under what circumstances the agreement may be terminated and the reasonable notice period that must be given. Consideration should also be given as to whether termination of the occupancy agreement is reasonable having regard to the nature of the occupancy.

For more information about the mandatory occupancy principles in relation to termination of occupancy agreements, see the Fact Sheet [Mandatory Occupancy Principles](#).

### IF I HAVE A DISPUTE, CAN I APPLY TO THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL FOR A RESOLUTION?

The ACT Civil and Administrative Tribunal (ACAT) has jurisdiction to hear occupancy disputes, however, where the dispute arises and a university dispute resolution process applies, the ACAT will be unable to hear the dispute until the parties have exhausted the university dispute resolution procedure. This requirement ensures parties have an opportunity to resolve their dispute through internal university processes before the dispute goes to ACAT.

For more information about disputes in relation to occupancy agreements, including making a application to the ACAT, see the Fact Sheet: [Disputes in relation to occupancy agreements](#).

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### IF I HAVE A DISPUTE, CAN I MAKE A COMPLAINT TO THE ACT HUMAN RIGHTS COMMISSION WITHOUT GOING THROUGH THE UNIVERSITY DISPUTE RESOLUTION PROCEDURE?

Yes. Occupants under an occupancy agreement provided by an education provider will not need to exhaust internal dispute resolution mechanisms prior to making an occupancy dispute complaint to the ACT Human Rights Commission. Further, an amendment to the *Human Rights Commission Act 2005* (ACT) clarifies that a party to an occupancy agreement does not have to attempt to resolve a dispute under a university dispute resolution procedure before the ACAT can consider the complaint if the complaint is unable to be resolved by the ACT Human Rights Commission.

For more information about disputes in relation to occupancy agreements, including making a complaint to the ACT Human Rights Commission, see the Fact Sheet: [Disputes in relation to occupancy agreements](#).

### WILL EXISTING EDUCATION PROVIDER OCCUPANCY AGREEMENTS BE AFFECTED?

Yes. From 30 January 2022, the mandatory occupancy principles will apply to all existing education provider occupancy agreements, including those signed before 30 January 2022.

### MORE INFORMATION AND ASSISTANCE

Australian National University Student Association Legal Service (ANUSA Legal Service)

**Phone:** 6125 2444 **Email:** [sa.admin@anu.edu.au](mailto:sa.admin@anu.edu.au) **Website:** <https://anusa.com.au/services/legal/>

Legal advice from this service is free and confidential. The service is only available to currently enrolled ANU students.

Tenancy Advice Service (Division of Legal Aid ACT)

**Phone:** 1300 402 512 **Email:** [TAS@legallaidact.org.au](mailto:TAS@legallaidact.org.au) **Website:** [www.legallaidact.org.au/tasact](http://www.legallaidact.org.au/tasact)

Legal advice from this service is free and confidential. It is not means-tested (the service is available to all occupants regardless of income).

Legal Advice Bureau (Open between 12:30pm and 2pm on weekdays)

**Phone:** 6274 0300

**Website:** [www.actlawsociety.asn.au/for-the-public/legal-help/legal-advice-bureau](http://www.actlawsociety.asn.au/for-the-public/legal-help/legal-advice-bureau)

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The Legal Advice Bureau at the Law Society is a free and confidential service and can provide advice in 15-minute consultation sessions to both occupants and grantors.

### Conflict Resolution Service

**Phone:** (02) 61890590 **Website:** <https://crs.org.au/>

Conflict Resolution Service (CRS) is a nationally accredited mediation service that resolves conflict professionally, competently and compassionately. CRS have experience working with neighbours, landlords and residential tenants to provide a safe, structured, and confidential environment for discussion between parties.

### ACT Civil and Administrative Tribunal (ACAT)

**Phone:** 6207 1740 **Email:** [tribunal@act.gov.au](mailto:tribunal@act.gov.au) **Website:** [www.acat.act.gov.au/](http://www.acat.act.gov.au/)

Please note that the Tribunal can assist with questions about its procedures, but it cannot give legal advice on individual situations.

### ACT Human Rights Commission

**Phone:** 6205 2222 **Email:** [HRCIntake@act.gov.au](mailto:HRCIntake@act.gov.au) **Website:** <https://hrc.act.gov.au/occupancy-disputes/>

The Commission can accept complaints about occupancy disputes arising from occupancy agreements. They will try to resolve matters informally through a conciliation process.

### Legislation

You can access the *Residential Tenancies Act 1997* and other ACT legislation on the ACT Legislation Register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au).