

SECOND READING SPEECH

Residential Tenancy Amendment Bill 2011

Mr Speaker, I move that the *Residential Tenancy Amendment Bill 2011* be read a second time.

The Residential Tenancy Amendment Bill improves protections for tenants, simplifies rental deposit processes and improves sub-tenancy and assignment processes.

Mr Speaker, the Amendment Bill introduces nationally agreed model provisions for regulating residential tenancy databases.

Residential tenancy databases are privately owned and operated databases that are used to store information about individual tenancy histories. Most real estate agents subscribe to a tenant database and use the information to screen prospective tenants applying for rental accommodation.

Tenants who are listed on a tenant database face automatic exclusion from the private housing market. This makes it extremely difficult for tenants listed on a database to secure rental accommodation.

The key concerns with tenant databases are that information stored may be inaccurate, tenants may not be aware that they have been listed, tenants may be unable to correct information,

information may be held for an inordinately long period of time and tenants may be listed for trivial or vindictive reasons or to deter them from pursuing their rights at law.

Until recently, there was no nationally uniform approach to regulating tenant databases. In 2006 all jurisdictions agreed to the development of uniform model legislation to regulate tenant databases. Following extensive consultations with stakeholders nationally, model legislation was approved by the Ministerial Council on Consumer Affairs in 2010, with all jurisdictions agreeing to implement them in 2011.

Key requirements of the model provisions are that:

- A listing can only occur where the tenant has breached the residential tenancy agreement, and because of that breach, either:
 - the tenant owes an amount that is more than the relevant security deposit; or
 - there is a court order terminating the tenancy agreement due to the breach.
- Information stored in a database can only relate to the breach and must be accurate.
- Property owners or agents must provide tenants with details of any database that has been used in the application process

and details of how they can have the information amended or removed.

- Information must not be listed in a database unless attempts have been made to give the person to whom it relates a copy of the information and an opportunity to respond.

The provisions also enable the Residential Tenancy Commissioner to order the amendment or removal of information where it is inaccurate, incomplete, ambiguous, out of date or otherwise unjust.

These provisions will ensure that property owners or agents are able to access relevant information about a tenant's history while protecting tenants from the use of unfair or prejudicial information.

Mr Speaker, the Amendment Bill also requires that all pre-1 July 2009 rental deposits be lodged with the Rental Deposit Authority.

When the Rental Deposit Authority commenced operation on 1 July 2009, all rental deposits required by property owners from that date had to be lodged with the Rental Deposit Authority. Pre-1 July 2009 deposits were able to be retained by property owners as the sheer number of these deposits meant it was not administratively or financially feasible to collect them at that time.

The number of pre-1 July 2009 deposits has decreased significantly and it is now desirable that they be lodged with the Authority. This will simplify compliance processes and secure deposits for long-term tenants.

Mr Speaker, the Amendment Bill also includes changes to improve the flexibility of tenancy arrangements for businesses and tenants.

These changes follow discussion in the Legislative Council during the passage of the *Residential Tenancy Amendment Bill 2010* about the application of the Principal Act to subtenancies. The Act currently prevents a person who is not the occupier of premises from sub-letting premises.

There was a concern, in particular, about the ability of tenants moving interstate to sub-let for the remainder of a fixed term agreement and it was proposed that applying the Act to subtenancies would resolve this issue.

However, it has since become clear that applying the Act to subtenancies would require numerous and complex amendments that would add to uncertainty about the roles of owners, tenants and sub-tenants under the Act.

For this reason, the problem has been addressed in an alternate way.

The amendments give a specific right for a tenant, with the agreement of a property owner to transfer their rights and obligations under a residential tenancy agreement to another tenant. This will enable tenants who need to move elsewhere for work or other reasons to assign the lease, with the agreement of the owner, for the remainder of the term.

The amendments also create a specific authority that allows an employer to be a tenant and to sublet to an employee, notwithstanding that the tenant (employer) is not an occupant.

This will enable employers to sublet premises to their employees, with the agreement of the property owner, where those employees are required to relocate for work purposes.

The Amendment Bill also introduces an offence for breach of section 25(2) of the Act, which requires that security deposits be paid to the Rental Deposit Authority.

Mr Speaker, I commend the *Residential Tenancy Amendment Bill 2011* to the House.

CLAUSE NOTES

Residential Tenancy Amendment Bill 2011

Clause 1: Short title

Provides the short title to be used when citing the proposed Act for any legal reason.

Clause 2: Commencement

The proposed Act commences upon Royal Assent.

Clause 3: Principal Act

The *Residential Tenancy Act 1997* is referred to as the Principal Act.

Clause 4: Section 3 amended (Interpretation)

Substitutes a new definition of 'claim form' for the purposes of section 3(1) of the Principal Act.

Clause 5: Section 8 amended (General functions and powers of Commissioner)

Adds the function of determining disputes in relation to residential tenancy databases to the functions of the Residential Tenancy Commissioner.

Clause 6: Section 25 amended (Security deposits)

Substitutes a new section 25(2) which introduces a penalty for failure to pay a

security deposit to the Rental Deposit Authority or, where a property is managed by a property agent, to the property agent.

Inserts a new subsection (3A) which requires that a person who pays or deposits a security deposit to the Authority must include with the deposit the form specified in section 27(a).

Clause 7: Section 27 substituted

Substitutes a new section 27 which requires that a form to lodge a security deposit and a form to claim the disbursement of a security deposit be in a form approved by the Director of Consumer Affairs and Fair Trading.

Clause 8: Part 4C inserted

Inserts a new Part 4C which contains provisions for regulating residential tenancy databases. These include:

Section 48U – Interpretation

Defines key terms used in the new Part 4C, including ‘database’, ‘inaccurate’, ‘list’, ‘personal information’ and ‘residential tenancy database’.

Section 48V – Application of Part

Provides that Part 4C does not apply to a residential tenancy database kept by an entity for use only by that entity, its officers employees or agents.

Section 48W – Notice of usual use of database

Requires that, where the owner or agent usually uses a residential tenancy database for checking applicants' tenancy histories, the owner or agent must provide the applicant with a written notice stating the name and contact details of any databases the owner or agent usually uses and that the reason they use the database is to check applicants' tenancy histories.

Section 48X – Notice of listing if database used

Requires that, where an owner or agent uses a residential tenancy database to check an applicants' tenancy history and personal information about the applicant is in the database, the owner or agent must provide the applicant with a written notice stating the name of the database, that information about the applicant is in the database, the name of the person who listed the information and how the applicant can have the information amended or removed.

Section 48Y – Listing can be made only for particular breaches by particular persons

Provides that an owner, agent or database operator can only list personal information about a person in a residential tenancy database where the person was a tenant under a residential tenancy agreement that has

ended, the person has breached the agreement and because of that breach, either the person owes an amount that is more than the security deposit for the agreement or the agreement has been terminated by a court order.

The personal information listed must only relate to the breach and must indicate the nature of the breach.

Section 48Z – Further restrictions on listing

Sets out further restrictions on listing, including that the person subject to the listing must be given:

- a copy of the personal information or at least other reasonable steps must be taken to disclose the information to the person; and
- at least 14 days to make submissions on the personal information to be listed, including a requirement that any submissions must be considered by the owner, agent or database operator.

These requirements do not apply where the person subject to the listing cannot be located after making reasonable enquiries or where the information is already contained in publicly available Court records or only involves an amendment of personal information.

Section 48ZA – Ensuring quality of listing - owner’s or agent’s obligation

Requires that where an owner or agent who lists personal information in a residential tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out of date, they must notify the database operator in writing. This includes a requirement to advise the operator of how the information can be amended or, if it is out of date, that it must be removed.

Section 48ZB – Ensuring quality of listing – database operator’s obligation

Provides that where a database operator receives a written notice from an owner or agent that personal information must be amended or removed, the database operator must amend or remove the information in the stated way within 14 days of receiving the notice.

Section 48ZC – Providing a copy of personal information listed

Requires that owners, agents and database operators who list personal information about a person or keep a database containing personal information about a person must provide a copy of that information to the person within 14 days of receiving a written request to do so.

This requirement only applies if any fee for giving the personal information has been paid.

A fee cannot be excessive or apply to the lodging of a request for the information.

Section 48ZD – Notifying relevant non-parties of Commissioner order about listing

Where the Residential Tenancy Commissioner makes an order requiring the amendment or removal of personal information from a residential tenancy database and the person against whom the order is made is not a party to the dispute proceedings, the Commissioner must give a copy of the order to the person.

Section 48ZE – Keeping personal information listed

Provides that personal information about a particular person cannot be kept in a residential tenancy database for longer than three years or such shorter period as may be required under the national privacy principles.

However, information can be kept for a longer period if other personal information about the person is in the database and that information is not required to be removed under this provision or any other law.

Section 48ZF – Civil proceedings to enforce compliance with Part

Allows persons affected by personal information kept in a residential tenancy database to apply to the Residential Tenancy

Commissioner for an order for compliance with this Part.

Where the Commissioner is satisfied that the information is inaccurate, incomplete, ambiguous or out of date or the inclusion of the information is unjust in the circumstances, the Commissioner may make such order as he or she thinks fit, including fixing a period for compliance with the order and imposing any other requirements necessary for enforcement of the order.

Clause 9: Section 49 amended (Subletting)

Substitutes a new section 49(1)(b) to enable an employer to sublet premises to his or her employees where the owner agrees and without the employer being required to occupy the premises.

Clause 10: Section 49A inserted

Inserts a new section 49A to enable the transfer of a residential tenancy agreement.

This clause allows a tenant to transfer his or her rights and obligations under a residential tenancy agreement with the consent of the owner. Where this occurs, the transferee becomes the tenant for the purposes of the Act and the transferor is no longer the tenant under the Act.

For evidentiary purposes, the owner, transferor and transferee are required to sign a document recording the transfer, although

failure to comply with this requirement does not invalidate the transfer.

Clause 11: Section 67A substituted

Inserts a new section 67A which gives effect to Schedule 2A with respect to transitional and savings matters consequent on the enactment of the proposed Act.

Clause 12: Schedule 2A substituted

Substitutes a new Schedule 2A which contains transitional matters with regard to security deposits.

The effect of this clause is to require that security deposits held by property owners in respect of residential tenancy agreements in force prior to 1 July 2009 and still held by the owner immediately before the day on which the proposed Act commences be deposited with the Rental Deposit Authority. These deposits must be deposited within 40 working days of commencement of the proposed Act unless the residential tenancy agreement is earlier terminated.

Clause 13: Repeal of Act

Repeals the proposed Act 90 days after it commences. However, the amendments made by the proposed Act to the Principal Act remain in force.

FACT SHEET

Residential Tenancy Amendment Bill 2011

The *Residential Tenancy Amendment Bill 2011* introduces nationally agreed model provisions to regulate tenant databases, requires that all rental deposits be lodged with the Rental Deposit Authority and provides for more flexible tenancy arrangements.

Residential tenancy databases are privately owned and operated databases used for storing information about individual tenancy histories. Most real estate agents use tenant databases to screen prospective tenants applying for rental accommodation. Once listed, it can be extremely difficult for tenants to secure rental accommodation in the private market.

Until recently, there was no nationally uniform approach to regulating tenant databases and there have been concerns about these databases. Concerns include inaccurate information being listed, tenants not being aware that they have been listed, tenants being unable to correct information, information being held for an inordinately long period of time and tenants being listed for trivial or vindictive reasons or to discourage them from pursuing their legal rights.

To address these concerns, nationally agreed model provisions for regulating tenant databases have been developed. The model provisions ensure that only relevant and appropriate information can be stored in tenant databases. Where a listing occurs, notice requirements and a right of review by the Residential Tenancy Commissioner are also included.

Since 1 July 2009, all new rental deposits have been required to be paid to the Rental Deposit Authority, where they are held in trust pending disbursement at the end of the tenancy. The Bill ensures that all rental deposits, including those paid to property owners prior to 1 July 2009, are deposited with the Authority. This will simplify arrangements for owners and tenants and streamline compliance processes.

The Bill provides greater flexibility for tenants by allowing tenancy agreements to be transferred with the agreement of the owner. The Bill also enables employers to sublet premises to their employees where the owner agrees.