

TASMANIA

RESIDENTIAL TENANCY AMENDMENT BILL 2011

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RESIDENTIAL TENANCY AMENDMENT BILL 2011

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
22 September 2011

(Brought in by the Minister for Corrections and Consumer Protection, the Honourable Nicholas James McKim)

A BILL FOR

An Act to amend the *Residential Tenancy Act 1997*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Residential Tenancy Amendment Act 2011*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Principal Act

In this Act, the *Residential Tenancy Act 1997** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting the definition of “claim form” and substituting the following definition:

“claim form” means the form specified in section 27(b);

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

Section 8 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “The function of the Commissioner is” and substituting “The functions of the Commissioner are”;
- (b) by omitting from subsection (1) “deposits” and substituting “deposits, the residential tenancy database”;
- (c) by omitting from subsection (2) “section 48I.” and substituting “sections 48I and 48ZF.”.

*No. 82 of 1997

6. Section 25 amended (Security deposits)

Section 25 of the Principal Act is amended as follows:

(a) by omitting subsection (2) and substituting the following subsection:

(2) A person paying a security deposit under subsection (1) must pay the deposit –

(a) to the Authority; or

(b) if the residential premises are managed on the owner's behalf by a property agent, within the meaning of the *Property Agents and Land Transactions Act 2005*, to the Authority or that property agent.

Penalty: Fine not exceeding 50 penalty units.

(b) by inserting the following subsection after subsection (3):

(3A) A person who pays a security deposit to the Authority under subsection (2)(a), or deposits a security deposit with the Authority under subsection (3), is to include with the deposit the form specified in section 27(a).

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7. Section 27 substituted

Section 27 of the Principal Act is repealed and the following section is substituted:

27. Forms relating to security deposit

The following forms are to be in a form approved by the Director of Consumer Affairs and Fair Trading:

- (a) a form to lodge a security deposit with the Authority;
- (b) a form to claim the disbursement of a security deposit.

8. Part 4C inserted

After section 48T of the Principal Act, the following Part is inserted:

PART 4C – RESIDENTIAL TENANCY DATABASES

48U. Interpretation

In this Part –

“database” means a system, device or other thing used for storing information, whether electronically or in some other form;

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“database operator” means an entity that operates a residential tenancy database;

“inaccurate”, in relation to personal information in a residential tenancy database, includes information that is inaccurate because –

- (a) the information indicates that the person owes an owner an amount that is more than the security deposit for a residential tenancy agreement; and
- (b) the amount owed was paid to the owner more than 3 months after the amount became due;

“list”, personal information in a residential tenancy database –

- (a) means –
 - (i) enter the personal information into the database; or
 - (ii) give the personal information to a database operator or someone else for entry into the database; and

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- (b) includes amend personal information about a person in the database to include additional personal information about the person;

“out of date”, in relation to personal information in a residential tenancy database, means the information is no longer accurate because –

- (a) for a listing made on the basis the person owes an owner an amount that is more than the security deposit for a residential tenancy agreement, the amount owed was paid to the owner within 3 months after the amount became due; or
- (b) for a listing made on the basis the Court has made an order under section 41 terminating the residential tenancy agreement, the order has been revoked following a review of the making of the order;

“personal information” means information (including an individual’s name) or an opinion,

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whether true or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion;

“residential tenancy database”
means a database –

- (a) containing personal information –
 - (i) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or
 - (ii) entered into the database for reasons relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; and
- (b) with an intended purpose of use by owners or agents of owners for checking a person’s tenancy history for deciding whether a

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residential tenancy
agreement should be
entered into with the
person.

48V. Application of Part

This Part does not apply to a residential tenancy database kept by an entity, including a department of the government of a State or Territory, for use only by that entity or its officers, employees or agents.

48W. Notice of usual use of database

(1) This section applies if –

- (a) a person (“**the applicant**”) applies to an owner, whether or not through the owner’s agent, to enter into a residential tenancy agreement; and
- (b) the owner or, if the application is made through the owner’s agent, the owner or agent usually uses one or more residential tenancy databases for deciding whether a residential tenancy agreement should be entered into with a person.

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- (2) The owner or agent must, when the application is made, give the applicant written notice stating the following:
 - (a) the name of each residential tenancy database the owner or agent usually uses, or may use, for deciding whether a residential agreement should be entered into with a person;
 - (b) that the reason the owner or agent uses a residential tenancy database specified under paragraph (a) is for checking an applicant's tenancy history;
 - (c) for each residential tenancy database specified under paragraph (a), how persons may contact the database operator who operates the database and obtain relevant information from the operator.
- (3) Subsection (2) applies in relation to a residential tenancy database whether or not the owner or agent intends to use the database for deciding whether a residential tenancy agreement should be entered into with the applicant.
- (4) However, the owner or agent is not required to give the written notice referred to in subsection (2) if a written notice stating the matters mentioned in

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the subsection was given to the applicant not more than 7 days before the application was made.

48X. Notice of listing if database used

- (1) This section applies if –
 - (a) a person (“**the applicant**”) applies to an owner, whether or not through the owner’s agent, to enter into a residential tenancy agreement; and
 - (b) the owner or, if the application is made through the owner’s agent, the owner or agent uses a residential tenancy database for checking whether personal information about the applicant is in the database; and
 - (c) personal information about the applicant is in the database.
- (2) The owner or agent must, as soon as practicable but within 7 days after using the database, give the applicant a written notice stating –
 - (a) the name of the database; and
 - (b) that personal information about the applicant is in the database; and

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- (c) the name of each person who listed the personal information in the database; and
- (d) how and in what circumstances the applicant can have the personal information removed or amended under this Part.

Penalty: Fine not exceeding 50 penalty units.

- (3) However, subsection (2)(c) requires the written notice to state the name of a person only if the person is identified in the residential tenancy database as the person who listed the personal information in the database.

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

- (1) An owner, owner's agent or database operator must not list personal information about a person in a residential tenancy database unless –
 - (a) the person was a tenant under a residential tenancy agreement that has ended; and
 - (b) the person has breached the agreement; and
 - (c) because of the breach, either –

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- (i) the person owes the owner an amount that is more than the security deposit for the agreement; or
 - (ii) the Court has made an order under section 41 terminating the residential tenancy agreement; and
- (d) the personal information –
- (i) relates only to the breach; and
 - (ii) is accurate, complete and unambiguous.

Penalty: Fine not exceeding 50 penalty units.

- (2) Without limiting subsection (1)(d)(ii), the personal information must indicate the nature of the breach.

48Z. Further restrictions on listing

- (1) An owner, owner's agent or database operator must not list personal information about a person in a residential tenancy database unless the owner, agent or operator –
- (a) has, without charging a fee –

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- (i) given the person a copy of the personal information;
or
 - (ii) taken other reasonable steps to disclose the personal information to the person; and
- (b) has given the person at least 14 days to review the personal information and make submissions –
- (i) objecting to its entry into the database; or
 - (ii) about its accuracy, completeness and clarity;
and
- (c) has considered any submissions made.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) does not apply if the owner, owner's agent or database operator can not locate the person after making reasonable enquiries.
- (3) Subsection (1)(b) and (c) do not apply –
- (a) to information that, at the time of the listing, is contained in

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publicly available Court records;
or

- (b) to a listing involving only an amendment of personal information about a person under section 48ZA.

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

- (1) This section applies if an owner or owner’s agent who lists personal information in a residential tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out of date.
- (2) The owner or agent must, within 7 days, give written notice of the following to the database operator who keeps the database:
- (a) if the information is inaccurate, incomplete or ambiguous –
- (i) that the information is inaccurate, incomplete or ambiguous; and
- (ii) how the information must be amended so that it is no longer inaccurate, incomplete or ambiguous;

- (b) if the information is out of date, that the information is out of date and must be removed.

Penalty: Fine not exceeding 50 penalty units.

- (3) The owner or agent must keep a copy of the written notice for one year after it was given under subsection (2).

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

- (1) This section applies if an owner or owner’s agent who has listed personal information in a tenancy database gives the database operator who operates the database a written notice stating that the personal information must be –
 - (a) amended in a stated way to make it accurate, complete and unambiguous; or
 - (b) removed.
- (2) The database operator must amend the personal information in the stated way, or remove the personal information, within 14 days after the operator is given the written notice.

Penalty: Fine not exceeding 50 penalty units.

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48ZC. Providing copy of personal information listed

- (1) An owner or owner's agent who lists personal information about a person in a residential tenancy database must, if asked in writing by the person, give the person a copy of the information within 14 days after the request is made.

Penalty: Fine not exceeding 50 penalty units.

- (2) A database operator must, if asked in writing by a person whose personal information is in the residential tenancy database kept by the operator, give the person a copy of the information within 14 days after the request is made.

Penalty: Fine not exceeding 50 penalty units.

- (3) If an owner or owner's agent charges a fee for giving personal information under subsection (1), or a database operator charges a fee for giving personal information under subsection (2), the subsection applies only if the fee has been paid.

- (4) An owner or owner's agent charging a fee for giving personal information under subsection (1), or a database operator charging a fee for giving personal information under subsection (2), must ensure that the fee –

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- (a) is not excessive; and
- (b) applies to the giving of the information and not to the lodging of a request for the information.

Penalty: Fine not exceeding 50 penalty units.

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

- (1) This section applies if –
 - (a) under section 48ZF, the Commissioner makes an order that a person must, in relation to a residential tenancy database –
 - (i) amend personal information in a stated way; or
 - (ii) remove all or particular personal information about a person; and
 - (b) the person against whom the order is made (“**the relevant person**”) is not a party to the proceeding for the dispute.
- (2) The Commissioner must ensure a copy of the order is given to the relevant person.

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48ZE. Keeping personal information listed

(1) In this section –

“national privacy principles” means the principles stated in Schedule 3 of the *Privacy Act 1988* of the Commonwealth.

(2) A database operator must not keep personal information about a particular person in the operator’s residential tenancy database for longer than –

(a) 3 years; or

(b) if, under the national privacy principles, the operator of the database is required to remove the personal information before the end of the 3-year period mentioned in paragraph (a), the period ending when the information must be removed under the national privacy principles.

(3) However, a database operator may keep the person’s name in the operator’s residential tenancy database for longer than the period stated in subsection (2)(a) or (b) if –

(a) other personal information about the person in the database is attached to the name; and

- (b) the other personal information is not required to be removed under subsection (2) or another law.
- (4) This section does not limit the operation of another provision of these model provisions or a provision of another law that requires the removal of the personal information.

48ZF. Civil proceedings to enforce compliance with Part

- (1) In this section –
 - “**eligible person**” means a person affected by information kept under this Part or a person authorised by such a person as a representative of the affected person.
- (2) An eligible person may apply to the Commissioner for an order under this section.
- (3) The Commissioner may make any order he or she thinks fit in respect of an application under subsection (2) if the Commissioner is satisfied that –
 - (a) personal information kept in the residential tenancy database is inaccurate, incomplete, ambiguous or out of date; or

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- (b) the inclusion of information that affects the eligible person is unjust in the circumstances, having regard to the following:
 - (i) the reason for the listing in the residential tenancy database;
 - (ii) the eligible person's, or the tenant's, involvement in any acts or omissions giving rise to the listing of the information in the residential tenancy database;
 - (iii) any adverse consequences suffered, or likely to be suffered by the eligible person because of the listing of the information in the residential tenancy database;
 - (iv) any other matter the Commissioner considers relevant.
- (4) The Commissioner may, by an order under this section, fix a period for compliance and impose any other requirements the Commissioner considers necessary or expedient for enforcement of the order.

9. Section 49 amended (Subletting)

Section 49(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) unless the tenant –
 - (i) is also an occupier of the premises; or
 - (ii) sublets the premises to one of his or her employees.

10. Section 49A inserted

After section 49 of the Principal Act, the following section is inserted in Part 5:

49A. Transfer of residential tenancy agreement

- (1) The tenant is not to transfer his or her rights and obligations under a residential tenancy agreement without the consent of the owner of the premises.
- (2) An agreement to transfer the rights and obligations of a tenant under a residential tenancy agreement in contravention of subsection (1) is invalid.
- (3) If, under this section, a tenant transfers his or her rights and obligations under a residential tenancy agreement –
 - (a) the transferee –

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- (i) becomes the tenant for the purposes of this Act; and
 - (ii) is taken to be the tenant under the residential tenancy agreement for the purposes of this Act; and
 - (b) the transferor is no longer the tenant for the purposes of this Act.
- (4) The owner, transferor and transferee are to –
- (a) each sign a document recording the transfer of the rights and obligations under a residential tenancy agreement and the date the transfer took place; and
 - (b) each receive a copy of the signed and dated record of the transfer for his or her records.
- (5) Failure to comply with subsection (4) does not affect the validity of a transfer under this section of rights and obligations under a residential tenancy agreement.

11. Section 67A substituted

Section 67A of the Principal Act is repealed and the following section is substituted:

67A. Transitional and savings provisions consequent on *Residential Tenancy Amendment Act 2011*

Schedule 2A has effect with respect to the transitional and savings matters consequent on the enactment of the *Residential Tenancy Amendment Act 2011*.

12. Schedule 2A substituted

Schedule 2A to the Principal Act is repealed and the following Schedule is substituted:

**SCHEDULE 2A – SECURITY DEPOSIT
TRANSITIONAL**

Section 67A

1. Retained security deposit to be paid to Authority

(1) In this clause –

“2005 commencement date” means the day on which the *Residential Tenancy Amendment Act 2005* commenced;

“2011 commencement day” means the day on which the *Residential Tenancy Amendment Act 2011* commences;

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“pre-existing residential tenancy agreement” means a residential tenancy agreement that was in force immediately before the 2005 commencement day.

- (2) This clause applies to a security deposit that –
- (a) was held by an owner in respect of a pre-existing residential tenancy agreement immediately before the 2005 commencement day; and
 - (b) is still held by the owner immediately before the 2011 commencement day.
- (3) An owner who holds a security deposit to which this clause applies must deposit that money with the Authority within 40 working days after the 2011 commencement day unless the pre-existing residential tenancy agreement is earlier terminated.

Penalty: Fine not exceeding 50 penalty units.

13. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.