

## CLAUSE NOTES

### *Residential Tenancy Amendment Bill 2024*

- Clause 1      **Short title**  
The short title will be the *Residential Tenancy Amendment Bill 2024*.
- Clause 2      **Commencement**  
The Amendment Act will commence on proclamation. The proclamation may identify different commencement days for different provisions.
- Clause 3      **Principal Act**  
References in the Bill to “Principal Act” are references to the *Residential Tenancy Act 1997*.
- Clause 4      **Section 3 amended (Interpretation)**  
This clause provides definitions for ‘approved form’, ‘safety modification’ and ‘Tribunal’. These terms are relevant to other provisions in the Bill.  
*Approved form* means approved by the Commissioner, which is the Residential Tenancy Commissioner. *Safety modification* in relation to premises, means the affixing of an item of furniture to those premises for the purposes of avoiding the risk of injury or death to a person from the movement of that furniture. *Tribunal* means the Tasmanian Civil and Administrative Tribunal.
- Clause 5      **Part 3C inserted – Pets**  
This clause inserts a new Part into the Principal Act. The new Part sits after section 36P and relates to pets.  
**Section 36Q. Interpretation of Part**  
New Section 36Q provides for interpretation for the new Part 3C and provides definitions of ‘exempt animal’, ‘ineligible animal’ and ‘pet’.  
The clause provides that *exempt animal* means a guide dog as defined by the *Guide Dogs and Hearing Dogs Act 1967*.  
*Ineligible animal* includes a dangerous dog within the meaning of the *Dog Control Act 2000* or a dog that is more than 6 months of age if the dog is not registered as required under section 8 of that Act. The definition also includes a cat that is more than 6 months of age if the cat is not microchipped as required under the section 12(1) of the *Cat Management Act 2009* or is not the subject of a certificate referred to in section 12(2) of that Act.

Pet means a domesticated animal, or an animal that is dependent on a person for the provision of food or shelter, that is not an exempt animal or an ineligible animal.

### **Section 36R. Keeping pets on premises**

New section 36R creates a presumption that a tenant of residential premises may keep one or more pets on those premises, or one or more exempt animals, subject to subsection (5) or a contrary order of the Tribunal. The Tribunal only has powers in relation to pets and ineligible animals, and not guide dogs.

Subsection (5) provides that the operation of other legislation that restricts or prevents the keeping of a pet on premises continues to apply. This covers provisions in other Acts, by-laws made under Part 11 of the *Local Government Act 1993* or by-laws made by a body corporate under section 90 of the *Strata Titles Act 1998*.

New subsection 36R(2) provides that if a tenant intends to keep pets they must notify the owner. New subsection (3) provides that the notification is to be in writing and specify the pet or pets that are intended to be kept on the premises and the date from which the pet or pets are intended to be kept on the premises and be given to the owner on or before that date.

New subsection 36R(4) is an avoidance of doubt clause to confirm that a tenant of residential premises may not keep an ineligible animal on those premises.

### **Section 36S. Owner must not unreasonably object to the keeping of pet**

New subsection 36S(1) provides that within 28 days after being given a notification under section 36R(2), the owner must confirm in writing that the owner consents to the tenant keeping the pet or pets specified in the notification, or object to the tenant keeping the specified pets. Where an objection is made, it is to be given in writing and provide the reasons for the objection, and the owner is to make an application to the Tribunal under section 36U(1).

New subsection (2) provides that the owner must not unreasonably object to the keeping of a pet specified in the notification.

New subsection (3) is an avoidance of doubt clause, and provides that where an owner has objected to the keeping of a pet, a tenant may continue to keep a pet on the premises, unless the Tribunal makes an order to the contrary.

New subsection (4) provides that the property owner may confirm consent subject to conditions. The conditions have to be agreed to by the tenant, relate only to the keeping of the pet specified in the notification to the owner, be reasonable in the circumstances, do not increase the rent or security deposit payable by the tenant and do not otherwise contravene the provisions of the Residential Tenancy Act or any other Act.

New subsection (5) provides that if the owner has not confirmed consent or objected within the time frame, the owner is taken to have confirmed consent to the keeping of the pet as specified.

### **36T. Withdrawal of consent**

New section 36T provides that the owner may only withdraw consent to the tenant keeping a pet or pets on those premises if the owner has given written notice to the tenant of their intention to withdraw consent and the reason for that withdrawal, and the Tribunal has made an order permitting the withdrawal of consent to the keeping of that pet.

Subsection (2) provides that consent cannot be unreasonably withdrawn.

Subsection (3) provides that the owner can withdraw consent in respect of a pet at any time, as long as it is in accordance with subsection (1) (that is, if the Tribunal has made an order).

### **36U. Determination of matter by Tribunal**

This clause provides that, on application from the owner, the Tasmanian Civil and Administrative Tribunal has jurisdiction to determine specified matters relating to pet on residential premises, these matters are set out in subsection (1)(a) through to (1)(f), and include that the objection is not on reasonable grounds, the objection is on reasonable grounds, withdrawal of consent is not on reasonable grounds, withdrawal of consent is on reasonable grounds, where no notification has been given, the pet may not be kept on those premises and that an animal is a pet or an ineligible animal. The Bill does not provide for the keeping of ineligible animals on residential premises.

Subsection (2) provides the orders the Tribunal may make where it has made a determination under subsection (1). The orders are that the tenant may keep a pet, that the tenant may not keep a pet, that the owners consent may be withdrawn, and that a pet or an ineligible animal must be removed from the residential premises.

Subsection (3) provides that the Tribunal may provide conditions and any other ancillary matter relating to the keeping of a pet on the premises it considers appropriate.

Subsection (4) provides that if the Tribunal makes an order under subsection (2)(c) or (d), that is an order that relates to withdrawal of consent or that a pet or ineligible animal must be removed from the premises, the Tribunal is to specify the period within which the pet or ineligible animal is to be removed. If no such period is specified in the order, the provision provides that the tenant is to remove the pet or ineligible animal from the premises within 7 days after the tenant is notified of the making of the order.

Subsection (5) provides that these matters fall within the Tribunal's original jurisdiction and matters are to be allocated to the Civil and Consumer stream of the General Division of the Tribunal.

### **36V. Rejection of application because of pet**

This clause provides that the owner of a residential premises must not unreasonably

reject an application to rent the premises on the basis that the person making the application has indicated that the person will be giving a notification that the person intends to keep a pet on those premises.

### **36W. Reasonable grounds**

This clause provides the grounds that the Tribunal may consider when considering matters relating to pets on premises, by virtue of section 36U. The Tribunal may take into account whether keeping a pet on the premises would have any of the following effects: cause a nuisance on the premises, cause a nuisance on an adjacent or adjoining premises or other nearby premises, cause damage that is more than reasonable wear and tear, pose an unacceptable risk to the safety of any person, pose an unacceptable risk to the safety or welfare of the pet or another animal on the premises, and any other grounds that the Tribunal considers reasonable.

### **36X. Transitional provision**

This clause provides for transitional arrangements for tenants who may have existing permission to have a pet on residential premises. It provides that if immediately before the commencement of Part 3C a tenant has the consent of the owner to keep a pet, that consent is taken to be a confirmation of consent given under new Part 3C in respect of the pet. That consent continues unless consent is withdrawn in accordance with the new provisions in the Bill. Such a person therefore does not have to give notification.

Clause 6

### **Section 54 amended (Alternations, additions and fixtures)**

This clause provides that section 54 does not apply to a modification to which new section 54A applies. Section 54 provides that consent of the owner is required to affix any fixture or make alterations to the premises, amongst other requirements.

Clause 7

### **Sections 54A, 54B and 54C inserted**

This clause inserts new sections 54A, 54B and 54C in Part 5 of the Principal Act.

#### **54A. Safety modification permitted**

New subsection 54A(1) provides a definition of 'permanent damage'. It provides that *permanent damage* includes damage that cannot be remedied, damage that affects a premises that has historical cultural heritage significance within the meaning of the *Historic Cultural Heritage Act 1995*; and a type of damage prescribed in regulations.

New subsection (2) provides that a tenant may make a safety modification to the premises without the consent of the owner, however this is subject to subsection (3), and provided that the safety modification does not contravene any other law in respect of modifications to premises.

New subsection (3) provides that despite the right provided in subsection (2), consent of the owner is required if a safety modification is likely to cause permanent damage to a premises. The consent is to be requested before

undertaking the safety modification.

New subsection (4) provides that an owner who receives a request for consent to make a safety modification must respond by granting or refusing the request within 14 days.

Subsection (5) provides that consent must not be unreasonably refused, and if the request has not been granted or refused within the 14 days, consent is taken to have been granted immediately after the expiry of that period.

New subsection (6) provides that a tenant may remove any safety modification that the tenant has made to the premises unless the removal is likely to cause permanent damage to the premises. The existing provisions in the Act will continue to apply requiring tenants to return the premises at the end of the lease to the condition that it was the start of the tenancy, apart from reasonable wear and tear.

New subsection (7) provides for action where damage is caused to the premises by removing any safety modifications. If this occurs, the tenant is to notify the owner as soon as practicable and the owner is to determine whether the tenant is to repair the damage or compensate the owner for any reasonable expenses incurred by the owner in repairing the damage.

#### **54B. Order of Commissioner in respect of safety modification**

New section 54B provides the steps that can be taken if an owner of a premises refuses consent to a requested safety modification, and the tenant believes the refusal is unreasonable. In those circumstances, the tenant may apply to the Residential Tenancy Commissioner for an order to authorise the making of the safety modification.

New subsection (2) provides that an application must be in the approved form, that is a form approved by the Residential Tenancy Commissioner, and specify the safety modification requested.

New subsection (3) provides that the Commissioner is to notify the owner of the premises of the application as soon as practicable after receiving the application.

New subsection (4) provides that the Commissioner may make a 'safety modification order'. A *safety modification order* authorises the making of a safety modification. For an order to be made, the Commissioner has to be satisfied that a refusal to consent is unreasonable in the circumstances. The Commissioner may refuse to make such an order.

New subsection (5) provides notification requirements on the Commissioner. Within three days of making or refusing to make a safety modification order, the Commissioner is to notify the tenant and the owner of the Commissioner's decision, provide reasons for the decision, notify the right to appeal that decision, and if the order is made, that the order takes effect after 14 days.

#### **54C. Appeal to Tribunal in respect of safety modification order**

New subsection 54C(1) provides that the Tasmanian Civil and Administrative Review Tribunal has jurisdiction to review the Commissioner's decision in respect of a safety modification order, by application of the owner or tenant.

New subsection (2) provides that an application needs to be made within the 14-day period starting from when the Commissioner provided notice of the decision.

New subsection (3) provides that the Tribunal review is within the review jurisdiction of the Tribunal and that the relevant stream is the Civil and Consumer stream of the General Division of the Tribunal.

Clause 8

#### **Section 64 repealed**

This clause repeals section 64B of the Principal Act, which is the section of the Act that currently relates to the keeping of pets. The Bill replaces this section with the new provisions providing for the new regime in relation to keeping of pets on residential premises.

Clause 9

#### **Repeal of Act**

The *Residential Tenancy Amendment Act 2024* will be automatically repealed after the first anniversary of this Act commencing.