

TASMANIA

**RESIDENTIAL TENANCY AMENDMENT BILL
2005**

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**RESIDENTIAL TENANCY AMENDMENT BILL
2005**

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

**An Act to amend the *Residential Tenancy Act 1997* and
consequentially amend the *Family Violence Act 2004***

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Residential
Tenancy Amendment Act 2005*.

2. Commencement

This Act commences on a day to be proclaimed.

**PART 2 – RESIDENTIAL TENANCY ACT 1997
AMENDED**

3. Principal Act

In this Part, 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 as
follows:

- (a) by omitting the definition of “agent” and
substituting the following definitions:

“agent” means –

- (a) in relation to an owner, a
person authorised by the
owner to act on behalf of
the owner in any matter to
which this Act relates; or
- (b) in relation to a tenant, a
person authorised by the
tenant to act on behalf of
the tenant in any matter to
which this Act relates;

“Authority” means the Rental
Deposit Authority established
under section 48K;

*No. 82 of 1997

- (b) by inserting the following definition after the definition of “boarding premises”:

“claim form” means a form containing the information specified in section 27;

- (c) by inserting the following definition after the definition of “Court”:

“deposit contributor” means a person or organisation, whether public or private, that –

- (a) is prescribed by the regulations for the purposes of this definition; and
- (b) has paid to the Authority the whole or any part of a security deposit;
- (d) by omitting “section 28” from the definition of “dispute” and substituting “section 29F”;
- (e) by omitting “Commonwealth.” from the definition of “tertiary student” and substituting “Commonwealth;”;
- (f) by inserting the following definition after the definition of “tertiary student”:

“working day” means a weekday that is not a statutory holiday, within the meaning of the *Statutory Holidays Act 2000*, in the area in which the residential premises to

which the residential tenancy agreement relates are situated.

5. Section 25 substituted

Section 25 of the Principal Act is repealed and the following section is substituted:

25. Security deposits

- (1) Except in the case of boarding premises, an owner may require that an amount be paid by or on behalf of the prospective tenant as security for the performance of obligations under a residential tenancy agreement.
- (2) A security deposit must be paid –
 - (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.
- (3) A property agent who receives a security deposit from a tenant under subsection (2)(b) must deposit that money with the Authority within 3 working days after receiving it.

Penalty: Fine not exceeding 50 penalty units.

- (4) An owner must not –

- (a) receive a security deposit from or on behalf of a tenant in relation to a residential tenancy agreement; or
- (b) require more than one security deposit to be paid in relation to the same residential tenancy agreement; or
- (c) require an amount to be paid as a security deposit that exceeds 4 weeks' rent payable under the residential tenancy agreement.

Penalty: Fine not exceeding 50 penalty units.

- (5) If a court finds a property agent or an owner guilty of contravening subsection (3) or (4)(a), the court, instead of or in addition to any penalty it may impose in respect of that contravention, may order the property agent or owner to pay an amount received as security deposit to the Authority within 3 working days.

6. Section 26 amended (Condition report)

Section 26(1) of the Principal Act is amended as follows:

- (a) by omitting “a prospective tenant to pay”;

- (b) by omitting “premises,” and substituting “premises to be paid by or on behalf of a prospective tenant,”.

7. Sections 27, 28 and 29 substituted

Sections 27, 28 and 29 of the Principal Act are repealed and the following sections are substituted:

27. Claim form for disbursement of security deposit

A claim form for the disbursement of a security deposit is to state –

- (a) whether, after taking into account any non-performance of the residential tenancy agreement by the tenant, it is considered that the owner is entitled to a disbursement of any of the security deposit by the Authority; and
- (b) if it is considered that the owner is so entitled to a disbursement, the amount that it is considered should be disbursed to him or her or an estimate of the date on which it is expected that the amount will be determined; and
- (c) if known, the names and contact details of the parties to the residential tenancy agreement and any deposit contributor; and

- (d) the rights of the tenant, deposit contributor or owner to lodge a dispute with the Commissioner under section 29F; and
- (e) the address of the Commissioner; and
- (f) any prescribed information.

28. Provision of claim form, &c., on termination of tenancy

On termination of a residential tenancy agreement, the owner must –

- (a) give to the tenant, not more than 3 working days after the termination of the residential tenancy agreement, a claim form signed by the owner; and
- (b) if the claim form specifies that it is considered that the owner is entitled to a disbursement, give to the tenant a notice that states the reasons why.

29. Claims for disbursement of security deposit generally

Following the termination of a residential tenancy agreement, the following persons are entitled to make a claim to the Authority for the disbursement of a security deposit in accordance with this Act:

- (a) the tenant under section 29A or 29B;

- (b) the owner under section 29A or 29C;
- (c) the deposit contributor under section 29A or 29D.

29A. Claim where all parties agree

- (1) If the owner, all tenants and all deposit contributors agree with the claim form and endorse the claim form to that effect, any of those persons may lodge the claim form with the Authority.
- (2) On receipt of a claim form lodged under subsection (1), the Authority is to –
 - (a) disburse to the owner from the security deposit the amount specified in the claim form or later determined; and
 - (b) disburse the remainder of the security deposit, if any, to the tenants and the deposit contributors in accordance with section 29E.

29B. Claim by tenant

- (1) The tenant may lodge with the Authority a claim form following the end of a residential tenancy agreement if –
 - (a) the tenant has received the claim form from the owner under section 28 and has endorsed it with his or her agreement; or

- (b) the owner has failed to so provide a claim form.
- (2) On receipt of a claim form under subsection (1), the Authority is to take all reasonable steps to provide a copy of the claim form to each owner, tenant and deposit contributor who has not endorsed the claim form with his or her agreement to it.
- (3) If no dispute is lodged under section 29F, the Authority is to –
 - (a) disburse to the owner from the security deposit any amount specified in the claim form or later determined; and
 - (b) disburse the remainder of the security deposit, if any, to the tenants and the deposit contributors in accordance with section 29E.

29C. Claim by owner

- (1) The owner may lodge a claim form with the Authority –
 - (a) if –
 - (i) the owner has given a claim form to a tenant under section 28; and
 - (ii) the tenant has not lodged that form with the Authority within 10 days after it was so given or a

longer prescribed period;
and

- (iii) the deposit contributor has not lodged a claim form with the Authority;
or

(b) if –

- (i) the owner has been unable to give the claim form to any tenant under section 28 after taking all reasonable steps to do so;
and

- (ii) the deposit contributor has not lodged a claim form with the Authority.

(2) On receipt of a claim form under subsection (1) –

- (a) the Authority is to refer the matter to the Commissioner; and

- (b) the referral is taken to be a dispute lodged under section 29F and this Act applies to the referral with such modifications as are necessary for that purpose.

29D. Claim by deposit contributor

- (1) A deposit contributor may lodge a claim form with the Authority if –

- (a) the contributor is aware that the residential tenancy agreement has been terminated; and
 - (b) the tenant has not lodged a claim form with the Authority within 10 days after it was given to him or her by the owner or a longer prescribed period; and
 - (c) the owner has not lodged a claim form with the Authority.
- (2) On receipt of a claim form under subsection (1), the Authority is to take all reasonable steps to provide a copy of the claim form to each owner, tenant and other deposit contributor.
- (3) If no dispute is lodged under section 29F, the Authority is to –
- (a) disburse to the owner from the security deposit the amount specified in the claim form or later determined; and
 - (b) disburse the remainder of the security deposit, if any, to the tenants and the deposit contributors in accordance with section 29E.

29E. Disbursements of security deposits

- (1) In this section –

“deposit contributor’s portion”
means the amount that would be paid to a deposit contributor

under subsection (2)(b) if no disbursement were to be made to the owner;

“tenant’s portion” means the amount that would be paid to a tenant under subsection (2)(a) if no disbursement were to be made to the owner.

- (2) If no part of a security deposit is to be disbursed to the owner –
 - (a) that part of the security deposit paid to the Authority by the tenant is to be disbursed to the tenant; and
 - (b) that part of the security deposit paid to the Authority by a deposit contributor is to be disbursed to the deposit contributor.
- (3) In a case where any part of the security deposit is to be disbursed to the owner –
 - (a) the Authority –
 - (i) is to subtract the amount to be disbursed to the owner firstly from the tenant’s portion; and
 - (ii) if there is insufficient money in the tenant’s portion to fully meet that disbursement, is to then subtract from the deposit contributor’s portion any part of that disbursement

that has not been met
from the tenant's portion;
and

- (b) if there is money remaining in either the tenant's portion or deposit contributor's portion after meeting the disbursement to the owner as specified in paragraph (a), the Authority is to pay that remainder to the tenant or contributor, as appropriate.
- (4) The Authority must not disburse the security deposit after a dispute is lodged under section 29F until –
- (a) if an appeal is instituted under section 30, that appeal is decided; or
 - (b) if no appeal is instituted under that section, the period allowed for instituting the appeal has elapsed.
- (5) Interest earned with respect to any security deposit held by the Authority is the property of the Authority and is not payable as a disbursement to any tenant, deposit contributor or owner.

29F. Lodging disputes

- (1) A tenant may dispute a claim form by lodging with the Commissioner a dispute –
- (a) if the tenant has received a claim form from the owner, at any time

- before a relevant claim form is lodged with the Authority; or
- (b) in all other cases, within 10 days after the lodgment of a relevant claim form with the Authority.
- (2) A deposit contributor or owner may dispute a claim form by lodging with the Commissioner a dispute within 10 days after the lodgment of a relevant claim form with the Authority.
- (3) A dispute is to –
- (a) be in writing; and
- (b) include or be accompanied by any information to support the dispute; and
- (c) be accompanied by the prescribed fee.
- (4) The Commissioner may accept the lodgment of a dispute after the period specified in subsection (1) or (2) has expired at his or her discretion but only if –
- (a) the Authority has not already made a disbursement of the security deposit; or
- (b) the security deposit has not been forfeited to the Authority.
- (5) If a matter in respect of a claim form is referred to the Commissioner by the Authority under section 29C(2), the

owner who lodged the claim form is required to pay the fee prescribed under subsection (3)(c) as if he or she had lodged the dispute.

- (6) On receipt of a dispute, the Commissioner –
 - (a) is to notify, in writing, the Authority of the dispute within 24 hours after it is lodged; and
 - (b) is to take all reasonable steps to notify, in writing, each tenant, deposit contributor and owner who is known to the Commissioner of the lodging of the dispute and their right to make written submissions in respect of the dispute within the time specified in the notice; and
 - (c) may require the Authority and any such tenant, deposit contributor and owner to provide it with information and documentation relevant to the dispute.
- (7) The Authority, a tenant, a deposit contributor or an owner must comply with a requirement made under subsection (6)(c).
- (8) If a tenant, deposit contributor or owner fails to comply with a requirement made under subsection (6)(c), he, she or it is guilty of an offence and is liable on

conviction to a fine not exceeding 10 penalty units.

- (9) Each owner, tenant and deposit contributor in respect of a residential tenancy agreement is a party to a dispute relating to the claim form in respect of the termination of that agreement.
- (10) A party other than the person who lodged the dispute may provide written submissions and other documents to the Commissioner in respect of the dispute on payment of the prescribed fee.
- (11) The Commissioner may waive the whole or any part of a fee payable under this section.

29G. Determining disputes

- (1) The Commissioner may not determine a dispute until at least 7 days have passed since the last of the notices that he or she is required to provide under section 29F(6)(a) and (b) has been so provided.
- (2) The Commissioner is to determine a dispute by determining the amount, if any, of the security deposit that is to be disbursed to the owner.
- (3) On determining a dispute, the Commissioner is to give to the Authority and each party known to the Commissioner written notice of the determination.

- (4) The Commissioner may refund to any person the whole or any part of any fee paid under section 29F if the Commissioner considers that another party to the dispute has acted vexatiously in lodging the dispute, submissions or other information under that section.

8. Section 30 amended (Appeal against determination)

Section 30 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 29.” and substituting “section 29G.”;
- (b) by omitting from subsection (2) “the determination is made.” and substituting “the last of the parties to the dispute has been given notice of the Commissioner’s determination under section 29G.”;
- (c) by omitting paragraph (b) from subsection (4) and substituting the following paragraph:
 - (b) vary the determination and order the security deposit to be disbursed in accordance with the determination as varied and section 29E.
- (d) by inserting the following subsection after subsection (4):

- (5) On deciding an appeal, the Court is to notify the Authority, in writing, of its decision.

9. Section 30A inserted

After section 30 of the Principal Act, the following section is inserted in Division 3:

30A. Unclaimed security deposit forfeited

- (1) In this section –

“expired period determination”
means a determination made under subsection (2);

“forfeit determination” means a determination made under subsection (3).

- (2) The Authority may determine in relation to a security deposit or part of a security deposit held by it that at least 6 years have elapsed since the end of the residential tenancy agreement.
- (3) In accordance with this section and after making an expired period determination, the Authority may further determine that the security deposit or the part of a security deposit held by it is forfeited to the Authority.
- (4) If no claim form has been lodged with the Authority, it may make a forfeit determination in respect of a security

deposit held by it any time after the expired period determination is made.

- (5) If a claim form has been lodged with the Authority –
 - (a) in a case where a disbursement has been made from the security deposit before the expired period determination is made, the Authority may make a forfeit determination in respect of that part of the security deposit held by it any time after the expired period determination is made; or
 - (b) in any other case, the Authority may make a forfeit determination in respect of that part of the security deposit held by it after all disbursements resulting from that claim are made in accordance with this Act.
- (6) On the making of a forfeit determination, the security deposit, or that part of a security deposit, in respect of which that determination is made is forfeited to and becomes the property of the Authority.

10. Part 4B inserted

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

PART 4B – RENTAL DEPOSIT AUTHORITY**48K. Rental Deposit Authority**

- (1) There is established a Rental Deposit Authority.
- (2) The Authority –
 - (a) may have a seal; and
 - (b) may sue and be sued in its name.
- (3) If the Authority has a seal –
 - (a) it is to be kept and used as authorised by the Authority; and
 - (b) all courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Authority.

48L. Constitution of Authority

The Authority is constituted by the Director of Consumer Affairs and Fair Trading.

48M. Functions of Authority

The functions of the Authority are –

- (a) to accept, hold and disburse security deposits in accordance with this Act; and
- (b) to collect data on the residential tenancy market in Tasmania; and
- (c) to conduct public awareness campaigns to educate parties to residential tenancy agreements regarding their obligations; and
- (d) to carry out any other functions conferred on it by this Act or as may be prescribed.

48N. Powers of Authority

- (1) The Authority has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the Authority –
 - (a) may acquire, hold, dispose of and otherwise deal with property other than real property; and
 - (b) may enter into contractual arrangements with other persons and bodies; and
 - (c) may enter into any arrangements or agreements with any person to act as its agent in the performance

of any of its functions under this Act; and

- (d) may do any other thing that it would be entitled to do if it were a body corporate.

480. Staff of Authority

- (1) The Authority may arrange with the Secretary of the Department for State Service officers and State Service employees employed in the Department to be made available to enable the Authority to perform and exercise its functions and powers.
- (2) On the written request of the Authority, the Secretary of the Department may arrange with another Head of a State Service Agency for State Service officers and State Service employees employed in that Agency to be made available to the Authority for the purpose of enabling the Authority to perform and exercise its functions and powers.
- (3) State Service officers and State Service employees made available under subsection (1) or (2) may serve the Authority in conjunction with State Service employment.
- (4) All expenses associated with the use by the Authority of the services of a State Service officer or State Service employee referred to in subsection (1) or (2) are to be met by the Authority unless otherwise

agreed between the Secretary of the Department and the Authority.

48P. Assistance and facilities

- (1) The Authority may arrange with one or more of the following persons to provide assistance and facilities to it to enable it to perform and exercise its functions and powers:
 - (a) the Secretary of the Department;
 - (b) another Head of a State Service Agency;
 - (c) any other person if the Minister approves it.
- (2) All expenses associated with the use by the Authority of the assistance and facilities provided under subsection (1) are to be met by the Authority unless otherwise agreed between the Secretary of the Department and the Authority.

48Q. Funds of Authority

- (1) The funds of the Authority consist of –
 - (a) any money provided by Parliament for the purposes of the Authority; and
 - (b) any interest earned in respect of the security deposits held by the Authority; and

- (c) any security deposit, or part of a security deposit, forfeited to the Authority under section 30A.
- (2) The funds of the Authority are to be applied in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Authority in the performance of its functions and exercise of its powers.

48R. Account in Special Deposits and Trust Fund

- (1) The Treasurer is to establish in the Special Deposits and Trust Fund an interest-bearing special deposits account or trust account into which the Authority is to pay the security deposits accepted by it.
- (2) The money standing to the credit of the account is to be used for the disbursement by the Authority of the security deposits held by it in accordance with this Act.
- (3) The Treasurer is to pay to the Authority from the money standing to the credit of the account –
 - (a) any money forfeited to the Authority under section 30A; and
 - (b) any interest accrued on the account.

48S. Accounts and financial statements of authority

(1) The Authority must –

- (a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and
- (b) keep those records in a manner that –
 - (i) allows true and fair accounts of the Authority to be prepared from time to time; and
 - (ii) allows separate accounts to be prepared in respect of the security deposits held by the Authority and in respect of the funds of the Authority; and
 - (iii) allows its accounts to be conveniently and properly audited or reviewed; and
 - (iv) complies with any instruction issued to it by the Treasurer; and
- (c) retain those records for a period of not less than 7 years after the completion of the transaction to which they relate or such other period as the Minister determines.

48T. Delegation

The Authority may delegate to a State Service officer or State Service employee any of its functions or powers under this Act other than this power of delegation.

11. Section 65 amended (Regulations)

Section 65 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1A):

(1B) Without limiting the generality of subsection (1), the regulations may make provision for or in respect of –

- (a) the issue of infringement notices; and
 - (b) the offences under this Act in respect of which infringement notices may be issued; and
 - (c) the amount of the penalties payable under infringement notices; and
 - (d) all other matters relating to infringement notices.
- (b) by inserting in subsection (6) “and any other matter under this Act” after “disputes”.

12. Section 66 amended (Regulations of savings and transitional nature)

Section 66 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or any Act amending this Act” after “Act”;
- (b) by omitting from subsection (2) “commencement day” and substituting “day on which this Act, or any Act amending this Act, commences”.

13. Section 68 inserted

After section 67 of the Principal Act, the following section is inserted in Part 5:

68. Transitional and savings provisions consequent on *Residential Tenancy Amendment Act 2005*

Schedule 3 has effect with respect to the transitional and savings matters consequent on the enactment of the *Residential Tenancy Amendment Act 2005*.

14. Schedule 3 inserted

After Schedule 2 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 3 – TRANSITIONAL AND SAVINGS
PROVISIONS CONSEQUENT ON *RESIDENTIAL
TENANCY AMENDMENT ACT 2005***

Section 68

1. Interpretation

In this Schedule –

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

“former Act” means this Act as in force immediately before the commencement day;

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

2. Security deposits held by owners

- (1) If immediately before the commencement day an owner holds a security deposit in respect of a pre-existing residential tenancy agreement, the owner must deposit the security deposit with the Authority within 6 months after the commencement day unless the residential tenancy agreement is earlier terminated.

Penalty: Fine not exceeding 50 penalty units.

- (2) If an owner knows that a pre-existing residential tenancy agreement is to be terminated within 6 months after the commencement day, he or she may deposit with the Authority the security deposit held by him or her in respect of that agreement before that termination.
- (3) An owner who deposits with the Authority a security deposit under this clause must provide to the Authority with that deposit written notice stating –
 - (a) the names and contact details of the parties to the residential tenancy agreement; and
 - (b) if known, the name and contact details of any deposit contributor and the amount of the security deposit paid by any deposit contributor.

3. Disbursement of security deposit in respect of certain pre-existing residential tenancy agreements

The former Act continues to apply in respect of the disbursement of a security deposit relating to a pre-existing residential tenancy agreement, and the right of the owner to retain the whole or any part of the security deposit, if the owner has not deposited the security

deposit with the Authority under clause 2.

4. Disputes and appeals under former Act

The former Act continues to apply –

- (a) in respect of a dispute under section 28 of the former Act in relation to the amount of the security deposit returned to the tenant by the owner after the termination of a pre-existing residential tenancy agreement; and
- (b) in respect of an appeal from the determination of the Commissioner under section 29 of the former Act relating to any such dispute.

5. Right of deposit contributor to notify Authority

A person or organisation that –

- (a) is prescribed under paragraph (a) of the definition of “deposit contributor”; and
- (b) paid to an owner a security deposit or part of a security deposit before the commencement day in respect of a pre-existing residential tenancy agreement –

may notify the Authority, in writing, of that fact, the amount paid, the name of the tenant and owner and the address of the premises rented.

PART 3 – FAMILY VIOLENCE ACT 2004 AMENDED**15. Principal Act**

In this Part, the *Family Violence Act 2004** is referred to as the Principal Act.

16. Section 17 amended (Issue of replacement residential tenancy agreement)

Section 17 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) (“the original agreement”) after “agreement”;
- (b) by omitting from subsection (2) “residential tenancy agreement established under subsection (1)” and substituting “replacement agreement”;
- (c) by omitting from subsection (2) “agreement that was terminated under that subsection.” and substituting “original agreement.”;
- (d) by omitting from subsection (3) “an agreement terminated under this section is” and substituting “the original agreement was”;
- (e) by omitting from subsection (3) “terminated” second occurring and substituting “original”;

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(f) by inserting the following subsections after subsection (3):

(3A) Where a court has made an order terminating a residential tenancy agreement and establishing a new residential tenancy agreement and a security deposit has been paid as required under the *Residential Tenancy Act 1997* in respect of the original agreement, the court may make an order stating that the deposit in respect of the original agreement is the security deposit in respect of the replacement agreement.

(3B) If an order is made under subsection (3A) –

(a) the owner of the residential property may not require any further security deposit in respect of the replacement agreement; and

(b) no disbursement or refund of the security deposit is payable under the *Residential Tenancy Act 1997* on the termination of the original agreement; and

(c) on the termination of the replacement agreement, the security deposit is to be disbursed or refunded

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as if it were the
termination of the original
agreement.