

TASMANIA

RESIDENTIAL TENANCY (RENT CONTROL) AMENDMENT BILL 2021

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RESIDENTIAL TENANCY (RENT CONTROL) AMENDMENT BILL 2021

(Brought in by Cassandra Stanwell O'Connor MP)

A BILL FOR

An Act to amend the *Residential Tenancy Act 1997* for the purposes of regulating rent increases and allowing for rent reduction orders

Be it enacted by Her 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 (Rent Control) Amendment Act 2021*.

2. Commencement

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

3. Principal Act

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

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

(1) Section 8(1)(d) of the Principal Act is amended by omitting “section 23” and substituting “Division 2A of Part 2”.

(1) Section 8(2) of the Principal Act is amended by omitting “section 23” and substituting “Division 2A of Part 2”.

*No. 82 of 1997

5. Section 20 repealed

Section 20 of the Principal Act is repealed.

6. Section 23 repealed

Section 23 of the Principal Act is repealed.

7. Part 2, Division 2A inserted

After section 24B of the Principal Act, the following Division is inserted in Part 2:

Division 2A - Rent increases

24C. Definitions in relation to rent increases

In this Division –

Australian Statistician means the Australian Statistician referred to in section 5(2) of the *Australian Bureau of Statistics Act 1975* of the Commonwealth and includes any person to whom the powers of the Australian Statistician under section 12 of the *Census and Statistics Act 1905* of the Commonwealth have been delegated; and

index number means the rents component of the housing group of the Consumer Price Index for Hobart published from time to time by the Australian statistician; and

rent increase means an increase the amount of the rent payable by a tenant in respect of a residential premises; and

rent increase limit is the amount worked as follows:

$$PI + \frac{PI}{10}$$

where –

PI is the percentage increase in the index number over the period since the last rent increase or since the beginning of the residential tenancy agreement (whichever is later); and

rent reduction order means an order for the reduction in the rent payable under a residential tenancy agreement issued under section 24M(1).

24D. Standard residential tenancy term – rent increase

Under a fixed term lease a rent increase may not occur during the fixed term unless the amount of the rent increase, or a method for working it out, is set out in the agreement.

24E. Limitation on rent increases

(1) An owner may cause a rent increase by an amount that is more than the rent increase limit only if –

- (a) the residential tenancy agreement allows a rent increase by that amount; or
- (b) after the owner gives notice under subsection (2), the tenant agrees, in writing, to the rent increase; or
- (c) the owner obtains the Commissioner’s prior approval.

(2) For subsection (1) (b), the owner must give the tenant a written notice stating –

- (a) the day the proposed rent increase takes effect (being a day at least 60 days after the day on which the notice is given); and
- (b) the amount of the proposed rent increase; and

- (c) whether the amount of the proposed rent increase is more than the rent increase limit; and
- (d) if the proposed rent increase is more than the rent increase limit – that if the tenant does not agree to the rent increase, the owner may only make the proposed rent increase with the prior approval of the Commissioner.

24F. Tenant may apply for review

- (1) A tenant may apply to the Commissioner for review of a proposed rent increase.
- (2) An application must be made not less than 14 days before the day on which the proposed rent increase is to come into effect.

24G. Waiver of notice requirements

- (1) The Commissioner may hear an application for the review of a rent increase even though the application is made less than 14 days before the day when the proposed rent increase is to come into effect, if the Commissioner is satisfied that –
 - (a) the application is late because of special circumstances; and
 - (b) to hear the application will not place the owner in a significantly worse position than the owner would have been had the applicant applied as prescribed.
- (2) If a tenant has an early vacation as a result of a rent increase but fails to notify the owner under section 46(d), the Commissioner may, on application by the tenant or former tenant, treat the early vacation as having been given in accordance with section 46(d) if satisfied that –
 - (a) the failure to give notice under section 46(d)

is a result of special circumstances; and

(b) to treat notice under section 46(d) as having been so given will not put the owner in a significantly worse position than if notice under section 46(d) had been given properly.

24H. Freezing rents

If an application for review of a rent increase has been made but not decided, no rent increase happens unless allowed by the Commissioner.

24I. Guidelines for orders

(1) This section applies if an application is made to the Commissioner under sections 24E(1)(c) or 24F(1) in relation to a rent increase.

(2) The Commissioner must allow a rent increase if the rent increase is allowed under the residential tenancy agreement and is not unreasonable.

(3) For the purposes of subsection (2) –

(a) unless the tenant satisfies the Commissioner otherwise, a rent increase is not unreasonable if it is equal to or less than the rent increase limit; and

(b) unless the owner satisfies the Commissioner otherwise, a rent increase is unreasonable if it is more than the rent increase limit.

(4) If a tenant or owner proposes that a rent increase is or is not unreasonable, the Commissioner, in considering whether he or she is satisfied about the proposal, must consider the following matters:

(a) the amount of rent payable before the proposed rent increase;

(b) if the owner previously issued a rent increase

while the relevant tenant was tenant –

- (i) the amount of the last rent increase before the proposed rent increase; and
- (ii) the period since that rent increase;
- (c) outgoings or costs of the owner in relation to the premises;
- (d) services provided by the owner to the tenant;
- (e) the value of fixtures and goods supplied by the owner as part of the tenancy;
- (f) the state of repair of the premises;
- (g) rental rates for comparable premises;
- (h) the value of any work performed or improvements carried out by the tenant with the owner's consent;
- (i) any other matter the Commissioner considers relevant.

(5) If the Commissioner considers a proposed rent increase is unreasonable, but a lesser rent increase would not be, it may disallow so much of the rent increase as is unreasonable.

24J. Orders

(1) The Commissioner may make the following orders in relation to an application to allow or to review a rent increase:

- (a) an order allowing the rent increase applied for, or another rent increase that the Commissioner considers just;
- (b) an order disallowing the rent increase;

(c) an order disallowing part of the rent increase.

(2) The Commissioner must, as soon as practicable after making an order under this section, notify a tenant and owner in respect of a premises of the order.

24K. Effect of orders

(1) If the Commissioner makes an order under section 24J(1)(a) or (c), the rent increase takes effect from the date when the proposed rent increase would, apart from section 24H, have taken place.

(2) The Commissioner may, on application, grant a tenant time to pay rent owed because of the operation of subsection (1).

(3) If –

(a) the Commissioner makes an order mentioned in section 24J(1)(b) or (c); and

(b) despite section 24H, the tenant has paid the owner the full amount of the rent increase proposed by the owner;

the Commissioner may order the owner to pay to the tenant the difference between the amount the tenant paid to the owner and the amount that was payable.

24L. Further increases

If a proposed rent increase has been reviewed by the Commissioner, any further purported rent increase for a period of 12 months after the day the proposed rent increase was to take effect is void.

24M. Reduction of existing rent

(1) A tenant may apply to the Commissioner for an order for a reduction in the rent payable under a residential

tenancy agreement (a rent reduction order).

(2) The Commissioner may make a rent reduction order, or refuse to make a rent reduction order, in accordance with this section.

(3) The Commissioner must issue a rent reduction order under subsection (2) if it considers that the tenant's use or enjoyment of the premises has diminished significantly as a result of any of the following:

(a) the loss or diminished utility of an appliance, furniture, a facility or a service supplied by the owner with the premises as a result of –

(i) the withdrawal of the appliance, furniture, facility or service by the owner; or

(ii) the failure by the owner to maintain the premises and any appliance, furniture or facility supplied with the premises in a reasonable state of repair, having regard to their condition at the commencement of the residential tenancy agreement; or

(iii) the failure by the owner to provide and maintain the locks or other security devices necessary to ensure that the premises are reasonably secure;

(b) the loss of the use of all or part of the premises;

(c) interference with the tenant's quiet enjoyment of the premises or the tenant's ability to use the premises in reasonable peace, comfort and privacy by the owner or anyone claiming through the owner or having an interest in, or title to, the premises.

(4) To remove any doubt and for subsection (3), a tenant's quiet enjoyment of premises is interfered with if there is substantial interference with, or a significant

lessening of freedom in exercising, the tenant's rights.

- (5) A rent reduction order under subsection (2) –
 - (a) takes effect from the day the tenant's use or enjoyment of the premises diminished, or a later date that the Commissioner specifies; and
 - (b) remains in force for the period, not longer than 12 months, specified by the Commissioner.
- (6) As part of a rent reduction order under subsection (2), the Commissioner may order an owner to pay to the tenant the difference between the rent paid and the rent payable as a result of a rent reduction order.
- (7) Any purported rent increase in relation to premises for which a rent reduction order is in force is void, and any amount paid above and beyond the reduced rental rate in accordance with a purported increase is a debt owing by the owner to the tenant.
- (8) The Commissioner must, as soon as practicable after making, or refusing to make, a rent reduction order, notify a tenant and owner in respect of a premises of the order or refusal.

24N. Tenant or owner may apply to court for review of proposed rent increase

- (1) If the Commissioner has made an order under section 24J(1) in respect of a premises, a tenant or an owner in respect of the premises may apply to the Court for a review of the proposed rent increase.
- (2) An application may only be made under subsection (1) by a tenant, or owner, in respect of premises within the period of 60 days after the tenant, or owner, is notified that the Commissioner has made an order under section 24J(1) in respect of a premises.
- (3) If an application for a review of a proposed rent

increase is made under subsection (1) in respect of a premises –

(a) any order made by the Commissioner under section 24J(1) in relation to the premises is of no effect, unless the application is withdrawn; and

(b) the Court is to determine the review as if –

(i) the Commissioner had not made an order under section 24J(1) in respect of the premises; and

(ii) a reference in sections 24H, 24I, 24J, 24K and 24L to the Commissioner were a reference to the Court.

24O. Tenant or owner may apply to court for review of rent reduction order

(1) If the Commissioner has, under section 24M(2), made a rent reduction order, or refused to make a rent reduction order, in respect of a premises, a tenant or an owner in respect of the premises may apply to the Court for a review of the rent reduction order, or refusal of a rent reduction order.

(2) An application may only be made under subsection (1) by a tenant or owner in respect of premises within the period of 60 days after the tenant or owner is notified that the Commissioner has, under section 24M(2), made a rent reduction order, or refused to make a rent reduction order, in respect of a premises.

(3) If an application for a review is made under subsection (1) in respect of a premises –

(a) any rent reduction order made by the Commissioner in relation to the premises is of no effect, unless the application is withdrawn; and

(b) the Court is to make a determination as if –

- (i) the Commissioner had not made a determination under section 24M(2); and
- (ii) a reference in section 24M to the Commissioner were a reference to the Court.

8. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.