

## CLAUSE NOTES

### RESIDENTIAL TENANCY AMENDMENT BILL 2013

#### **Part I - Preliminary**

**Clause 1:       Short title**

The Act is to be referred to as the *Residential Tenancy Amendment Act 2013*.

**Clause 2:       Commencement**

Provides that provisions of the Act commence on a day or days to be proclaimed. This gives flexibility if Government needs to commence different sections of the Act on different days.

#### **Part 2 – Residential Tenancy Act 1997 Amended**

**Clause 3:       Principal Act**

Provides that the *Residential Tenancy Act 1997* is to be referred to as the Principal Act.

**Clause 4:       Section 3 amended (Interpretation)**

**‘Director of Housing’** is inserted as it forms a key part of the definition of social housing.

**‘Domestic partner’** is inserted to assist in the interpretation of ‘member of the family’ that is inserted into section 42 of the Act by clause 20 of this Bill.

The definition of **‘Essential service’** is amended to make it clear that tap washers and

fuses fall within this definition and are the responsibility of the owner but the definition does not include fuses when contained in a meter box and not light globes that are inaccessible.

**‘inaccessible light globes or light tubes’** are defined.

**‘social housing’** is defined to include a range of housing forms that was originally the preserve of public housing.

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

Amendments to this section expand and clarify the existing functions and scope of the Residential Tenancy Commissioner to include:

- applications under sections 23 or 36A(unreasonable rent increases and orders for repairs); or
- other functions conferred under this Act.

**Clause 6:       Section 11 amended (Expiry)**

**Clause 7:       Section 12 amended (Extension and renewal)**

The amendments to sections and 11 and 12 need to be read together to have meaning.

At present, sections 11 and 12 together provide that:

- An agreement expires on the date fixed in the agreement or on a date agreed to between the parties);
- However, where an agreement for a fixed term expires and the tenants continue to occupy the premises, the agreement becomes an agreement of no-fixed term, 28 days after the day of expiry.
- There is some ambiguity that arises because of the current drafting of these sections and the revised sections both make a policy change and clarify the meaning of these sections.

The amended sections 11 and 12 provide that:

- An agreement expires on the date fixed in the agreement or on a date agreed between the parties;
- However, where an agreement for a fixed term expires and the tenants continue to occupy the premises, the agreement becomes an agreement of no-fixed term, on the day after the day of expiry.
- The automatic conversion of a fixed term agreement to an agreement of no fixed term does not apply where:

- a notice to vacate has been served by the owner under section 38; or
- a notice to terminate has been served by the tenant under section 42.

**Clause 8:       Section 16B inserted**

This provision deals with rent bidding and requires that when property is advertised for rent it is advertised at a fixed price. This means that bracket pricing is prohibited and an owner or agent must not invite a prospective tenant to make bids for the rental on the property.

This amendment does not intend to prohibit advertising that a property is for rent by placing a billboard on the property.

**Clause 9:       Section 17 amended (Money other than rent)**

The amendment to this section will prohibit a rent collection agency from charging fee for the collection of rent. The provision will not apply to deposit taking institutions that charge fees for banking transactions but will mean that where an owner appoints another party to collect the rent, that party cannot charge a fee directly to the tenant for that service. The owner is also prohibited under this section for charging such a fee.

**Clause 10:      Section 20 amended (Increase in rent)**

This section as amended will prevent a rent increase from occurring more frequently than at 12 month interval and only following 60 days' notice of the intention to increase the rent.

Rent for social housing can be increased at any time after 60 days' notice. Social housing rent is only increased every 12 months as a matter of public policy.

**Clause 11:      Section 23 amended (Unreasonable increase)**

This amendment transfers the existing power for a Magistrate to review an increase in rent because it is unreasonable from the Magistrates Court to the Residential Tenancy Commissioner. An application can be made to the Commissioner within 60 days after the tenant receives notice from the owner of the increase. A decision made by the Commissioner can be reviewed on appeal to the Magistrates Court.

**Clause 12:      Section 31A inserted**

This provision makes clear that where an object is required to be repaired under the Act and is subsequently not able to be repaired, then it must be replaced. The reason for this inclusion is to prevent avoidance of

maintenance obligations where it is not possible to repair an object.

The section also gives guidance as to the standard that must be met by a replacement item to satisfy the obligation to repair under the Act.

**Clause 13:      Section 32 amended (General repairs and maintenance)**

This amended section provides that the obligation to maintain the property needs to read in the context of Part 3B. This means that certain standards must be met and maintained which are more than just maintaining what existed on commencement of the tenancy.

This amendment also provides that where maintenance is required to a cooking stove, the repair must be made in 14 days, not 28 days.

**Clause 14:      Section 33 amended (Urgent repairs)**

This amended section gives clarity to the meaning of 'functional' under the Act in relation to water and sewerage services, electricity services, heating services, cooking stoves, and hot-water services. Where essential services are not 'functional' then it becomes an 'urgent repair' which requires immediate attention by the property owner.

**Clause 15:      Section 36A substituted**

This provision provides that a tenant may apply to the Commissioner for an order for repairs to be carried out by the owner. The section provides that a fee can be charged and details the procedure that can be followed by the Commissioner in determining an application and making an order.

**Clause 16:      Part 3B inserted**

This part inserts provisions that relate to minimum standards for premises. The new sections are as follows:

**36I – Premises to be weatherproof and structurally sound**

This provision requires that a property is weatherproof and in a proper state of structural repair at the beginning of a tenancy and continues to be so during the term of any agreement.

*A penalty applies for renting a property that does not comply with this section.*

**36J – Cleanliness and good repair**

This provision requires premises to be clean at the beginning of a property and must be in good repair.

Where a property ceases to be in good repair, the owner must take action to rectify any

issues. The owners obligations do not apply where the problem arises because an action of the tenant.

*A penalty applies for renting a property that does not comply with this section.*

### **36K – Bathrooms, toilets and laundries to be provided**

This provision requires that each premise has a flushable toilet that is connected to an appropriate waste management system. The toilet must be contained in a room that used solely for the purpose of toilet use or is contained in a bathroom. The provision also specifies requirements for ventilation.

The provision requires each property to contain a separate bathroom which is private and contains either a bath or shower and a washbasin that is connected to hot and cold water.

*A penalty applies for renting a property that does not contain these facilities.*

### **36L – Cooking facilities**

This provision requires that each rental property contains a kitchen sink connected to a hot and cold water supply. Each property must also contain a stovetop and a functioning oven.

*A penalty applies for renting a property that does not contain these facilities.*

### **36M – Electricity and heating**

#### **Electricity**

This provision requires that an electricity supply is available at the premises. An alternate functioning device may also be provided to supply electricity such as a generator.

All of the wires and power points at the property must function unless specifically listed as not functioning on the condition report.

Every room, other than a room specifically designated as a storage room or a garage, must have adequate natural or artificial light.

#### **Heating**

This provision requires an owner to provide fixed heating in the main living area of residential premises. Compliant heating can be provided by electricity, gas, a heat pump, a wood heater or another device that is prescribed. A property can have an open fireplace but this does not qualify as complying with this section.

### **36N – Window covering for privacy**

This provision requires that a residential premise must be fitted with window covering

in each room that is likely to be used as a bedroom or a living area. The section does not apply to social housing.

### **36O – Ventilation**

This provision outlines the requirement of an owner to ensure adequate ventilation of premises, taking into consideration the requirements and function of each room.

### **36P – Exemption from requirements of provision of this part**

The Director may specify by notice to an owner that premises or a class of premises are exempt from Part 3B of the Act.

#### **Clause 17: Section 37 amended (Termination of agreement)**

This provision clarifies existing law by making it clear that a residential tenancy agreement is terminated on the making a closure order under the *Public Health Act 1997* or on the death of the sole tenant of premises.

#### **Clause 18: Section 38 amended (Notice of termination by tenant)**

This provision allows a tenant of a fixed term agreement to give notice of their intention to terminate an agreement on the expiry of the agreement. This notice can be served on the owner no more than 60 days before the expiry date.

**Clause 19:      Section 39 amended (Effect of notice of termination)**

Where a tenant gives notice under section 38 to terminate a fixed term agreement on expiry, the notice takes effect 14 days after the notice is served but not before the expiry of the agreement.

Under the current Act, the tenant can leave on the expiry date without notifying the owner. This amendment means that a tenant must give 14 days notice before ending a fixed term agreement.

**Clause 20:      Section 42 amended (Notice to vacate by owner)**

The amended sections achieve a number of changes including:

- removing the 28 day buffer period after the expiry of a fixed term agreement;
- allowing notice to be given where premises of a non-fixed term are to be used by members of the owners family;
- clarifying when a notice can be given where premises of a non-fixed term are to be sold or renovated;
- allowing notice to be given where a tenant of social housing exceeds the income or asset threshold;

- allowing notice to be given where a tenant of social housing no longer qualifies because of under occupancy; and
- allowing notice to be given where a tenant of social housing no longer needs services provided for a person with a disability.

**Clause 21: Section 43 amended (Effect of notice to vacate)**

The amended section updates the relevant time periods in which a notice to vacate must prescribe.

**Clause 22: Section 45 amended (Order for vacant possession)**

This amended section allows a Magistrate to decline to make an order for vacant possession where the making of the order would result in hardship for the tenant, where the premises falls within the definition of social housing.

The amended section also allows a Magistrate to proceed with an order for vacant possession even where the date specified in the notice is incorrect. This means that where a mistake is made in a notice, the notice is not disqualified simply because of this error.

**Clause 23: Section 49B amended**

This provision makes it clear that the rights of a tenant under an agreement do not transfer

to any heirs or successors on the death of a tenant.

**Clause 24: Section 55A inserted**

This provision requires an owner to get written consent to display to the public a photograph of the premises. This will prevent photographs of tenant's possessions from being identified in advertisements in print or on the internet. Photos of personal possessions have the potential to create a security risk by identifying goods or the identity of the tenant.

**Clause 25: Section 57 amended (Locks and security devices)**

This provision inserts penalty provisions after subsection (1), subsection (1A) subsection (2)(b) and subsection (5).

The provision makes the requirement for locks in boarding premises clearer by stepping out different requirements for the tenant's room, the bathroom and toilet facilities and the entrance to the premises.

The provision also provides that a tenant may add, alter or remove a lock or security device without permission where there is a relevant Family Violence Order.

**Clause 26: Section 62 amended (Notification of name and address)**

This provision inserts penalties after subsections (1), (2), (3) and (4). As the requirements under these sections are mandatory requirements, a penalty is appropriate for a failure to comply.

**Clause 27:      Sections 68B and 68C inserted**  
**General transitional provisions**

These provisions make arrangement for a transitional implementation of changes to the Principal Act that are to be made by this Bill.

The intent of the transitional arrangements are that where new contracts are made before the commencement of changes to section 11 or section 12, these changes should not take effect until after 12 months. A cut off of 12 months is provided as an open ended arrangement this would mean that the new provisions would not apply at all to some agreements.

Where the new provisions relate to changes to sections about expiry, a 14 month cut off is provided. Although the new provisions require longer notice of 42 days, notice cannot be given until 12 months after commencement of section 11 and section 12. The 14 month period after commencement allows notice to be given under the new provision.

New section 16B will apply only to advertisements placed after the commencement of that section.

New section 3A will not apply to agreements entered into before the commencement of that section until after 12 months.

New section 20 and 23 will not apply to agreements entered into before the commencement of that section until after 12 months.

New section 38 and 39 will not apply to agreements entered into before the commencement of that section until after 12 months.

New section 38 and 39 will not apply to the expiry in relation to agreements entered into before the commencement of that section until after 14 months.

New sections 42, 43, and 45 will not apply to agreements or a notice to vacate in relation to agreements entered into before the commencement of those sections until after 12 months.

Section 49B will not apply before the commencement of that section.

The amendments made to section 57 do not apply until 12 months after commencement of those sections where the agreements are

entered into before the commencement of these amendments.

### **Transitional provisions relating to new standards**

In relation to minimum standards, the following transitional arrangement applies:

- Where an agreement is made before commencement of section 36I the provision does not apply to that agreement for 3 years.
- Where an agreement is made after the commencement of section 36I the section does not apply to that agreement for 12 months after commencement.
- Section 36J(1) does not apply to agreement entered into within 30 days after commencement but applies to all agreements after that date.
- Where a new agreement is made after the commencement of section 36J(2) the section does not apply to that agreement for 12 months after commencement.
- Where a new agreement is made after the commencement of section 36J(3) the section does not apply to that agreement for 3 years after commencement.

- Where a new agreement is made before commencement of sections 36K, 36L, 36M, 36N or 36O, the provision do not apply to that agreement for 3 years.
- Where a new agreement is made before commencement of sections 36K, 36L, 36M, 36N or 36O within 12 months the provisions do not apply to those agreements for 3 years.

### **Part 3 – Land Titles Act 1980 Amended**

#### **Clause 28: Principal Act**

Defines the Principal Act as the *Land Titles Act 1980*.

#### **Clause 29: Section 164 amended (Mortgagee, encumbrance or lessor may obtain possession in certain case)**

Section 146(6A) of the Land Titles Act is amended to be consistent with amendments to section 43 of the *Residential Tenancy Act 1997*.

### **Part 4 – Concluding Provisions**

#### **Clause 30: Repeal of Act**

Provides that this amendment Act is repealed 365 days from the day on which all of the provisions of this Act commence.