

## SECOND READING SPEECH

### Residential Tenancy Amendment Bill 2010

Mr Speaker, I move that the *Residential Tenancy Amendment Bill 2010* be read a second time.

The Residential Tenancy Amendment Bill ensures eligibility for funding under the Commonwealth's National Rental Affordability Scheme (NRAS) for organisations such as community housing organisations and the University of Tasmania by:

- removing the current exemption from the Act to University premises that are subject to funding under NRAS;
- allowing property owners to enter into residential management agreements and for residential managers to perform the functions of property owner; and
- restricting the circumstances under which people can sub-let premises.

The Amendment Bill also clarifies some Rental Deposit Authority processes relating to notices of claims and referral of disputes.

The *Residential Tenancy Act 1997* establishes a legal framework for residential tenancy agreements. The Act prescribes the rights and obligations of property owners and tenants and provides legal redress through the Magistrates Court.

The National Rental Affordability Scheme (NRAS) is an Australian Government initiative that aims to increase the supply of affordable rental housing for low and moderate income earners across Australia.

Funding under NRAS is subject to the condition that the relevant tenancy law applies to tenants under any proposed scheme. However, some of the proposed schemes in

Tasmania may not currently be eligible for funding under Commonwealth NRAS requirements.

The Amendment Bill will ensure that the Residential Tenancy Act will apply to prospective University housing that is funded under the National Rental Affordability Scheme. This will assist the University's application for NRAS funding.

The Amendment Bill removes the current exemption under section 6(2)(d) of the Residential Tenancy Act and inserts into that Act a new section 5 to make it clear that the Act will apply to approved dwellings as defined by the *National Rental Affordability Scheme Regulations 2008*.

The existing exemption for educational institutions will be reinstated in the regulations. These regulations have been drafted and are currently being approved to commence on the day on which this Amendment Act receives Royal Assent.

All other exemptions are currently being considered as part of the review of the Residential Tenancy Act and the exemptions for educational institutions will be considered as part of this process.

The Housing Innovations Unit of the Department of Health and Human Services wishes to contract with community housing organisations to collect rents, undertake maintenance and perform a range of other obligations under the Act, for NRAS funded properties. Housing will retain title to the properties. This arrangement is known as a 'head lease' agreement.

However, it is not currently possible to 'contract out' of the statutory obligations of the 'owner' of the property (defined in the Act as a person who holds legal title to the residential premises) and consequently it is not feasible for Government to enter into these types of head leasing arrangements.

Further, if a head tenant let the premises to people who will occupy the premises, then these people become sub-tenants. As the Act does not apply to sub-tenants, this would mean that the occupants of the relevant NRAS properties would not have the protection of the Residential tenancy Act. Unfortunately, NRAS funding is not available where the relevant residential tenancy laws do not apply.

To solve these problems, the Amendment Bill establishes a residential management agreement where the head lessee or residential manager becomes the property owner for the purposes of the Act. Under this arrangement, any tenant of residential manager becomes the tenant and has the protection of the Residential Tenancy Act. This also means that these premises are eligible for NRAS funding.

Where a head lessee dies, becomes insolvent or is wound up (in the case of a company), the application of the Act reverts back to the owner. This prevents the creation of specific business structures designed to avoid the obligations of owner under the Act.

Finally, the Bill prevents a tenant from sub-letting premises where they do not occupy the premises. At present, a person can rent a number of properties under a head leasing arrangement and sub-let to tenants. As the Act does not apply to sub-tenants this structure avoids the application of the Act to occupants of premises. Restricting sub-letting only to tenants who occupy premises will solve problem.

Mr Speaker the Amendment Bill also clarifies some Rental Deposit Authority processes.

The Authority holds monies in trust for the parties to a residential tenancy agreement. The Act also established processes for notifying the parties when a claim has been lodged and for resolving disputes arising from the claims process.

The Act prescribes in detail the 'content' of a claim form in a manner that does not support the current claims process. The Amendment Bill provides the required flexibility by providing that the content of a claim form is to be determined by the Director of Consumer Affairs and Fair Trading.

The Act currently provides that on receipt of a claim, the Authority is to provide a copy of the claim form to the other parties. However, the claim form does not contain information which is of any use to these other parties. Further, it may contain privacy information such as bank details. The amendments provide that only notice of the receipt of a claim is given to the other parties and not the actual claim form.

The Act currently does not provide that the 'non-agreement' of the parties to a claim automatically triggers referral of the claim to the Residential Tenancy Commissioner for determination as a disputed claim. The Amendment Bill enables the Rental Deposit Authority to refer such claims automatically to the Commissioner.

Mr Speaker, I commend the *Residential Tenancy Amendment Bill 2010* to the House.