

Bills

RESIDENTIAL TENANCIES (MISCELLANEOUS) AMENDMENT BILL

Introduction and First Reading

The Hon. A. MICHAELS (Enfield—Minister for Small and Family Business, Minister for Consumer and Business Affairs, Minister for Arts) (15:42):

Obtained leave and introduced a bill for an act to amend the Residential Tenancies Act 1995 and to make related amendments to the Real Property Act 1886 and the Residential Parks Act 2007. Read a first time.

Second Reading

The Hon. A. MICHAELS (Enfield—Minister for Small and Family Business, Minister for Consumer and Business Affairs, Minister for Arts) (15:43): I move:

That this bill be now read a second time.

I am pleased to introduce the Residential Tenancies (Miscellaneous) Amendment Bill 2023. This bill proposes to amend the Residential Tenancies Act 1995, the Residential Parks Act 2007 and the Real Property Act 1886 to improve the rights of renters, modernise existing rental laws and ensure landlords can continue to manage properties effectively. The amendments proposed in the bill form part of the government's commitment to improve housing outcomes for the people of South Australia.

Earlier this year, the commencement of the Residential Tenancies (Protection of Prospective Tenants) Amendment Act 2023 and amendments to the Residential Tenancies Regulations 2010 provided some immediate relief for tenants through taking measures to ban rent bidding, protect tenant information and make residential rental bonds more affordable. This bill contains broader reforms that are necessary to respond to the many challenges faced by tenants in South Australia.

In September 2023, the Senate Community Affairs References Committee delivered its interim report into the worsening rental crisis in Australia. This report highlights that the challenges faced by tenants to find suitable, affordable and safe housing are at an unprecedented scale, with Australia experiencing a period of extremely low rental vacancy rates and rising rental levels. In August 2023, the residential rental vacancy rate in Adelaide was 0.5 per cent, the second lowest rate of the Australian capital cities behind Perth.

The bill proposes amendments to South Australia's rental laws that are consistent with the agreement made by national cabinet on 16 August 2023 to A Better Deal for Renters, which focuses on improving renters' rights across Australia. Reforms within the bill also consider the outcomes of extensive consultation on the review of the act conducted by Consumer and Business Services.

Broad consultation was undertaken between 15 November and 16 December 2022, when more than 5,000 people completed a YourSAy survey and over 150 submissions were received from key stakeholders and members of the public. The outcome of this consultation informed the drafting of the bill, which was released for targeted consultation between 14 August and 4 September this year.

All stakeholder groups that made submissions during public consultation were invited to provide feedback on the bill as part of targeted consultation. Submissions were received from 21 stakeholders, including the Real Estate Institute of South Australia, Shelter SA, Uniting Communities, Better Renting, RSPCA SA, SACAT and COTA SA. This feedback informed the final version of the bill that I am pleased to introduce today.

A key reform of the bill is to prohibit the termination and non-renewal of tenancy agreements without providing a prescribed reason. Notice of termination on a prescribed ground must be accompanied by written evidence as approved by the Commissioner for Consumer Affairs. This measure is part of a series of amendments that will provide tenants with greater security of tenure and encourage longer tenancies.

It is proposed that landlords will retain the ability to terminate a tenancy by providing a notice of termination due to a breach of agreement as specified in section 80 of the act. Landlords will also be able to end a periodic tenancy or not renew a fixed-term tenancy agreement because they require possession of the property for reasons detailed in section 81 of the act.

To balance the rights of landlords, the reasons that may be used to end a periodic tenancy or not renew a fixed term tenancy will be expanded through regulations. These reasons, which will be finalised after consultation on the supporting regulations, are expected to include:

the tenant or their visitor intentionally or recklessly causes serious damage to the property, including safety equipment in common areas;

the tenant or their visitor puts neighbours, the landlord or the landlord's agent, contractors or employees in danger;

the premises are unfit for human habitation, destroyed totally or destroyed to the extent that they are unsafe;

the tenant or anyone else living at the property seriously threatens or intimidates the landlord, their agent or the landlord's contractors or employees;

the tenant has failed to comply with a SACAT compliance order;

the tenant has already been given two breach notices, and the same breach occurs;

the property is being used for illegal purposes;

the tenant has brought in other tenants or subtenants without consent;

the tenant has not paid the bond as agreed;

the landlord is a government Housing Authority, and the tenant misled the authority so they could get social housing;

the tenant has been involved in an illegal drug-related activity in the property;

the tenant is keeping a pet without consent, and SACAT has made an order excluding the pet;

the tenant is renting a house from a charity or community housing provider, and the tenant no longer meets the charity or community housing provider's eligibility requirements to continue as a tenant; and

the tenant has engaged in false, misleading or deceptive conduct or concealed material facts from the landlord or agent in inducing the landlord to enter into the tenancy agreement.

Consultation highlighted that some tenants are apprehensive to exercise their rights under the act, fearing retaliatory eviction. As a measure to ensure that tenants can exercise their rights, such as requesting necessary repairs, the bill proposes to insert a new section 90A into the act to allow SACAT to determine that a notice of termination has no effect when SACAT is satisfied that it is a retaliatory notice. This change is consistent with the agreement made at national cabinet to ensure provisions to allow appeals against retaliatory eviction notices are fit for purpose.

I understand that tenants are sometimes forced to leave rental properties due to disproportionate rent increases, which can cause their rent to become unaffordable. Section 56 of the act currently allows SACAT to determine rent to be excessive by considering factors including the general level of rents for comparable premises in the same or similar localities and the state of repair and general condition of the premises.

The bill proposes to amend this provision to require that SACAT must also have regard to whether the increase in rent was disproportionate when deciding a rent increase is excessive. It is proposed that tenants who believe their rent is excessive will have 90 days after being notified of a rent increase to apply to SACAT for a determination on whether the rent increase is excessive and should be reduced.

The bill proposes several reforms to encourage longer tenancies. Under the Real Property Act 1886 the title of a registered proprietor is indefeasible subject to, among other things, a residential tenancy agreement not exceeding one year. The bill proposes to amend this to three years to offer landlords greater security from a caveat being placed on their property by a tenant who has a fixed-term tenancy agreement exceeding 12 months. This proposed change to the Real Property Act 1886 is consistent with equivalent legislation in other Australian jurisdictions.

Tenants may be reluctant to enter into longer fixed-term tenancies due to concern about their liability to continue paying rent should they need to end the tenancy early. The bill proposes to introduce section 75A, which limits the amount of unpaid rent that a landlord can claim to a maximum of one month of rent for each year remaining of the fixed-term agreement. This must not exceed six months' rent in total. When there is less than one year remaining on an agreement a tenant will only be liable for a maximum one month of rent. It is noted that landlords will remain entitled to costs associated with reletting, such as advertising costs.

The introduction of section 75A aligns with national cabinet's agreement to limit break-lease fees for fixed-term agreements to a maximum prescribed amount, which declines according to how much of the lease has expired.

Pets can offer physical and mental health benefits to their owners and can provide support to people experiencing loneliness. Many tenants in South Australia report struggling to find pet-friendly rental accommodation. According to the RSPCA, one in five animals surrendered is due to their owners being unable to find a rental property that allows pets.

The bill proposes to introduce a presumption that a tenant who applies to keep a pet in a rental property cannot have their request unreasonably refused provided the tenant agrees to comply with any reasonable conditions imposed by the landlord. Reasonable conditions may include requiring the pet to be effectively restrained during inspections and requiring carpets to the premises to be cleaned to a professional standard at the end of the tenancy. Tenants will have the option to apply to SACAT if they believe their request for a pet was unreasonably refused or they are not satisfied that the conditions imposed by the landlord are reasonable.

It is also a challenge for some South Australians to find an accessible rental property. This challenge is intensified by limitations on how rental properties can be modified. The bill proposes to change section 70 of the act which specifies the process for requesting alterations to rental properties. This change will prevent a landlord from unreasonably withholding consent to an alteration or an addition to a rental premises that is minor but necessary to ensure provision of infrastructure or a service of a prescribed kind, or required for a disability within the meaning of the Equal Opportunity Act 1983 and would not significantly change or affect the structure of the premises.

Changes to this section would also prevent a landlord unreasonably withholding consent to an alteration or an addition if the tenant has mobility or access needs relating to their age and which is reasonable and necessary for the tenant and would not significantly change or affect the structure of the premises.

Changes to section 70 of the act will make it easier for tenants to make minor modifications, such as installing wall anchors to safely mount furniture, adding picture hooks, installing child safety gates and changing internal window coverings.

These changes will also create more opportunities for tenants to make changes to improve the accessibility of a property through measures such as adding safety rails, temporary ramps and custom showerheads, provided these changes are made good at the end of the tenancy.

All rental properties are required to meet the prescribed minimum housing standards under the Housing Improvement Act 2016. The bill proposes to introduce section 67A, which will clarify that a landlord under a residential tenancy agreement must ensure that their property complies with these standards on or before the day on which the tenant enters into occupation of the premises.

It is noted that section 67A does not require an independent auditor to conduct inspections to ascertain compliance with these standards. Should a rental property not meet these standards, section 67A allows a tenant to request the landlord to carry out urgent repairs to ensure the premises complies with these standards. Section 85B will allow a tenant to serve a notice of termination if their rental property does not comply with these standards.

The bill proposes that tenants will be able to terminate tenancies in other circumstances under the proposed section 85AA, when a tenant has served a notice of breach of a residential tenancy agreement on the landlord on two occasions and the landlord has remedied the breach in the prescribed period on both occasions. Should the same breach occur again, the tenant may serve a notice of termination without providing a period for the landlord to remedy the breach. It is proposed that a tenant will also be able to terminate a tenancy in circumstances where the tenant has been offered and accepted accommodation by the South Australian Housing Trust, a subsidiary or by a community housing provider.

Section 85C proposes that a tenant can terminate a tenancy if they require care of a kind prescribed by regulations, such as care within a nursing home, and they need to vacate in order to obtain that care, or the tenant requires prescribed temporary crisis accommodation and needs to vacate the premises to obtain that accommodation.

At the national cabinet meeting on 16 August 2023, agreement was obtained from all states and territories to implement a number of reforms to better protect tenants who are experiencing domestic and family violence. The bill proposes measures to strengthen protections for tenants who are victims of domestic abuse. This includes the introduction of section 85D, which will allow tenants to serve a notice of termination in circumstances of domestic abuse by providing supporting evidence to their landlord instead of making an application to SACAT. Section 90B proposes to allow SACAT to order a termination notice served on the tenant is invalid if the tenant has been subjected to domestic abuse and SACAT determines that the termination notice was served due to the act of a person who subjected the tenant to that domestic abuse.

The inclusion of proposed sections 66A and 66B will allow a person experiencing domestic abuse to alter any external door or window lock without the permission of the

landlord provided keys to the new locks are issued to the landlord or agent as soon as possible. Changes to section 89A of the act are also proposed. These changes will provide SACAT with greater jurisdiction to make decisions about whether a tenant, who has experienced domestic abuse and was not responsible for damage caused by the co-tenant, should be liable to pay compensation to the landlord for the damage. In practice, this will allow SACAT to refund a victim's portion of the rental bond and hold a co-tenant responsible for any damage they caused even when the amount of compensation owed to the landlord is greater than this tenant's portion of the bond.

The bill proposes to provide additional protections for people living in shared accommodation. Extending the definition of rooming houses will afford more renters living in shared accommodation protection under the act. The definition of a rooming house will be amended to mean premises in which two or more rooms are available for valuable consideration. The proposed inclusion of sections 103B to 103E in the act establishes a rooming house registration scheme for rooming houses with accommodation available for five or more persons. This register will be maintained by CBS and require that prescribed rooming house proprietors can provide CBS with evidence that they are fit and proper to carry out business involved in the provision of accommodation under rooming house agreements.

Further changes to the rooming house provisions within the act include amending section 105U so that a proprietor may only terminate a rooming house agreement on a prescribed ground and provide 60 days' notice. Presently, a proprietor can terminate a periodic agreement without grounds by providing four weeks' notice.

South Australia is currently experiencing extremely low rental vacancy rates, making it a competitive time to be in the market for a new rental property. It is important that tenants who receive notice that their residential tenancy will not be renewed have enough time to secure new accommodation. The bill proposes to amend section 83A to require that a landlord may only terminate a fixed-term residential agreement at the end of the fixed term on a prescribed ground with 60 days' notice as opposed to 28 days. This will provide tenants with more time to secure a new rental property and make the necessary arrangements to move house.

The bill also proposes to allow tenants to vacate their rental property within the 60-day notice period and not pay rent after they vacate. This provision will be contingent on a tenant having had their tenancy terminated or not renewed on certain grounds, such as the landlord moving into the property, and requires the tenant to provide seven days' notice to the landlord or agent if they intend to vacate early.

At present, a landlord or agent may inspect a rental property once every four weeks. This is out of step with all other Australian jurisdictions, which allow a maximum of four routine inspections each year. The bill proposes to amend section 72 of the act to reduce the number of routine inspections permitted, so that a maximum of four routine inspections per year is allowed, unless SACAT orders that additional inspections are appropriate. Circumstances that may warrant additional routine inspections include

where a tenant has issues with hoarding and more frequent inspections are required to ensure the safety of the property is maintained.

I seek leave to have the remainder of the second reading explanation and the explanation of clauses inserted in *Hansard* without my reading them.

Leave granted.

It is noted that section 72(1)(i) of the Act allows a landlord or agent to enter a rental property for a genuine purpose with the consent of the tenant. This section allows for landlords to hold re-inspections, should any issues arise during a routine inspection that the landlord and tenant seek to rectify without a landlord issuing a notice for breaching the tenancy agreement.

As a measure to ensure the privacy of tenants during the sale of a tenanted property, it is proposed that section 72(5a) is included in the Act to allow for regulations to prescribe requirements relating to the production, distribution or publication of documents or records in connection with the relevant entry onto the premises. This will allow the regulations to provide restrictions regarding how tenants' belongings can be photographed and published in real estate advertisements.

As a step towards improving energy efficiency standards in rental properties, the Bill proposes to introduce section 68A, which specifies that any new or replacement fixture in a rental property will be required to meet certain energy or water efficiency standards, which are to be detailed in regulations.

The inclusion of section 73A specifies that a landlord and tenant may enter into an agreement under which the tenant is able to pay for the installation of a solar energy system. This section is intended to clarify that no section of the Act prevents tenants and landlords forming agreements about the installation of energy saving infrastructure by a tenant.

The Bill also proposes changes to statutory and excess water charges. It is proposed that section 73 of the Act is amended to specify that a landlord is responsible for rates and charges not based on the level of consumption, such as the water supply charge. If the premises is separately metered, the landlord and tenant may agree otherwise. Further, a tenant is not required to pay rates or charges if the landlord fails to provide a copy of the invoice within 30 days.

The introduction of section 73B proposes to clarify that a landlord is responsible for excessive water usage charges caused by a fault in water infrastructure or equipment or other appliances, fittings, or fixtures at or connected to the premises when the tenant has notified the landlord of the issue as soon as practicable. It is noted that the tenant and landlord are not responsible for costs associated with a fault that is the responsibility of SA Water.

The Bill also proposes to introduce measures to prevent the provision of misleading information. Section 47C will require that a landlord or agent make prescribed information available to prospective tenants and do not make any statement or representation they know to be false, misleading, or deceptive or knowingly conceal a material fact of a kind prescribed by regulation. It will also be a requirement that tenants are informed of information related to embedded networks, when entering a tenancy where an embedded network is present.

To balance the rights of landlords, and ensure prospective tenants are deterred from providing misleading information, the Bill proposes to introduce a provision at section 47B to require that a prospective tenant does not give a landlord false information or a falsified document in connection with an application to enter a residential tenancy agreement.

At present, a landlord is not entitled to compensation (i.e., break lease costs) where the landlord terminates the agreement due to a breach by the tenant and the breach is for something other than unpaid rent. The Bill proposes the addition of section 84A. This section will specify that landlords are entitled to costs or expenses of a kind determined by the Commissioner in connection with the termination of a residential tenancy agreement in prescribed circumstances.

When National Cabinet met on 16 August 2023, it was agreed to move towards a national standard of no more than one rent increase per year for a tenant in the same property across fixed and ongoing agreements. To implement this, the Bill proposes to amend section 55 of the Act to clarify that an increase in rent, even by mutual agreement, must be at least 12 months after the date on which the residential tenancy agreement was entered into, or, if there has been a previous increase of rent under this section, the last increase. Section 55 also clarifies that if the agreement type changes (i.e. from fixed to periodic) the rent still cannot be increased within 12 months after the start of the original agreement or the last rent increase.

New provisions within the Act are proposed to accommodate changes to the payment of tenant bonds. Changes to sections 61-63 of the Act will allow regulations to provide for lodgement of bonds by tenants and clarify that bonds will be returned to tenants equally unless otherwise consented to or disputed. Further, changes to these provisions will clarify that SACAT may disclose sealed orders to CBS to allow CBS to make bond repayments in accordance with these orders.

Section 63 of the Act specifies the process for the repayment of bonds. At different stages of this process, parties are provided with 10 days to take certain actions. This timeframe of 10 days was designed to allow for communication via the postal system. The Bill proposes that these timeframes are prescribed in regulations, with the view to reduce these timeframes in circumstances where all parties have access to the online bonds system.

The Bill proposes to introduce section 67B into the Act. This section requires a landlord who becomes aware that drug related conduct has occurred at a rental property must test the property for contamination and remedy any contamination so that the property meets the minimum housing standards under the *Housing Improvement Act 2016*. The proposed introduction of 80A will allow a landlord to terminate a tenancy agreement if they are aware the tenant has engaged in or allowed another person to engage in drug related conduct on the premises and testing indicates the property is contaminated.

The Bill will also clarify that a landlord or agent must not unreasonably withhold consent for a tenant to sub-let a property. To ensure that community housing is reserved for tenants who meet eligibility requirements, a landlord who is a community housing provider may withhold consent for a tenant to sublet the property when the sub-tenant does not meet the eligibility requirements to occupy the property. The Bill also proposes to introduce section 74B into the Act to specify that a landlord or agent must not charge a fee for giving consent to a tenant to sub-let the property.

The Act currently lacks detail about the process for ending a tenancy following the death of a sole tenant. The Bill proposes to amend section 79 of the Act to clarify that a tenancy agreement will terminate 30 days after the death of the tenant, unless an agreement is reached with an administrator or next of kin of the deceased tenant, the tenancy is terminated earlier by notice, or a SACAT order specifies otherwise.

The Bill proposes change to requirements regarding the manner and payment of rent. Changes to section 56A of the Act ensure the payment of rent is in a reasonably convenient manner and, in particular, to ensure that at least one means of payment is electronic and does not involve the collection of rent by a third party for a fee. This will guarantee that tenants who seek to transfer rent payments electronically, are able to do so without being charged.

It is further proposed within the Bill that section 99J of the Act is amended to prevent a landlord, agent, or database operator charging a tenant a fee for giving the tenant personal information listed about them on a residential database.

Section 101 of the Act specifies that the income derived from the Residential Tenancies Fund may be applied for purposes connected with, or arising under the Act or the *Residential Parks Act 2007* that are approved by the Commissioner. The Bill proposes to amend section 101 so that the Minister responsible for the Act may also approve the application of this income.

The Bill proposes to introduce section 114A into the Act, which provides that except in exceptional circumstances, leave must not be granted in relation to an application for a review of a decision by SACAT if a person was ordered to make a payment to another person and that has not occurred. This section is intended to prevent parties applying for a SACAT decision to be reviewed in order to delay making a compensation payment. A person will not be prevented from applying for a review of the decision when the compensation payment has been made.

The South Australian Government recently announced it will explore making the necessary changes to ensure ancillary dwellings, such as granny flats, can be rented to non-family members. This Bill proposes change to the definition of a residential tenancy agreement within the Act, to clarify that a residential tenancy agreement can include an agreement to rent a granny flat.

Reforms to the *Residential Parks Act 2007* are also proposed by this Bill. As a measure to encourage transparency relating to embedded networks, section 14 will be amended to require that a park owner must provide prescribed information to a resident if electricity is supplied via a connection point that is part of an embedded network.

The Bill also proposes change to section 18 of the *Residential Parks Act 2007* to include a new provision clarifying that residents of residential parks are not required to pay entry or exit fees, a management fee, a fee for amenities provided by the park (known as a communal contribution fee) or any other prescribed fee regardless of how the payment is described, including if this additional fee is described as 'deferred rent'. However, the resident and park owner may still agree to defer the payment of rent under an agreement so that it is paid at a later date than when it would fall due. Late rental payments must be calculated with specific reference to the regular rent fee payable for occupation. For example, a residential park owner may agree to allow a resident to pay \$20 of the weekly rent of \$200 late such that \$180 is paid now and \$20 is paid after the due date.

To discourage landlords and residential park owners from contravening the Act and the *Residential Parks Act 2007*, the Bill proposes to raise penalties to ensure the costs of contravening provisions are consistent and proportionate deterrents.

The Bill progresses reforms to South Australian tenancy laws that will ensure tenants are safe, secure and happy in their homes. They are also key in shaping the roles and responsibilities of landlords and land agents. These changes are significant, as they are a key component of the first substantive review of the Act since 2014.

I would like to thank everyone who participated in the review of the Act, through completing the survey, making submissions and sharing their stories.

In particular, I also thank the Real Estate Institute of South Australia, SACOSS, Uniting Communities, Anglicare, Shelter SA, SA Unions and the Honourable Robert Simms MLC who have worked constructively with the Government on these reforms.

Subject to passage of this Bill through Parliament, I will seek further amendments to the Residential Tenancies Regulations 2010 to support the changes proposed in the Bill.

I commend this Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

Part 2—Amendment of *Residential Tenancies Act 1995*

3—Amendment of section 3—Interpretation

Definitions are inserted and amended for the purposes of the measure.

4—Amendment of section 5—Application of Act

Certain sections proposed by the measure are to apply to residential tenancy agreements under which the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust is the landlord.

5—Amendment of section 35—Special powers to make orders

The meaning of a member of the Tribunal who is 'legally qualified' is clarified.

6—Amendment of section 47A—Prospective tenant to be notified of sale of premises

A maximum penalty and expiation fee are inserted.

7—Amendment of section 47B—Prospective tenant—requirements relating to provision of information

Section 47B(1) is amended such that it applies not only in respect of requesting prescribed information from a prospective tenant, but from any person. A new offence relating to the provision of false information or falsified documents by a prospective tenant is inserted.

8—Insertion of section 47C

New section 47C is inserted:

47C—Advertising premises and misleading etc conduct

Two new offences are inserted relating to the requirements for advertising premises for rent, and the making of false, misleading or deceptive statements to a tenant by a landlord or agent of a landlord.

9—Amendment of section 48—Information to be provided by landlords to tenants

Where there is a requirement relating to the provision of certain addresses, this clause amends the section such that the address provided must be either a postal or an email

address. The maximum penalties and expiation fees for the offences in section 48 are increased. A requirement is inserted that a written notice provided by a landlord under section 48(1) set out certain information relating to the supply of electricity if the electricity is supplied in a certain manner.

10—Amendment of section 49—Residential tenancy agreements

Where there is a requirement relating to the setting out of certain addresses in section 49, this clause amends the section such that the address must be either a postal or an email address. The maximum penalties and expiation fees for the offences in section 49 are increased.

11—Amendment of section 51—False information from tenant

The maximum penalty for the offence in section 51 is increased.

12—Amendment of section 52—Discrimination against tenants with children

The maximum penalties for the offences in section 52 are increased.

13—Amendment of section 53—Permissible consideration for residential tenancy

The maximum penalty for the offence in section 53(1) is increased, and an expiation fee for the offence is inserted. The other amendment is consequential.

14—Amendment of section 54—Rent in advance

The maximum penalties and expiation fees for the offences in section 54 are increased.

15—Amendment of section 55—Variation of rent

Proposed section 55(2b) provides restrictions on when certain increases in rent may occur. Section 55(7) is amended to clarify when a series of residential tenancy agreements between the same parties relating to the same premises will be treated as a single residential tenancy agreement.

16—Amendment of section 56—Excessive rent

Proposed section 56(1a) requires applications made on certain bases under the section to be made within a certain period. Proposed section 56(2)(fc) sets out a further matter to which the Tribunal must have regard in deciding whether rent payable is excessive. The maximum penalty for the offence in section 56(5) is increased, and an expiation fee is inserted.

17—Amendment of section 56A—Manner of payment of rent

Section 56A is amended to require the landlord to ensure that rent may be paid by a tenant in a certain manner. The maximum penalty and expiation fee for the offence in

section 56A are also increased. Proposed section 56A(2) prohibits a person from charging a tenant a fee for the payment of rent.

18—Amendment of section 57—Landlord's duty to keep proper records of rent and other payments

The maximum penalties for the offences in section 57 are increased, and the expiation fee in section 57(1) is also increased.

19—Amendment of section 58—Duty to provide statement or give receipt for rent

The maximum penalties and expiation fees for the offences in section 58 are increased.

20—Amendment of section 61—Bond

The maximum penalty for the offence in section 61(1) is increased, and an expiation fee is inserted. Proposed section 61(1a) requires that a bond be paid in a certain manner and form, and that it be accompanied by certain information. Proposed section 61(1b) clarifies that a bond paid to a landlord's agent constitutes payment of the bond to the landlord.

21—Amendment of section 62—Receipt of bond and transmission to Commissioner

Section 62(2) is amended to require a person to pay a bond received to the Commissioner in a manner and form, and with the information, determined by the Commissioner. Proposed section 62(3) requires the Commissioner to notify the landlord of the receipt of an amount paid by way of a bond. Proposed section 62(4) allows the Commissioner to refund an amount received if the Commissioner is satisfied that the amount is not within the ambit of the definition of a bond. The maximum penalties and expiation fees for the offences in section 62 are also increased.

22—Amendment of section 63—Repayment of bond

Section 63(2)(a) is amended to provide that an application under the section must be made in a manner approved by the Commissioner. The notice periods set out in the section are substituted such that the periods are prescribed by the regulations. Proposed section 63(12) allows the Registrar to share information relating to details of a decision or order of the Tribunal with the Commissioner for purposes relating to the payment of a bond.

Section 63(13) is amended to reflect circumstances in which an application involves multiple tenants. Proposed section 63(14) sets out the circumstances in which an application involving payment to multiple tenants will be considered undisputed. Proposed section 63(15) requires that certain applications made by or on behalf of a landlord be made within a certain period and be in a certain manner and form. Proposed section 63(16) provides a regulation making power to modify or disapply a provision of section 63 in relation to an electronic system for the repayment of bonds.

23—Amendment of section 65—Quiet enjoyment

The maximum penalty for the offence in section 65(2) is increased.

24—Amendment of section 66—Security of premises

The maximum penalties for the offences in section 66 are increased. The other amendment is technical.

25—Insertion of sections 66A and 66B

New sections 66A and 66B are inserted:

66A—Altering locks etc for premises in certain circumstances

A lock or security device of premises may be altered in certain circumstances relating to domestic abuse or personal safety.

66B—Application to Tribunal to alter etc locks or security devices without consent

A tenant may apply to the Tribunal in certain circumstances for a determination that the landlord's consent is not required for the tenant to alter, remove or add a lock or security device.

26—Insertion of Part 4 Division 6A

New Division 6A is inserted into Part 4:

Division 6A—Keeping of pets on premises

66C—Keeping of pets on premises

The approval of a landlord is required for the keeping of pets on premises. However, such approval is not required if the animal is an exempt animal. The application and approval process is set out.

66D—Grounds for refusing pets being kept at premises

This section provides the sole grounds on which a landlord may refuse a tenant's application for approval under section 66C.

66E—Tenant may seek Tribunal orders

A tenant may apply to the Tribunal, and the Tribunal may make certain orders, where a landlord refuses the tenant's application to keep a pet on premises.

66F—Continuation of approval to keep pet on premises

This section specifies the circumstances of the continuation of an approval given under the Division.

66G—Limitation of landlord's liability

A landlord has no additional duty of care to a person arising out of an approval given under the Division or an order made by the Tribunal.

27—Insertion of sections 67A and 67B

New sections 67A and 67B are inserted:

67A—Occupation of premises that do not comply with minimum housing standards

A landlord must ensure that premises comply with the prescribed minimum housing standards under the *Housing Improvement Act 2016* on or before the day on which a tenant enters into occupation of the premises.

67B—Testing and remediation in relation to drug contamination

This section sets out obligations imposed on a landlord, and a term of a residential tenancy agreement relating to premises, arising out of the landlord becoming aware of drug related conduct occurring on the premises.

28—Insertion of section 68A

New section 68A is inserted:

68A—Minimum efficiency standards

This section sets out a term of residential tenancy agreements relating to energy and water efficiency standards for appliances, fittings and fixtures installed by a landlord at premises after the commencement of the section.

29—Amendment of section 69—Tenant's responsibility for cleanliness, damage and loss

The maximum penalty for the offence in section 69(2) is increased.

30—Amendment of section 70—Alteration of premises

Section 70(1a) is amended to expand the circumstances in which a landlord will not unreasonably withhold consent for a tenant to make alterations or additions to premises. Proposed section 70(1ab) sets out circumstances in which a landlord may refuse consent. Proposed section 70(2a) and (2b) together require the tenant to bear the cost of alterations made, and to return the premises to the state it was in before the alterations were made.

31—Amendment of section 71A—Sale of residential premises

Proposed section 71A(3) makes it an offence for a landlord to contravene a term of a residential tenancy agreement arising under section 71A(1) or (2) without reasonable excuse.

32—Amendment of section 72—Right of entry

Section 72(1)(c)(i) is amended to reduce the frequency with which a landlord may enter premises for the purposes of inspection, while also allowing the landlord to apply to the Tribunal for an order under proposed subsection (5c) to inspect the premises more frequently in certain circumstances. The required notice period set out in section 72(1)(c)(ii) is amended. Section 72(1)(g)(ii) is amended such that if agreement cannot be reached with a tenant as to a suitable time, the premises may only be shown to prospective purchasers as ordered by the Tribunal on application by the landlord. Proposed section 72(5a) allows the regulations to prescribe requirements relating to certain documents or records. Proposed section 72(5b) makes it an offence for a landlord to contravene a requirement so prescribed.

33—Amendment of section 73—Statutory charges

Proposed section 73(2) as substituted sets out the determination of certain statutory charges that are to be borne by a landlord or tenant. Proposed section 73(3) provides that a tenant is not required to pay rates and charges in accordance with the section if the landlord fails to provide a copy of the invoice to the tenant within a certain period. The other amendments are technical or consequential.

34—Insertion of sections 73A and 73B

New sections 73A and 73B are inserted:

73A—Agreements relating to installation of solar energy systems

A landlord and a tenant may enter into an agreement relating to costs and charges for the installation of a solar energy system for the premises.

73B—Excessive water usage charges

This section sets out the determination of liability for costs relating to excessive water usage.

35—Substitution of Part 4 Division 12

Division 12 of Part 4 is substituted:

Division 12—Assignment and sub-letting

74—Assignment and sub-letting by tenant

A tenant may only assign or sub-let premises with the landlord's written consent, and the landlord must not unreasonably withhold consent. The withholding of consent is deemed to be unreasonable or not unreasonable in certain circumstances.

74A—Tenant may apply to Tribunal

A tenant may apply to the Tribunal for a determination that the landlord's consent is not required for the assignment or sub-letting of the premises by the tenant.

74B—Landlord cannot demand or receive fee for giving consent

A landlord must not, inter alia, receive a fee for giving consent for the assignment or sub-letting of premises.

36—Insertion of Part 4 Division 13A

Division 13A is inserted into Part 4:

Division 13A—Maximum liability for rent payable following tenant's termination of fixed term tenancy

75A—Maximum liability for rent payable following tenant's termination of fixed term tenancy

This section sets out the maximum liability for rent payable by a tenant following the tenant's termination of a fixed term tenancy.

37—Amendment of section 76A—Preliminary

The definitions in section 76A are amended.

38—Amendment of section 76B—Dealing with tenant information

Section 76B is amended to delineate requirements relating to tenant information and prospective tenant information.

39—Amendment of section 76C—Powers of Tribunal

The amendments are consequential.

40—Amendment of section 77—Accelerated rent and liquidated damages

The maximum penalty and expiation fee for the offence in section 77(3) are increased.

41—Amendment of section 79—Termination of residential tenancy

The amendments are consequential on amendments made by the measure.

42—Insertion of Part 5 Division 1A

New Division 1A is inserted into Part 5:

Division 1A—Termination following death of sole tenant

79B—Termination following death of sole tenant

This section sets out the manner in which and date on which a residential tenancy is terminated following the death of a sole tenant.

43—Amendment of section 80—Notice of termination by landlord on ground of breach of agreement

A regulation making power for the purposes of section 80(2)(d) is inserted.

44—Insertion of section 80A

New section 80A is inserted:

80A—Termination by landlord on ground of drug contamination

A landlord may terminate a residential tenancy if the premises are contaminated as a result of drug related conduct engaged in or allowed by the tenant.

45—Amendment of section 81—Termination because possession is required by landlord for certain purposes

Section 81 is amended to allow a tenant to whom a notice of termination is given under the section to give up possession of the premises prior to the end of the period of notice. A tenant who gives up possession in such a manner will not be liable to pay rent after the specified day. The maximum penalties for the offences in section 81 are increased, and expiation fees for the offences are inserted.

46—Amendment of section 83—Termination by landlord without specifying a ground of termination

Section 83 currently provides that a landlord may, subject to certain matters, terminate a tenancy without specifying a ground of termination. Section 83 is amended to provide instead that a landlord may terminate a tenancy under the section on a ground prescribed by the regulations. The other amendment is consequential.

47—Amendment of section 83A—Notice to be given at end of fixed term

Section 83A currently provides that a landlord may terminate a residential tenancy agreement for a fixed term at the end of the fixed term without specifying a ground of termination. Section 83A is amended to provide instead that a landlord may only terminate the tenancy at the end of the fixed term on a ground prescribed by the

regulations. The period of notice for such a termination is amended. Section 83A is also amended to allow a tenant to whom a notice of termination is given under the section to give up possession of the premises prior to the end of the fixed term. A tenant who gives up possession in such a manner will not be liable to pay rent after the specified day.

48—Amendment of section 84—Limitation of right to terminate

Section 84(1) is amended to incorporate some specific grounds on which a landlord may, with the authorisation of the Tribunal, terminate a tenancy under the section. The other amendment is consequential.

49—Insertion of section 84A

New section 84A is inserted:

84A—Compensation for termination in certain circumstances

A landlord may be entitled to compensation for certain costs and expenses incurred in connection with a termination of a residential tenancy agreement in certain circumstances.

50—Insertion of section 85AA

New section 85AA is inserted:

85AA—Notice of termination by tenant for successive breaches of the agreement

A tenant may terminate a tenancy in circumstances where the landlord has successively breached the same provision of the residential tenancy agreement.

51—Insertion of sections 85B, 85C and 85D

New sections 85B, 85C and 85D are inserted:

85B—Notice of termination by tenant due to condition of premises

A tenant may terminate a tenancy on the basis of the condition of the premises.

85C—Notice of termination by tenant in certain circumstances

A tenant may terminate a tenancy on the basis of certain grounds relating to the tenant's circumstances.

85D—Notice of termination by tenant on ground of domestic abuse

A tenant may terminate a tenancy in circumstances relating to domestic abuse.

52—Amendment of section 89A—Termination based on domestic abuse

Section 89A(2) is amended such that an application may be made under that subsection not only by the South Australian Housing Trust, a subsidiary of the South Australian Housing Trust or a community housing provider registered under the *Community Housing Providers National Law* but by any landlord. Section 89A(3) is substituted such that, in the case of an application made under section 89A(2) as amended, a person who normally or regularly resides at the residential premises for whose protection an intervention order is in force or against whom domestic abuse has been committed is a party to proceedings under the section.

Section 89A(4) is amended to allow the Tribunal to make an order requiring the landlord to enter into a new residential tenancy agreement for the remainder of the term of a tenancy with a person who normally or regularly resides at the residential premises for whose protection an intervention order is in force against a tenant or against whom a tenant has committed domestic abuse. Section 89A(12) is substituted to clarify the directions the Tribunal may make in respect of the repayment of a bond where 1 or more, but not all, of the co-tenants under a residential tenancy agreement are liable under section 89A(10) and (11). The other amendments are technical or consequential.

53—Insertion of Part 5 Division 4A

New Division 4A is inserted into Part 5:

Division 4A—Tribunal may make orders in relation to retaliatory behaviour and circumstances of domestic violence

90A—Tribunal may make orders in relation to retaliatory behaviour

The Tribunal may make an order in respect of a termination or proposed termination of a residential tenancy agreement if satisfied that a notice of termination or an application made by a landlord was retaliatory.

90B—Tribunal may make orders in relation to circumstances of domestic abuse

The Tribunal may make an order that a notice of termination is invalid if satisfied of certain matters relating to domestic abuse.

54—Amendment of section 91—Form of notice of termination

Section 91(1) is amended to provide that a notice of termination given by a landlord to a tenant must, in the case of a notice given on a ground prescribed by the regulations, be accompanied by written evidence which supports the ground for giving the notice. The other amendment is consequential.

55—Insertion of section 91A

New section 91A is inserted:

91A—Prohibition on letting premises after notice of termination

A landlord must not let premises to a person within 6 months after terminating a tenancy in respect of the premises on a ground of a kind prescribed by the regulations, unless the Tribunal has ordered otherwise.

56—Amendment of section 95—Repossession of premises

The maximum penalty for the offence in section 95 is increased, and an expiation fee for the offence is inserted.

57—Amendment of section 97A—Offence to deal with abandoned property in unauthorised way

The maximum penalty for the offence in section 97A is increased.

58—Amendment of section 97B—Action to deal with abandoned property other than personal documents

This clause substitutes the period set out in section 97B(4)(b) with a prescribed period.

59—Amendment of section 97C—Action to deal with abandoned personal documents

This clause substitutes the period set out in section 97C(2)(b) with a prescribed period.

60—Amendment of section 99—Enforcement of orders for possession

The maximum penalties for the offences in section 99 are increased, and expiation fees for the offences are inserted.

61—Amendment of section 99D—Notice of usual use of database

The maximum penalty and expiation fee for the offence in section 99D(2) are increased.

62—Amendment of section 99E—Notice of listing if database used

The maximum penalty and expiation fee for the offence in section 99E(2) are increased.

63—Amendment of section 99F—Listing can be made only for particular breaches by particular persons

The maximum penalty for the offence in section 99F(1) is increased, and an expiation fee for the offence is inserted.

64—Amendment of section 99G—Further restriction on listing

The maximum penalty for the offence in section 99G(1) is increased, and an expiation fee for the offence is inserted.

65—Amendment of section 99H—Ensuring quality of listing—landlord's or agent's obligation

The maximum penalties for the offences in section 99H are increased, and expiation fees for the offences are inserted.

66—Amendment of section 99I—Ensuring quality of listing—database operator's obligation

The maximum penalty for the offence in section 99I(2) is increased, and an expiation fee for the offence is inserted.

67—Amendment of section 99J—Providing copy of personal information listed

The maximum penalties for the offences in section 99J are increased, and expiation fees for the offences are inserted. Further, section 99J currently allows for a landlord, a landlord's agent or a database operator to charge a fee for giving personal information under the section, subject to certain matters. This clause amends section 99J to prohibit a landlord, a landlord's agent or database operator from charging a fee for giving personal information.

68—Amendment of section 99K—Keeping personal information listed

The maximum penalty and expiation fee for the offence in section 99K(1) are increased.

69—Amendment of section 101—Application of income

Section 101(1)(f) is amended to allow income derived from the Fund to be applied for a purpose connected with, or arising under, this Act or the *Residential Parks Act 2007* approved by not only the Commissioner, but also the Minister.

70—Insertion of Part 7 Division 1A

New Division 1A is inserted into Part 7:

Division 1A—Registration of proprietors of designated rooming houses

103A—Interpretation

Definitions are set out for the purposes of the Division.

103B—Proprietors must be registered to carry on business relating to designated rooming houses

A person must be registered under section 103C to carry on a business involving the provision of accommodation under rooming house agreements at residential premises at which 5 or more rooms are available for valuable consideration for residential occupation.

103C—Registration

This section sets out the manner in which the Commissioner may register a person for the purposes of the Division.

103D—Annual return and fee

A person registered under section 103C must pay an annual fee and provide an annual return.

103E—Notification of change in circumstances

A person registered under section 103C must notify the Commissioner if certain matters change.

103F—Cancellation or suspension of registration

This section sets out the basis on which the registration of a person under section 103C may be cancelled or suspended.

103G—Review by Tribunal

A person who is dissatisfied with a certain decision may apply to the Tribunal for review of the decision.

71—Amendment of section 105—Copies of written agreements

The maximum penalty and expiation fee for the offence in section 105(1) are increased.

72—Amendment of section 105C—Application to Tribunal if house rules are considered unreasonable

The maximum penalty for the offence in section 105C(4) is increased, and an expiation fee for the offence is inserted.

73—Amendment of section 105D—Availability of house rules

The maximum penalty and expiation fee for the offence in section 105D(1) are increased.

74—Amendment of section 105E—Permissible consideration and statutory charges

The maximum penalties for the offences in section 105E are increased.

75—Amendment of section 105F—Rent in advance

The maximum penalties and expiation fees for the offences in section 105F are increased.

76—Amendment of section 105G—Duty to provide statement or give receipt for payments

The maximum penalties and expiation fees for the offences in section 105G are increased.

77—Amendment of section 105K—Bond

The maximum penalty for the offence in section 105K is increased, and an expiation fee for the offence is inserted. Section 105K is further amended to require a bond to be paid in a certain manner.

78—Amendment of section 105L—Receipt of bond and transmission to Commissioner

This clause mirrors the amendments made by the measure to section 62, but in respect of rooming house agreements rather than residential tenancy agreements.

79—Amendment of section 105M—Repayment of bond

This clause mirrors the amendments made by the measure to section 63, but in respect of rooming house agreements rather than residential tenancy agreements.

80—Amendment of section 105N—Use and enjoyment of room and facilities

The maximum penalty for the offence in section 105N(2) is increased.

81—Amendment of section 105O—Security of premises and personal property

The maximum penalty for the offence in section 105O(2) is increased.

82—Insertion of section 105PA

New section 105PA is inserted:

105PA—Minimum efficiency standards

This section mirrors proposed section 68A of the measure, but in respect of rooming house agreements rather than residential tenancy agreements.

83—Amendment of section 105Q—Sale of rooming house

This clause mirrors the amendments made by the measure to section 71A, but in respect of rooming house agreements rather than residential tenancy agreements.

84—Amendment of section 105R—General obligations of resident

The maximum penalty for the offence in section 105R(2) is increased, and an expiation fee for the offence is inserted.

85—Amendment of section 105S—Accelerated rent and liquidated damages

The maximum penalty and expiation fee for the offence in section 105S(3) are increased.

86—Amendment of section 105T—Goods not to be taken in lieu of amounts owing to proprietor

The maximum penalty for the offence in section 105T is increased.

87—Amendment of section 105U—Termination of rooming house agreement

Section 105U(6) currently allows a proprietor to terminate a rooming house agreement providing for accommodation on a periodic basis without specifying a ground for termination by giving the resident at least 4 weeks notice. Section 105U(6) is amended to provide that a proprietor may terminate a rooming house agreement on a ground prescribed by the regulations by giving the resident at least 60 days notice.

88—Amendment of section 105W—Abandoned property

The notice periods set out in section 105W(1)(b)(ii) and (2)(b) are amended. The maximum penalty in section 105W(4) is increased.

89—Amendment of section 114—Remuneration of representative

The maximum penalty in section 114 is increased.

90—Insertion of Part 8 Division 5

New Division 5 is inserted into Part 8:

Division 5—Other matters

114A—Internal review in relation to certain orders

Leave may only be granted in exceptional circumstances under section 70(1a) of the *South Australian Civil and Administrative Tribunal Act 2013* in relation to an application for a review of certain orders of the Tribunal under the principal Act.

91—Amendment of section 115—Contract to avoid Act

The maximum penalty in section 115 is increased.

92—Amendment of section 119—Tribunal may exempt agreement or premises from provision of Act

The maximum penalty for the offence in section 119(3) is increased, and an expiation fee for the offence is inserted.

93—Amendment of section 120—Service

Section 120(1)(d) is amended to remove the ability to serve a document or notice under the Act by transmission by fax.

94—Amendment of section 121—Regulations

The amendments made by this clause are technical.

95—Insertion of Schedule 3

Proposed Schedule 3 sets out transitional provisions for the purposes of the measure.

Schedule 1—Related amendments

Part 1—Amendment of *Real Property Act 1886*

1—Amendment of section 69—Title of registered proprietor indefeasible

Section 69(h) is amended to extend the indefeasible interest for residential tenancies from 1 year to 3 years.

Part 2—Amendment of *Residential Parks Act 2007*

2—Amendment of section 7—Residents committees

The maximum penalties and expiation fees for the offences in section 7 are increased. Exiation fees are inserted for the offences in section 7(1b) and (6).

3—Amendment of section 10—Residential park agreement to be in writing

The maximum penalty and expiation fee for the offence in section 10(5) are increased.

4—Amendment of section 11—Copies of written agreements

The maximum penalty and expiation fee for the offence in section 11 are increased.

5—Amendment of section 12—Agreements incorporate park rules

The maximum penalty and expiation fee for the offence in section 12(2) are increased.

6—Amendment of section 14—Information to be provided by park owners to residents

The maximum penalties and the expiation fee for the offences in section 14 are increased. A requirement is inserted that a park owner give a resident certain information relating to the supply of electricity if the electricity is supplied in a certain manner.

7—Amendment of section 15—False information from resident

The maximum penalty for the offence in section 15 is increased, and an expiation fee for the offence is inserted.

8—Amendment of section 17—Discrimination against residents with children

The maximum penalties for the offences in section 17 are increased.

9—Amendment of section 17B—Certain site agreements to be reissued

The maximum penalty and expiation fee for the offence in section 17B(11) are increased.

10—Amendment of section 18—Permissible consideration for residential park agreement

The maximum penalty for the offence in section 18(1) is increased, and an expiation fee for the offence is inserted. Proposed section 18(3) clarifies what is to be regarded as a payment for the purposes of section 18(1).

11—Amendment of section 19—Rent in advance

The maximum penalties and expiation fees for the offences in section 19 are increased.

12—Amendment of section 20—Method of payment of rent

The maximum penalty and expiation fee for the offence in section 20 are increased.

13—Amendment of section 22—Excessive rent

The maximum penalty for the offence in section 22(5) is increased, and an expiation fee for the offence is inserted.

14—Amendment of section 23—Park owner's duty to keep proper records of rent

The maximum penalties and the expiation fee for the offences in section 23 are increased.

15—Amendment of section 24—Duty to give receipt for rent

The maximum penalty and expiation fee for the offence in section 24(1) are increased.

16—Amendment of section 27—Bond

The maximum penalty for the offence in section 27(1) is increased, and an expiation fee for the offence is inserted.

17—Amendment of section 28—Receipt of bond and transmission to Commissioner

The maximum penalties and expiation fees for the offences in section 28 are increased.

18—Amendment of section 31—Quiet enjoyment

The maximum penalty for the offence in section 31(2) is increased.

19—Amendment of section 32—Residential park tenancy agreement—security of dwelling

The maximum penalty for the offence in section 32(2) is increased.

20—Amendment of section 33—Access to residential park

The maximum penalty for the offence in section 33(3) is increased.

21—Amendment of section 36—Resident's responsibility for cleanliness and damage

The maximum penalty for the offence in section 36(2) is increased.

22—Amendment of section 46—Accelerated rent and liquidated damages

The maximum penalty for the offence in section 46(3) is increased.

23—Amendment of section 48—Assignment of residential park agreement

The maximum penalties and expiation fees for the offences in section 48 are increased.

24—Amendment of section 50—Residential park site agreement—sale of dwelling on-site

The maximum penalty for the offence in section 50(2) is increased.

25—Amendment of section 59—Termination where periodic tenancy and sale of rented property

The maximum penalties for the offences in section 59 are increased, and an expiation fee for the offence in section 59(4) is inserted.

26—Amendment of section 85—Repossession of rented property

The maximum penalty for the offence in section 85 is increased.

27—Amendment of section 87—Enforcement of orders for possession

The maximum penalties for the offences in section 87 are increased, and expiation fees for the offences are inserted.

28—Amendment of section 89—Resident to give forwarding address

The maximum penalty and expiation fee for the offence in section 89 are increased.

29—Amendment of section 91—Offence to deal with abandoned property in unauthorised way

The maximum penalty for the offence in section 91 is increased.

30—Amendment of section 95—Park owner may give person notice to leave for serious act of violence

The maximum penalties for the offences in section 95 are increased.

31—Amendment of section 96—Exclusion from park for certain period

The maximum penalty for the offence in section 96(1) is increased.

32—Amendment of section 98—Occupation of rented property pending application or hearing

The maximum penalty for the offence in section 98(1) is increased.

33—Amendment of section 137—Contract to avoid Act

The maximum penalty for the offence in section 137(3) is increased.

34—Amendment of section 138A—Park owner must have safety evacuation plan

The maximum penalty and expiation fee for the offence in section 138A are increased.

Debate adjourned on motion of Hon. J.A.W. Gardner.