

1991

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

LANDLORD AND TENANT (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

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LANDLORD AND TENANT (AMENDMENT) BILL 1991

The Landlord and Tenant Act 1949 regulates the relationship between lessors (landlords) and lessees (tenants) by controlling rents and other payments in connection with leased premises and by providing mechanisms for the recovery of possession of premises.

The Landlord and Tenant (Amendment) Bill 1991 amends the *Landlord and Tenant Act 1949* to provide a rental bond protection scheme for the Territory.

The Bill creates the office of Director of Rental Bonds as the statutory office-holder with responsibility for the administration of the scheme.

The Bill imposes an obligation on lessors to deposit any money that they receive by way of a bond from lessees in respect of a lease agreement with the Director of Rental Bonds. All bond moneys deposited with the Director of Rental Bonds will be paid into a Trust Fund.

The purpose of depositing bonds with the Director of Rental Bonds is to provide an impartial stakeholder so that neither the landlord nor the tenant holds an advantage over the other in disputes that may arise on termination of a lease agreement.

A sum of \$250 000 has been appropriated to provide for the administration of the scheme in its first year of operation. This amount will be repaid from the interest earned by the Trust Fund. It is anticipated that the scheme will be self supporting after this initial appropriation.

Details of the Bill are included in the Attachment.

ATTACHMENT

LANDLORD AND TENANT (AMENDMENT) BILL 1991

Clause 1 provides that the Bill, once enacted, may be cited as the *Landlord and Tenant (Amendment) Act 1991*.

Clause 2 provides for the commencement of the Act. Sections 1 and 2 are to commence on the day the Act is notified in the Gazette. The remaining sections of the Act are to commence on a day to be fixed by the Minister by notice in the Gazette. If the entire Act has not commenced within 6 months after the making of the Act is notified in the Gazette then at the end of the 6 month period the remaining provisions commence automatically.

Clause 3 provides that references to the "Principal Act" are references to the *Landlord and Tenant Act 1949*.

Clause 4 amends the long title of the Principal Act to reflect the change in the purpose of the Act.

Clause 5 inserts a new definition into section 8 of the Principal Act.

Clause 6 amends section 36 of the Principal Act to provide that the Director does not commit an offence through contravening subsection 36(1) of the Act. For example, this could occur through inadvertently receiving moneys from a lessor in the performance of her or his duties under the Act in contravention of paragraph 36(1)(aa) or through withholding bond moneys past the 28 day limit in paragraph 36(1)(ab) of the Principal Act pending resolution of a dispute in the Small Claims Court.

Clause 7 amends section 41 of the Principal Act to change the references to "the lessor" to "the Director" to reflect the fact that it is the Director who will be holding bonds rather than the lessor. The amended section 41 will allow a lessee to, by notice in writing, apply to the Director for a refund of excess bond moneys. Clause 7 also omits subsection 41(2) of the Principal Act and substitutes new subsections 41(2), (2A), (2B), (2C), and (2D).

- New subsection 41(2) provides that the Director may either approve or refuse to approve an application for a payment under subsection 41(1).

- New subsection 41(2A) provides that where the Director is satisfied that, in respect of an application under section 41(1), an amount equal to 4 times the weekly rent payable in respect of a tenancy of prescribed premises at any time is less than either an amount equal to 4 times the weekly rent payable, or the amount of bond paid, at the time the particular tenancy was entered into then the Director must refund the excess bond moneys and give a notice to the lessor stating that such a payment has been made and specifying the date and amount of the payment.
- New subsection 41(2B) provides that where the Director refuses to approve an application under subsection 41(1) then she or he must notify the lessee in writing of the decision.
- New subsection 41(2C) provides that the notice given under subsection 41(2A) or (2B) must contain a statement informing the lessor or lessee, as the case may be, that she or he may dispute the decision of the Director to approve or refuse an application in the Court.
- New subsection 41(2D) provides that, in subsection 41(2C), "Court" has the same meaning as in Part IIAA of the Act - that is, the Small Claims Court.

Clause 8 inserts a new Part IIAA - "RENTAL BONDS" - after section 62 of the Principal Act.

- New section 62AA inserts definitions for new Part IIAA of the Act. Section 62AA has the effect that where caravans and other mobile homes are the subject of a lease, and a bond is paid in respect of that lease, then the bond will be required to be dealt with in accordance with Part IIAA of the Act.
- New section 62AB provides that the Minister may appoint a public servant to be the Director of Rental Bonds (the Director). The Director has statutory responsibility for administering the receipt and payment of bond moneys under the Act.
- New section 62AC provides that the Director may delegate to a public servant all or any of her or his powers under new Part IIAA of the Act.
- New section 62AD provides that the Minister may approve persons to be mediators for the purposes of Part IIAA of the Act.
- New section 62AE places an obligation on lessors to deposit all moneys received by way of a bond with the Director. The period within which these moneys are required to be deposited is variable depending on

whether a bond in respect of a lease was paid before or after the commencement of this amendment.

Subsection 62AE(1) provides a transitional period of 3 months for the deposit of bonds which have been paid and which have not become refundable or been refunded to the lessee or become the property of the lessor or become subject to proceedings in a court before the commencement of this amendment. Subsection 62AE(3) provides an exemption from the requirement in subsection 62AE(1) where the bond has been refunded to the lessee or become the property of the lessor or become subject to proceedings in a court during that 3 month period or where the bond becomes refundable within 14 days of the end of the 3 month period.

Subsection 62AE(2) provides that, in the case of a bond which is paid or becomes effective after the commencement of the amendments, the lessor is required to deposit the moneys within the prescribed period.

Subsection 62AE(4) provides that the prescribed period referred to in subsection 62AE(2) is 10 days or such other period as may be prescribed by regulation.

Subsection 62AE(5) deals with the form and content of notices to be given to the Director with the money paid as bond.

Subsection 62AE(6) provides that a person who, without reasonable excuse, fails to comply with the requirement to deposit bond moneys under either subsection 62AE(1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5000.

New section 62AF deals with the condition of leased premises.

Subsection 62AF(1) requires a lessor to give the lessee 3 copies of a report signed by or on behalf of a lessor as to the state of repair or general condition of the premises and of any goods leased with the premises the subject of the lease as at the day the lessee takes possession of the premises.

Subsection 62AF(2) provides that the report shall be in a form approved by the Director.

Subsections 62AF(3), (4) and (5) detail the procedures to be taken after a lessee has been given a report. If the lessee agrees with the matters stated in the report, she or he shall sign it without further endorsement. If the lessee does not agree with the report she or he shall endorse the report to indicate the areas of the report with which she or he does not

agree. The lessee is then required to return 2 copies of the report to the lessor, who is required to give one of those copies to the Director.

Subsection 62AF(6) provides that a person is not liable to be prosecuted for contravention of this section. The sanction for failure to comply with this section is provided by the evidentiary consequences in section 62AG of the Act.

- New section 62AG deals with evidence as to the condition of premises.

Subsection 62AG(1) provides that where a lessor and lessee have both complied with the requirements of subsections 62AF(1) and (3) respectively then, except where the lessee has endorsed a report, the statements in the report are evidence of the state of repair or general condition of the premises and any goods leased with the premises as at the day on which the report was given to the lessee. Subsection 62AG(5) provides that this subsection does not apply in relation to lack of repair or condition of premises of goods, or a part of those premises or goods, that could not have been discovered on a reasonable inspection of the premises or goods.

Subsection 62AG(2) provides that where the lessor has complied with her or his obligations under subsection 62AF(1) and the lessee has not complied with subsection 62AF(3) then statements in the report are evidence of the state of repair or general condition as at the day on which the report was given to the lessee.

Subsection 62AG(3) provides that where a lessor has not complied with the requirements of subsection 62AF(1) then evidence of the lessee is evidence of the state of repair or general condition as at the day on which the lessee obtained possession of the premises.

Subsection 62AG(4) provides that subsections 62AG(1), (2) and (3) apply only for the purpose of proceedings in the Small Claims Court.

- New section 62AH provides that where the Director accepts a payment of bond money, she or he shall give a copy of the notice which accompanies the payment to the lessee. This ensures that the lessee is able to determine whether the lessor had paid the whole amount of the bond to the Director.

- New section 62AJ provides that where a bond is paid by instalments to a lessor, each instalment is treated as if it were a bond and, consequently, comes within the requirements to deposit the bond with the Director within the prescribed period.

- New section 62AK provides that the Director is to pay moneys received by way of deposit of bonds into the Trust Fund provided for by section 82 of the *Audit Act 1989*. The moneys paid into the Trust Fund in accordance with this section may, unless they become unclaimed moneys, only be used to refund bonds in accordance with the provisions of Part IIAA of the Act or section 41 of the Act (which deals with excess bond moneys).

- New section 62AL provides for the method in which interest received from the investment of moneys paid to the credit of the Trust Fund pursuant to Part IIAA of the Act may be dealt with.

Subsection 62AL(1) provides that the interest is firstly to go towards repaying to the Consolidated Revenue Fund any amounts appropriated for the purposes of setting up and administering the scheme. Once the appropriation has been repaid the balance of the interest will be applied as prescribed in the regulations.

Subsection 62AL(2) defines areas with respect to which the regulations may provide that the interest moneys may be applied.

- New section 62AM provides that a lessor or lessee, individually or jointly, may apply (in writing in an approved form) for repayment of bond money.
- New section 62AN provides that on receipt of an application for repayment of a bond by either a lessor or lessee, the Director shall give notice of receipt of the application to the other party.
- New section 62AP provides the process to be followed by the Director before a payment out of the Trust Fund may be made where there is no dispute between the lessor and lessee.

Subsection 62AP(1) provides that where a lessor has applied for repayment of bond money and a lessee has not, within 10 days after receiving notice of such application, disputed the lessor's claim, the Director shall cause the amount of the bond to be paid out in accordance with the lessor's application.

Subsection 62AP(2) provides that where a lessee has applied for repayment of bond money and a lessor has not, within 10 days after receiving notice of such application, disputed the lessee's claim, the Director shall cause the amount of the bond to be paid out to the lessee in accordance with the lessee's application.

Subsection 62AP(3) provides that where the lessor and lessee jointly apply for repayments of bond moneys, the Director shall cause

repayment of the bond money to be made in accordance with that application.

- New section 62AQ provides the procedure to be followed where the lessor or lessee notifies the Director that he or she disputes the claim of the other party (either wholly or in part).

Subsection 62AQ(1) provides that the Director shall refer the dispute to an approved mediator.

Subsection 62AQ(2) provides that the approved mediator shall, as soon as practicable, invite the parties to confer with her or him in an effort to resolve the dispute, arrange a conference with the parties and, if both parties attend, conduct a conference.

- New section 62AR provides that where an application for repayment of a bond has been made and either the lessor or lessee notifies the Director of a dispute with respect to only part of the amount of bond claimed then the Director shall treat the remainder of the bond as if there were no dispute.

- New Section 62AS deals with proceedings with respect to a claim in relation to an amount of bond money standing to the credit of the Trust Fund.

Subsections 62AS(1) and (2) provide that the Court has jurisdiction to hear and determine a claim and that the *Small Claims Act 1974* applies to the proceedings as though they were proceedings under that Act.

Subsection 62AS(3) provides that the Director shall be the respondent to the proceedings and that references in the *Small Claims Act 1974* to the defendant shall, in those proceedings, be read as references to the respondent.

Subsection 62AS(4) provides that where proceedings under this Part have been instituted, the Court shall not inquire into the matter unless the claimant has filed a certificate by the relevant approved mediator which states that the mediator has invited the parties to the dispute to a conference to resolve the issues.

- New section 62AT provides that nothing said or done at the conference held by the approved mediator is admissible as evidence in proceedings by the Court.
- New section 62AU provides that where, in proceedings under Part IIAA of the Act, the Court has given judgment or made an order for the payment of an amount of bond money, a copy of the judgment or order

shall be served on the Director who shall cause the money to be paid out of the Trust Fund.

- New section 62AV provides that where bond moneys have stood to the credit of the Trust Fund for a continuous period of 6 years after the termination of the lease in respect of which those bond moneys were held without an application for return of those moneys being made, and the purpose for which those moneys are held is no longer capable of being fulfilled, then those moneys may be credited to the interest accrued under the Trust Fund and expended accordingly. This section is intended to ensure that, instead of moneys becoming part of Consolidated Revenue through the operation of subsection 32(5) of the *Audit Act 1989* when the relevant parties do not come forward to claim them, those moneys are applied for the benefit of the target group of the legislation.
- New section 62AW requires the Director to provide the Minister with a report for presentation to the Legislative Assembly on her or his activities under the Act during each financial year.

Clause 9 amends section 96 of the Principal Act to ensure the penalties reflect current values and to make that section consistent with new subsections 62AD(1) and (2) of the Act.

Clause 10 inserts a new section 97 into the Principal Act to allow the Executive to make regulations. This new section complements new subsections 62AD(4) and 62AL.

Clause 11 provides that the lessor is not required to give notice of the general condition of premises, nor is the lessee required to return such notice where the lease or proposed lease was entered into before the commencement of the Bill.