

2017

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Residential Tenancies Amendment Bill 2017

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Residential Tenancies Amendment Bill 2017

A Bill for

An Act to amend the *Residential Tenancies Act 1997*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Residential Tenancies Amendment Act 2017*.

3 **2 Commencement**

4 (1) This Act (other than schedules 2 and 3) is taken to have commenced
5 on the day the bill for this Act was presented to the Legislative
6 Assembly.

7 (2) Schedules 2 and 3 commence on a day fixed by the Minister by
8 written notice.

9 *Note 1* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see [Legislation](#)
11 [Act](#), s 77 (1)).

12 *Note 2* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see [Legislation Act](#), s 79).

15 (3) If schedule 3 has not commenced within 12 months beginning on
16 this Act's notification day, it automatically commences on the first
17 day after that period.

18 (4) The [Legislation Act](#), section 79 (Automatic commencement of
19 postponed law) does not apply to schedule 3.

20 **3 Legislation amended**

21 This Act amends the *Residential Tenancies Act 1997*.

1 **Schedule 1 Commercial guarantees—**
2 **stage 1 amendments**

3 (see s 3)

4 **[1.1] Section 15 (4)**

5 *substitute*

- 6 (4) In subsection (1), a reference to a ***bond***—
7 (a) includes a reference to a guarantee or an indemnity under
8 section 16; but
9 (b) does not include a commercial guarantee.

10 **[1.2] New section 15 (7)**

11 *insert*

- 12 (7) In this section:
13 ***commercial guarantee***, in relation to a residential tenancy
14 agreement, means a contract or arrangement between the lessor, the
15 tenant and a third party—
16 (a) that is in addition to or in place of a bond; and
17 (b) under which the third party, for a fee, benefit or reward, gives a
18 guarantee or indemnity to the lessor for the performance of the
19 tenant's obligations under the residential tenancy agreement.

- 1 **[1.3] Section 16 (2)**
- 2 *substitute*
- 3 (2) A guarantee or an indemnity under subsection (1) is only
4 enforceable—
- 5 (a) against the guarantor or indemnifier—
- 6 (i) if it is in addition to a bond—to the extent of the
7 difference between the maximum amount that would
8 have been payable by the tenant as a bond and the
9 amount that is payable by the tenant as a bond; or
- 10 (ii) if it is in place of a bond—to the extent of the maximum
11 amount that would have been payable by the tenant as a
12 bond; and
- 13 (b) if the guarantee or indemnity is not a commercial guarantee.
- 14 (3) In this section:
- 15 *commercial guarantee*—see section 15 (7).

1 **Schedule 2 Commercial guarantees—**
2 **stage 2 amendments**

3 (see s 3)

4 **[2.1] Section 15 (4) (b)**

5 *substitute*

- 6 (b) if the guarantee or indemnity is a commercial guarantee—only
7 includes a commercial guarantee that is consistent with a
8 registered standard guarantee contract.

9 **[2.2] Section 15 (7)**

10 *substitute*

- 11 (7) In this section:

12 ***registered standard guarantee contract*** means a standard guarantee
13 contract registered under section 104.

14 **[2.3] Section 16 (2) and (3)**

15 *substitute*

- 16 (2) A guarantee or an indemnity under subsection (1) is only
17 enforceable against the guarantor or indemnifier—

18 (a) if it is in addition to a bond—to the extent of the difference
19 between the maximum amount that would have been payable
20 by the tenant as a bond and the amount that is payable by the
21 tenant as a bond; or

22 (b) if it is in place of a bond—to the extent of the maximum
23 amount that would have been payable by the tenant as a bond.

- 24 (3) A term of a commercial guarantee, in relation to a residential
25 tenancy agreement, that is inconsistent with, or is in addition to, a
26 registered standard guarantee contract is void.

- 1 (4) If a regulation requires a commercial guarantee to include a term in
2 the contract, the guarantee is taken to include the term.
- 3 (5) If a regulation requires a matter to be excluded from a commercial
4 guarantee, the guarantee is void to the extent that it includes the
5 matter.
- 6 (6) In this section:
- 7 *registered standard guarantee contract* means a standard guarantee
8 contract registered under section 104.

9 **[2.4] New part 8**

10 *insert*

11 **Part 8 Registration of standard**
12 **guarantee contract for**
13 **commercial guarantee**

14 **102 Meaning of *commercial guarantee* and *standard***
15 ***guarantee contract***

16 In this Act:

17 *commercial guarantee*, in relation to a residential tenancy
18 agreement, means a contract or arrangement between the lessor, the
19 tenant and a third party—

- 20 (a) that is in addition to or in place of a bond; and
- 21 (b) under which the third party, for a fee, benefit or reward, gives a
22 guarantee or indemnity to the lessor for the performance of the
23 tenant's obligations under the residential tenancy agreement.

24 *standard guarantee contract* means a form of contract for a
25 commercial guarantee.

- 1 **103** **Application for registration of standard guarantee**
2 **contract**
- 3 (1) A person may apply to the commissioner for fair trading to register
4 a standard guarantee contract for a commercial guarantee.
- 5 (2) The application must—
- 6 (a) be in writing; and
- 7 (b) include the applicant’s name, address, email address and phone
8 number; and
- 9 (c) include any information prescribed by regulation.
- 10 *Note 1* It is an offence to make a false or misleading statement, give false or
11 misleading information or produce a false or misleading document (see
12 [Criminal Code](#), pt 3.4).
- 13 *Note 2* A fee may be determined under s 134 for this provision.
- 14 **104** **Commissioner must decide application**
- 15 (1) Within 30 days after the day the application is received, the
16 commissioner for fair trading must—
- 17 (a) register the standard guarantee contract; or
- 18 (b) register the standard guarantee contract subject to conditions;
19 or
- 20 (c) refuse to register the standard guarantee contract.
- 21 *Note* Failure to decide the application within the required time is taken to be a
22 decision not to register the applicant (see [ACT Civil and Administrative](#)
23 [Tribunal Act 2008](#), s 12).
- 24 (2) Before making a decision under subsection (1), the commissioner
25 may ask an applicant to give the commissioner, within a stated time,
26 information about the applicant or about the standard guarantee
27 contract, that the commissioner reasonably needs to decide the
28 application.

1 (3) If the applicant does not give the commissioner the information
2 requested under subsection (2), the commissioner may refuse to
3 register the standard guarantee contract.

4 (4) If the commissioner refuses to register the standard guarantee
5 contract, or registers the standard guarantee contract subject to
6 conditions, the applicant may apply to the ACAT for a review of the
7 decision.

8 *Note 1* The commissioner for fair trading must take reasonable steps to give a
9 reviewable decision notice to any person whose interests are affected by
10 the decision (see *ACT Civil and Administrative Tribunal Act 2008*,
11 s 67A).

12 *Note 2* The requirements for reviewable decision notices are prescribed under
13 the *ACT Civil and Administrative Tribunal Act 2008*.

14 **105 Register of standard guarantee contracts**

15 (1) The commissioner for fair trading must keep a register of standard
16 guarantee contracts.

17 (2) The register must include—

18 (a) the business name and the trading name of the person who has
19 registered a standard guarantee contract; and

20 (b) any information prescribed by regulation.

21 (3) The register may include any other information the commissioner
22 for fair trading believes will improve consumer protection.

23 (4) The register may be kept in any form, including electronically, that
24 the commissioner decides.

1 (5) The commissioner must make the register available to the public.

2 *Note* The Territory privacy principles (the *TPPs*) apply to the commissioner
3 for fair trading (see *Information Privacy Act 2014*, sch 1). The TPPs
4 deal with the collection, storage and exchange of personal information.

5 **106 Relationship to Australian Consumer Law (ACT)**

6 This part and section 16 (3) do not affect the operation of the
7 Australian Consumer Law (ACT).

8 **[2.5] New section 134**

9 *insert*

10 **134 Determination of fees**

11 (1) The Minister may determine fees for this Act.

12 *Note* The [Legislation Act](#) contains provisions about the making of
13 determinations and regulations relating to fees (see pt 6.3).

14 (2) A determination is a disallowable instrument.

15 *Note* A disallowable instrument must be notified, and presented to the
16 Legislative Assembly, under the [Legislation Act](#).

17 **[2.6] New section 136 (2) (c)**

18 *insert*

19 (c) commercial guarantees, including the following:

20 (i) grounds for registering, applying a condition to, or
21 refusing to register a standard guarantee contract;

22 (ii) a matter that must be included in, or excluded from, a
23 commercial guarantee;

24 (iii) requirements in relation to reporting on, record keeping
25 for and the administration of commercial guarantees;

- 1 (iv) if a person has registered a standard guarantee contract—
2 information that the person must give to another person
3 before entering into a commercial guarantee with the
4 other person;
- 5 (v) amending, renewing, ending or suspending the
6 registration of a standard guarantee contract.

7 **[2.7] Schedule 1, clause 13 (1)**

- 8 *omit*
- 9 commissioner of fair trading
- 10 *substitute*
- 11 commissioner for fair trading

12 **[2.8] Dictionary, note 2**

- 13 *insert*
- 14 • Australian Consumer Law (ACT)

15 **[2.9] Dictionary, new definition of *commercial guarantee***

- 16 *insert*
- 17 *commercial guarantee*—see section 102.

18 **[2.10] Dictionary, definition of *commissioner***

- 19 *omit*

20 **[2.11] Dictionary, new definition of *standard guarantee contract***

- 21 *insert*
- 22 *standard guarantee contract*—see section 102.

1 **Schedule 3 Rental bond amendments**

2 (see s 3)

3 **[3.1] Section 24**

4 *substitute*

5 **24 Deposit of bond by tenant**

6 (1) If the lessor and the tenant agree to the tenant depositing the bond
7 with the Territory—

8 (a) the tenant must deposit with the Territory the amount of the
9 bond; and

10 (b) the tenant, or the lessor on the tenant's behalf, must lodge a
11 notice in accordance with section 25.

12 (2) Unless the lessor and the tenant otherwise agree, the tenant is not
13 entitled to possession of the premises until—

14 (a) the tenant gives the lessor evidence that the bond has been
15 deposited; or

16 (b) the Territory gives the lessor written notice that the bond has
17 been deposited.

18 *Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information
19 required to be in writing may be given electronically in certain
20 circumstances.

21 **[3.2] Section 25 heading**

22 *substitute*

23 **25 Notice about deposit**

1 **[3.3] Section 25**
2 *omit*
3 or section 24 (1) (b)
4 *substitute*
5 , section 24 (1) (b) or section 26

6 **[3.4] Section 26**
7 *substitute*

8 **26 Acknowledgment of receipt of bond money**
9 If the Territory accepts an amount of bond, the Territory must—
10 (a) if the tenant deposited the bond—give the tenant a receipt for
11 the amount; and
12 (b) give the tenant and lessor a notice in accordance with
13 section 25.

14 *Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information
15 required to be in writing under this section may be given electronically
16 in certain circumstances.

17 **[3.5] Schedule 1, clause 19 (a) and (b)**
18 *substitute*
19 (a) the tenant, or the lessor on the tenant’s behalf, must
20 complete the bond lodgment form provided by the Office
21 of Rental Bonds and lodge the form with the Office;
22 (b) the tenant must lodge the bond with the Office of Rental
23 Bonds in the way permitted by the Office;

[3.6] Schedule 1, clause 19 (c)

2 *omit*

3 (such evidence includes the receipt of the Office of Rental Bonds)

4 *substitute*

5 or the Office of Rental Bonds notifies the lessor that the bond was
6 received by the Office

[3.7] Schedule 1, clause 20 (b), (c) and (d)

8 *substitute*

9 (b) the lessor must complete the bond lodgment form
10 provided by the Office of Rental Bonds and lodge the
11 form with the Office;

12 *Note* Under the *Electronic Transactions Act 2001*, s 8 (1),
13 information required to be in writing may be given
14 electronically in certain circumstances.

15 (c) the lessor must lodge the bond with the Office of Rental
16 Bonds in the way permitted by the Office within—

17 (i) the later of 2 weeks after receiving the bond and the
18 commencement of the tenancy; or

19 (ii) if the lessor's real estate agent lodges the bond—the
20 later of 4 weeks after receiving the bond and the
21 commencement of the tenancy.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 September 2017.

2 Notification

Notified under the [Legislation Act](#) on 2017.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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