

Residential Tenancies (Water and Utilities Charges) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 21 April 1993

(Brought in by the Honourable R. I. Knowles)

A BILL

to amend the **Residential Tenancies Act 1980**, the **Caravan Parks and Movable Dwellings Act 1988**, the **Water Act 1989** and the **Melbourne and Metropolitan Board of Works Act 1958** and for other purposes.

Residential Tenancies (Water and Utilities Charges) Act 1993

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

5 The main purpose of this Act is to specify who is liable to pay for various services provided to tenants and caravan park residents by amending the **Residential**

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

Tenancies Act 1980, the Caravan Parks and Movable Dwellings Act 1988, the Water Act 1989 and the Melbourne and Metropolitan Board of Works Act 1958.

2. Commencement

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- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Parts 2 and 3 come into operation on 1 July 1993.
- (3) Parts 4, 5 and 6 come into operation on 1 July 1994.

PART 2—AMENDMENTS TO THE RESIDENTIAL TENANCIES ACT 1980

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3. Insertion of definition

In section 2 of the **Residential Tenancies Act 1980**, after the definition of “**security deposit**” insert—

“**separately metered**”, means that there is, in respect of a rented premises, a meter that has been installed or approved by the relevant supply authority and that measures, in relation to those premises only, the quantity of a substance or service that is supplied to, or used at, those premises;’.

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4. Insertion of new sections 82–82D

For section 82 of the **Residential Tenancies Act 1980** substitute—

“82. Responsibility for various utility charges

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(1) The tenant is liable—

- (a) for all charges in respect of the supply or use of electricity, gas or oil in respect of his or her occupation of rented premises that are separately metered (except the

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charge mentioned in sub-section (2) (e)); and

- (b) for the cost of all water supplied to the rented premises during the tenant's occupancy of those premises if that cost is based solely on the amount of water supplied to those premises and the premises are separately metered; and
- (c) if the cost of water supplied to separately metered rented premises is only partly based on the amount of water supplied to those premises, for that part of the charge that is based on the amount of water supplied to those premises during the tenant's occupancy of those premises.

(2) The landlord is liable—

- (a) for all charges arising from a water supply service to a separately metered rented premises that are not based on the amount of water supplied to the premises; and
- (b) for all costs and charges related to a water supply service to, and water supplied to, a rented premises that is not separately metered; and
- (c) for all charges in respect of the supply or use of electricity, gas or oil by a tenant at a rented premises that is not separately metered; and
- (d) for all charges related to the supply or use of sewerage and drainage services to or at a rented premises; and
- (e) for the installation costs and charges in respect of the initial

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connection to a rented premises of any electricity, oil or gas supply service.

- (3) Despite sub-section (1), a landlord may agree to take over the tenant's liability with respect to anything listed in that sub-section. 5
- (4) Such an agreement is only binding on the landlord if it is in writing and is signed by the landlord. 10
- (5) If the tenant pays for anything the landlord is liable for under sub-section (2), the landlord must reimburse the tenant for the payment within 28 days after receiving a written request for the reimbursement attached to a copy of the account and the receipt (or other evidence of payment). 15
- (6) If the landlord pays for anything the tenant is liable for under sub-section (1), the tenant must reimburse the landlord for the payment within 28 days after receiving a written request for the reimbursement attached to a copy of the account and the receipt. 20
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- (7) Sub-section (6) is subject to any agreement to the contrary under sub-section (3).
- (8) For the purpose of removing doubt, sub-section (6) does not apply in a case where a landlord directly bills a tenant for the supply or use of a substance or service under a re-sale agreement with a supply authority. 30

82A. *Landlord must not seek overpayment for utility charge*

5 (1) A landlord of separately metered rented premises must not seek a payment or reimbursement from the tenant of those premises in respect of a cost or charge under section 82 (1) that is greater than the amount that the relevant supply authority would have charged the tenant.

10 Penalty: 10 penalty units.

15 (2) Where the relevant supply authority has issued an account to the landlord, a landlord cannot recover under section 82 (6) an amount from the tenant which includes any amount that could have been claimed as a concession or rebate by, or on behalf of, the tenant from the relevant supply authority.

20 (3) Sub-section (2) does not apply if the concession or rebate must be claimed by the tenant and the landlord has given the tenant the opportunity to claim the concession or rebate and the tenant does not claim the concession or rebate by the payment date set by the relevant supply authority.

25 (4) Sub-section (2) also does not apply if the concession or rebate is paid directly to the tenant as a refund.

30 **82B. *Director of Housing may impose service charge***

35 (1) This section only applies to the Director of Housing and incorporated bodies that receive financial assistance from the Director of Housing.

(2) A person to whom this section applies may impose a service charge on a tenant

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- in rented premises let by the person in respect of any water, central heating, laundry or utility services or facilities made available to the tenant.
- (3) This only applies if it is not possible or practicable to accurately measure the use by a tenant of the service or facility for which the charge is to be made. 5
- (4) A service charge may be increased or decreased in line with changes in the costs of providing the services or facilities to which it relates. 10
- (5) This section overrides anything to the contrary in any tenancy agreement entered into before 1 July 1993. 15

82c. *Meter readings to be recorded at the start and end of tenancy if landlord is a utility re-supplier*

- (1) This section applies if the landlord of a separately metered rented premises directly bills a tenant for the supply or use of the substance or service that is separately metered under a re-sale agreement with a supply authority. 20
- (2) The landlord must ensure that the reading shown on every separate meter that measures the supply or use of any substance or service to or at those premises that is directly billed is recorded in writing at the start of a tenancy and at the end of the tenancy. 25
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- (3) The landlord must include the record taken at the start of the tenancy in any condition report required under section 73. 35

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- (4) In all other cases, the landlord must give a copy of the records to the tenant or former tenant on request.
 - (5) If the landlord has not complied with sub-section (2), (3) or (4), the tenant is not liable to pay the landlord for the supply or use of the metered item to or at the rented premises in respect of the billing period in which the failure to comply occurred.

82D. *Liability for services etc. used at the start and end of tenancies*

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- (1) This section applies until 1 July 1994, but does not apply to circumstances to which section 82C applies.
 - (2) Despite anything to the contrary in sections 82 (1) and (2), a landlord is liable to pay for the cost of any substance or service supplied to a rented premises in respect of any billing period in which a tenant was not in occupation of the premises for the entire billing period.”.

5. *Amendment to rates indemnity provision*

25 In section 84 of the **Residential Tenancies Act 1980**—

(a) after “84.” **insert** “(1)”;

(b) at the end of the section **insert**—

30 “(2) Sub-section (1) does not apply to any rates or taxes that are based solely on the amount of a substance or service that is supplied to the rented premises.”.

6. *Amendment to “urgent repairs” provision*

In section 99 of the **Residential Tenancies Act 1980**—

(a) after sub-section (2) **insert**—

“(2A) In carrying out urgent repairs to an item that uses or supplies water and that does not have at least an A rating (as defined in section 100A (4)), if the item cannot be repaired the tenant may replace it with an item that does have an A rating.”; 5

(b) after sub-section (3) (i) **insert**—

“(ia) an appliance, fitting or fixture provided by the landlord that uses or supplies water and that is malfunctioning in a way that results, or will result, in a substantial amount of water being wasted;”. 10

7. Insertion of section 100A

After section 100 of the **Residential Tenancies Act 1980** **insert**— 15

‘100A. Landlord to ensure water efficient appliances installed

(1) If an appliance, fitting or fixture provided by a landlord that uses or supplies water at a rented premises needs to be replaced, the landlord must ensure that the replacement has at least an A rating. 20

(2) A landlord is liable to pay for the cost of water supplied to, or used at, a rented premises for so long as the landlord is in breach of sub-section (1) or of any law requiring the use of water efficient appliances in respect of the premises. 25

(3) Sub-section (2) applies despite anything to the contrary in section 82 (1) and in Part 13 of the **Water Act 1989** and in Part II of the **Melbourne and Metropolitan Board of Works Act 1958**. 30
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- (4) In this section, “**A rating**” has the meaning it has in SAA MP64–1992 Manual of Assessment Procedure for Water Efficient Appliances as amended from time to time by Standards Australia in respect of the relevant item.’.

PART 3—AMENDMENTS TO THE CARAVAN PARKS AND MOVABLE DWELLINGS ACT 1988

8. Insertion of definition

In section 3 of the **Caravan Parks and Movable Dwellings Act 1988**, after the definition of “**resident**” insert—

“**separately metered**” means that there is, in respect of a site, a meter that has been installed or approved by the relevant supply authority and that measures, in relation to that site only, the quantity of a substance or service that is supplied to, or used at, that site;’.

9. Consequential amendment

Sections 19 (1) and (2) of the **Caravan Parks and Movable Dwellings Act 1988** are repealed.

10. Insertion of sections 19A–19D

After section 19 of the **Caravan Parks and Movable Dwellings Act 1988** insert—

“19A. Responsibility for electricity, gas and water charges

- (1) A resident is responsible for the payment of charges made for the supply or use of electricity, gas and water on the site occupied by the resident while the resident occupies the site, but only in respect of those services that are separately metered.

- (2) A caravan park owner is liable—
- (a) for all charges arising from a water supply service to a separately metered site that are not based on the amount of water supplied or used; and 5
 - (b) for all charges related to the supply or use of sewerage and drainage services to or at a site; and
 - (c) for the cost of all services to a site that are not separately metered; and 10
 - (d) for the installation costs and charges in respect of the initial connection to a site of any electricity or gas supply service. 15
- (3) If a caravan park owner pays for anything a resident is responsible for under sub-section (1), the resident must reimburse the owner for the payment within 28 days after receiving a written request for the reimbursement attached to a copy of the account and the receipt. 20
- (4) For the purpose of removing doubt, sub-section (3) does not apply in a case where a caravan park owner directly bills a resident for the supply of a substance or service under a re-sale agreement with a supply authority. 25
- (5) If a resident pays for anything a caravan park owner is liable for under sub-section (2), the owner must reimburse the resident for the payment within 28 days after receiving a written request for the reimbursement attached to a copy of the account and the receipt (or other evidence of payment). 30
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19B. *Owner must not seek overpayment for utility charges*

5 (1) A caravan park owner must not seek reimbursement or payment under section 19A (3) for an amount that is greater than the amount the relevant supply authority would have charged the resident.

Penalty: 10 penalty units.

10 (2) Where the relevant supply authority has issued an account to the caravan park owner, a caravan park owner cannot recover under section 19A (3) an amount from the resident which includes any amount that could have been claimed as a concession or rebate by, or on behalf, of the resident from the relevant supply authority.

15 (3) Sub-section (2) does not apply if the concession or rebate must be claimed by the resident and the caravan park owner has given the resident the opportunity to claim the concession or rebate and the resident does not claim the concession or rebate by the payment date set by the relevant supply authority.

20 (4) Sub-section (2) also does not apply if the concession or rebate is paid directly to the resident as a refund.

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30 **19C. *Owner who acts as utility re-supplier must supply meter readings***

35 (1) This section applies if section 19A (1) applies to the supply of a substance or service to a site and the caravan park owner directly bills a resident for the supply of the substance or service under a re-sale agreement with a supply authority.

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- (2) The caravan park owner must ensure that the reading shown on the meter that measures the amount of the substance or service supplied to, or used at, the site is recorded in writing at the beginning of an occupancy of the site and at the end of the occupancy. 5
- (3) The caravan park owner must include any record taken at the start of the occupancy in any condition report required under section 14 (2). 10
- (4) In all other cases, the caravan park owner must give a copy of the records to the resident or former resident of the site on request. 15
- (5) If the caravan park owner has not complied with sub-sections (2), (3) or (4), the resident is not liable to pay the caravan park owner for the supply or use of the substance or service to or at the site in respect of the billing period in which the failure to comply occurred. 20

19D. *Liability for services etc. used at start and end of residency*

- (1) This section applies until 1 July 1994, but does not apply to circumstances to which section 19C applies. 25
- (2) Despite anything to the contrary in sections 19A (1) and (2), a caravan park owner is liable to pay for the cost of any substance or service supplied to a site in respect of any billing period in which a resident was not in occupation of the site for the entire billing period.”. 30

11. Amendment to “urgent repairs” provision

In section 22A of the **Caravan Parks and Movable Dwellings Act 1988**—

(a) after sub-section (2) **insert**—

“(2A) In carrying out urgent repairs to an item that uses or supplies water and that does not have at least an A rating (as defined in section 22B (1)), if the item cannot be repaired the resident may replace it with an item that does have an A rating.”;

(b) after sub-section (3) (i) **insert**—

“(ia) an appliance, fitting or fixture provided by the caravan park owner that uses or supplies water and that is malfunctioning in a way that results, or will result, in a substantial amount of water being wasted.”.

12. Insertion of section 22B

After section 22A of the **Caravan Parks and Movable Dwellings Act 1988** **insert**—

‘22B. Owner to ensure water efficient appliances installed

(1) In this section—

“**A rating**” has the meaning it has in SAA MP64–1992 Manual of Assessment Procedure for Water Efficient Appliances as amended from time to time by Standards Australia in respect of the relevant item;

“**owner**” means the caravan owner or, if the caravan park owner of the caravan park in which the caravan is situated receives the hiring charges, the caravan park owner.

- (2) If an appliance, fitting or fixture provided by an owner that uses or supplies water in a caravan or on a site hired to a resident needs to be replaced, the owner must ensure that the replacement has at least an A rating. 5
- (3) An owner is liable to pay for the cost of water supplied to, or used in, a caravan for so long as the owner is in breach of sub-section (2) or of any law requiring the use of water efficient appliances in respect of the caravan. 10
- (4) Sub-section (3) applies despite anything to the contrary in section 19A (1) and in Part 13 of the **Water Act 1989** and in Part II of the Melbourne and Metropolitan Board of **Works Act 1958**.'. 15

PART 4—AMENDMENTS TO THE WATER ACT 1989

13. Insertion of sections 273A and 273B 20

In Part 13 of the **Water Act 1989**, after the heading “**Division 7—Payment and recovery of money**” insert—

‘273A. Occupiers liable for costs based on water supplied 25

- (1) This section applies if a property to which water is supplied by an Authority—
- (a) is occupied by a tenant under a tenancy agreement to which the **Residential Tenancies Act 1980** applies (whether wholly or partly); or 30
- (b) is a site in a caravan park occupied by a resident of the caravan park— 35

and the quantity of water supplied to the property is measured by a meter provided or installed by the Authority that only measures that quantity.

5 (2) The occupier of the property is liable for the cost of all water supplied to the property during the time the occupier occupies the property if that cost is based solely on the amount of water that is supplied to the property.

10 (3) If the cost of the water supplied to a property during the time the occupier occupies the property is only partly based on the amount of water supplied to the property, the occupier of the property is liable for that part of the cost that is based on the amount of water supplied to the property.

15 (4) The owner of a property is not liable for any amount that an occupier of the property is liable for under this section and any such amount cannot be made a charge on the land of the owner.

20 (5) This section overrides anything to the contrary in section 170 but is subject to anything to the contrary in section 273B.

25 (6) In this section and section 273B, if an occupier of a property only occupies a part of the property, then a reference to the property is to be read as a reference to the part of the property occupied by the occupier.

30 (7) In this section, “**caravan park**”, “**resident**” and “**site**” have the meanings they have in the **Caravan Parks and Movable Dwellings Act 1988**.

273B. Authority must read meter when tenant arrives and departs

- (1) This section applies if a property to which water is supplied by an Authority— 5
- (a) is occupied, or to be occupied, by a tenant under a tenancy agreement to which the **Residential Tenancies Act 1980** applies (whether wholly or partly); or 10
- (b) is a site in a caravan park occupied, or to be occupied, by a resident of the caravan park—
- and the quantity of water supplied to the property is measured by a meter provided or installed by the Authority that only measures that quantity. 15
- (2) The tenant or resident must notify the Authority that he or she will occupy or vacate, or has occupied or vacated, the property. 20
- (3) The Authority must ensure that the reading on the meter measuring the quantity of water supplied to the property is recorded on the day the tenant or resident occupies or vacates the property or as soon as is practicable after that day. 25
- (4) Sub-section (3) does not apply unless the Authority is given at least 48 hours notice of the day of occupation or vacation. 30
- (5) If the Authority is not given at least 48 hours notice of the occupation or vacation of a property, it must ensure that the reading on the meter measuring the quantity of water supplied to the property is recorded within 48 hours of it 35

being given notice that a property has been occupied or vacated by a tenant or resident or as soon as is practicable after it is given notice.

5 (6) If a tenant or resident occupies a property, the landlord or caravan park owner is liable for the cost of all water supplied to the property until the Authority records the reading on the meter on or after the date of occupation.

10 (7) If a tenant or resident fails to notify the Authority that he or she has occupied a premises within 48 hours of occupying the property—

15 (a) he or she is liable for the cost of all water supplied to the property since the meter was last read on behalf of the Authority; and

(b) sub-section (6) does not apply.

20 (8) If a tenant or resident fails to notify the Authority that he or she has vacated a property within 48 hours of vacating the property, he or she is liable for the cost of all water supplied to the property until—

25 (a) the Authority next records the reading on the meter; or

(b) the end of the billing period in which the vacation occurred—

30 whichever happens first.

(9) No time falling on a Saturday, Sunday or holiday is to be included in calculating any period of time for the purposes of this section.

35 (10) In this section—

(a) “**caravan park**”, “**resident**” and “**site**” have the meanings they

have in the **Caravan Parks and Movable Dwellings Act 1988**;

- (b) **“holiday”**, in relation to an area, means any public holiday appointed or observed in the area under the **Public Sector Management Act 1992**.’

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14. *Consequential changes*

In the **Water Act 1989**—

- (a) in section 265, for “The” **substitute** “Subject to section 273A, the”; 10
- (b) in section 274—
- (i) in sub-section (1)—
- (A) for “to the owners that payment is required” **substitute** “requiring payment”; 15
- (B) after “unless the person” **insert** “liable to pay the amount”;
- (ii) in sub-section (4), for all words after “Authority by the” **substitute** “person liable to pay the amount”; 20
- (iii) after sub-section (4) **insert**—
- “(4A) If the person liable to pay an amount to an Authority in relation to a property owns the property, the amount due is a charge on the property, whether or not the Authority has agreed to defer the payment of the whole or any part of that amount.”; 25
- (iv) in sub-section (5), for “sub-section (4)” **substitute** “sub-sections (4) and (4A)”; 30
- (c) in section 275 (1), for “274 (4)” **substitute** “274 (4A)”; 35
- (d) in section 276 (1), after “is due” **insert** “by the owner of the property”;
- (e) after section 278 (2) (c) **insert**—

“; or

(d) the person liable to pay is not the owner of the property.”;

(f) in section 282 (4) (a), after “the person” insert “never owned or”.

PART 5—AMENDMENTS TO THE MELBOURNE AND METROPOLITAN BOARD OF WORKS ACT 1958

15. Insertion of sections 98A and 98B

After section 98 of the **Melbourne and Metropolitan Board of Works Act 1958** insert—

‘98A. Occupiers liable for rates etc. based on water supplied

(1) This section applies if a premises to which water is supplied by the Board—

(a) is occupied by a tenant under a tenancy agreement to which the **Residential Tenancies Act 1980** applies (whether wholly or partly); or

(b) is a site in a caravan park occupied by a resident of the caravan park—

and the quantity of water supplied to the premises is measured by a meter that only measures that quantity.

(2) The occupier of the premises is liable for all rates and charges imposed under this Part that are based solely on the amount of water that is supplied to the premises.

(3) If such a rate or charge is only partly based on the amount of water supplied to the premises, the occupier of the premises is liable for that part of the rate or charge that is based on the amount of water supplied to the premises.

- (4) The owner of a premises is not liable for any amount that an occupier of the premises is liable for under this section and any such amount cannot be made a charge on the land of the owner. 5
- (5) This section overrides any provision to the contrary in this Part (other than section 98B) and section 239D.
- (6) In this section, “**caravan park**”, “**resident**” and “**site**” have the meanings they have in the **Caravan Parks and Movable Dwellings Act 1988**. 10

98B. Board to read meter when tenant arrives and departs

- (1) This section applies if a premises to which water is supplied by the Board— 15
 - (a) is occupied, or to be occupied, by a tenant under a tenancy agreement to which the **Residential Tenancies Act 1980** applies (whether wholly or partly); or 20
 - (b) is a site in a caravan park occupied, or to be occupied, by a resident of the caravan park—

and the quantity of water supplied to the premises is measured by a meter provided or installed by the Board that only measures that quantity. 25
- (2) The tenant or resident must notify the Board that he or she will occupy or vacate, or has occupied or vacated, the premises. 30
- (3) The Board must ensure that the reading on the meter measuring the quantity of water supplied to the premises is recorded on the day the tenant or resident 35

occupies or vacates the premises or as soon as is practicable after that day.

5 (4) Sub-section (3) does not apply unless the Board is given at least 48 hours notice of the day of occupation or vacation.

10 (5) If the Board is not given at least 48 hours notice of the occupation or vacation of a premises, it must ensure that the reading on the meter measuring the quantity of water supplied to the premises is recorded within 48 hours of it being given notice that the premises has been occupied or vacated by the tenant or resident or as soon as is practicable after it is given notice.

15 (6) If a tenant or resident occupies a premises, the landlord or caravan park owner is liable for the cost of all water supplied to the premises until the Board records the reading on the meter on or after the day of occupation.

20 (7) If a tenant or resident fails to notify the Board that he or she has occupied a premises within 48 hours of occupying the premises—

25 (a) he or she is liable for the cost of all water supplied to the premises since the meter was last read on behalf of the Board; and

30 (b) sub-section (6) does not apply.

35 (8) If a tenant or resident fails to notify the Board that he or she has vacated a premises within 48 hours of vacating the premises, he or she is liable for the cost of all water supplied to the premises until—

(a) the Board next records the reading on the meter; or

- (b) the end of the billing period in which the vacation occurred—
whichever happens first.
- (9) No time falling on a Saturday, Sunday or holiday is to be included in calculating any period of time for the purposes of this section. 5
- (10) In this section—
- (a) “**caravan park**”, “**resident**” and “**site**” have the meanings they have in the **Caravan Parks and Movable Dwellings Act 1988**; 10
- (b) “**holiday**”, in relation to an area, means any public holiday appointed or observed in the area under the **Public Sector Management Act 1992**.’ 15

PART 6—REVOCATION OF TRANSITIONAL PROVISIONS

16. *Revocation of transitional provisions*

- (1) Section 82D of the **Residential Tenancies Act 1980** is repealed. 20
- (2) Section 19D of the **Caravan Parks and Movable Dwellings Act 1988** is repealed.