

# LEGISLATIVE ASSEMBLY

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Read 1° 15 April 1987

*(Brought in by Mr Wilkes and Mr Trezise)*

## A BILL

to amend the *Residential Tenancies Act 1980* and the *Administrative Law Act 1978* and for other purposes.

### **Residential Tenancies (Amendment) Act 1987**

The Parliament of Victoria enacts as follows:

#### **Purpose.**

1. The purposes of this Act are—

- 5           (a) to provide that tenancy agreements cannot be terminated under the *Residential Tenancies Act 1980* without reason; and
- (b) to widen the definition of “urgent repairs” under that Act and to increase the maximum amount which a tenant can recover from a landlord in respect of urgent repairs; and
- 10           (c) to increase the powers, and widen the jurisdiction, of the Residential Tenancies Tribunal; and
- (d) to make other reforms to residential tenancies law.

#### **Commencement.**

2. This Act comes into operation on a day or days to be proclaimed.

**Removal of landlord’s power to give notice to vacate where no reason is specified.**

No 9514  
Amended by  
Nos 9549, 9786,  
10020 and  
16/1986

**3. The Residential Tenancies Act 1980 is amended as follows:**

- (a) Section 123 is repealed;
- (b) Section 124 is repealed; 5
- (c) In section 125 (2) (b), omit “except in the case of a notice under section 123,”;
- (d) In section 127—
  - (i) in sub-section (1), omit “otherwise than under section 123”; 10
  - (ii) in sub-section (2), for paragraphs (a) and (b) and the word “or” between those paragraphs, substitute “the tenant has given notice of intention to vacate”.

**Urgent repairs.**

**4. Section 99 of the Residential Tenancies Act 1980 is amended as follows: 15**

- (a) In paragraph (b) of sub-section (1), for “\$200” substitute “\$500”;
- (b) After sub-section (1), insert—
  - “(1A) The regulations may prescribe an amount greater than \$500 for the purposes of sub-section (1) (b) and, in that case, a reference in that sub-section to \$500 is to be taken to be a reference to the amount so prescribed.”; 20
- (c) For sub-section (3), substitute—
  - “(3) In this section “**urgent repairs**” means any work necessary to repair or remedy any of the following: 25
    - (a) A burst water service;
    - (b) A blocked or broken lavatory system;
    - (c) A serious roof leak;
    - (d) A gas leak; 30
    - (e) A dangerous electrical fault;
    - (f) Flooding or serious flood damage;
    - (g) Serious storm or fire damage;
    - (h) A failure or breakdown of the gas, electricity or water supply to the rented premises; 35
    - (i) A failure or breakdown of any essential service or appliance, provided by the landlord, on the rented premises for hot water, cooking, heating or laundering;

- (j) A serious fault in a lift or staircase in the rented premises;
- (k) Any fault or damage that makes the rented premises unsafe or insecure;
- 5 (l) Any damage of a prescribed class.’

**Security deposits.**

5. Section 77 of the *Residential Tenancies Act* 1980 is amended as follows:

- 10 (a) In sub-section (1) (b), after “agrees” insert “in writing”;
- (b) In sub-section (2), at the foot of the sub-section, insert—  
“Penalty: \$1000.”;
- (c) After sub-section (2), insert—  
“**(2A)** A landlord who contravenes sub-section (2) and who, but for this sub-section, would be entitled to the whole or any part of a security deposit held by the landlord in respect of the tenancy agreement, ceases to have that entitlement and the tenant becomes entitled to the whole of the security deposit.”;
- 15 (d) After sub-section (7), insert—  
“**(7A)** If—
- 20 (a) a security deposit is paid on behalf of a tenant by the Director of Housing incorporated under the *Housing Act* 1983 or an agent of that Director; and
- 25 (b) the tenant is entitled to be paid the whole or any part of that security deposit—  
the landlord must pay to the Director of Housing or the agent of that Director and not to the tenant the whole or part, as the case requires, of the security deposit held by the landlord to which the tenant is entitled.
- 30 (7B) If a security deposit is paid on behalf of a tenant by the Director of Housing incorporated under the *Housing Act* 1983 or an agent of that Director, then—
- 35 (a) the landlord is not entitled to pay the whole or any part of the security deposit to the tenant in accordance with sub-section (1) (a); and
- (b) any agreement entered into by the tenant under sub-section (1) (b) is void from the beginning; and
- 40 (c) sub-sections (3) (b), (5) and (6) apply in relation to the tenancy agreement as if any reference in those sub-sections to the tenant was a reference to the Director of Housing.”.

**Miscellaneous amendments.****6. The *Residential Tenancies Act* 1980 is amended as follows:**

- (a) Section 1 (3) is repealed;
- (b) In section 5—
- (i) for “\$1500 but not exceeding \$3000” substitute “\$3000 but not exceeding \$5000”; 5
- (ii) for “\$1500 is” substitute “\$3000 is”;
- (c) In section 18—
- (i) in sub-section (1), for “\$1500” substitute “\$3000”;
- (ii) in sub-section (2), for “\$1500” (where twice occurring) substitute “\$3000”; 10
- (iii) in sub-section (3), for “\$1500” substitute “\$3000”;
- (d) In section 23, after sub-section (1), insert—
- “(1A) A person who is not a landlord or a tenant under a tenancy agreement may, with the leave of the Tribunal, make an application to the Tribunal relating to that tenancy agreement. 15
- (1B) The Tribunal must not grant leave under sub-section (1A) unless it is satisfied that the person has an interest in the tenancy agreement that is sufficient to justify the granting of leave.”; 20
- (e) In section 30—
- (i) in sub-section (3), after paragraph (a), insert—
- “(ab) may direct that a person be made a party to the proceedings;”;
- (ii) after sub-section (3), insert—
- “(4) The Tribunal must not under sub-section (3) (ab) direct that a person be made a party to proceedings before it unless the Tribunal is satisfied, whether on application by that person or by a person who is a party to the proceedings or without any such application, that that person has an interest in the proceedings that is sufficient to justify the making of the direction. 30
- (5) The Tribunal may make an interim determination in any proceedings even if— 35
- (a) the person who made the application to the Tribunal is absent and unrepresented; or
- (b) a person who is a party to the proceedings, or who the Tribunal directs be made a party to the proceedings, is absent and unrepresented because that person has not been notified of the proceedings in accordance with this Act— 40
- if the Tribunal is satisfied that the proceedings are urgent.

(6) An interim determination only operates until the time specified in it or until the making of a further determination by the Tribunal, whichever occurs first.”;

(f) After section 39, insert—

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**Tribunal may correct determination.**

“39A. The Tribunal may, on its own initiative at any time or on application by a party to proceedings before the Tribunal within 14 days after the receipt by that party of a copy of a determination made by the Tribunal in those

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(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

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(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or

(d) a defect of form.”;

(g) In section 41—

(i) in sub-section (1)—

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(A) for “at any time” substitute “, if that person did not appear and was not represented at the proceedings,”;

(B) after “Tribunal” (where secondly occurring) insert “within 14 days of being given a copy of the determination”;

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(ii) in sub-section (2), for “determination to which an application under sub-section (1) applies should be reviewed” substitute “applicant has a reasonable excuse for not appearing or being represented at the proceedings”;

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(h) For section 46, substitute—

**Contempt of Tribunal.**

“46. (1) If a person—

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(a) insults a member of the Tribunal while the member is performing functions or exercising powers as the Tribunal; or

(b) insults a person attending a hearing before the Tribunal; or

(c) misbehaves at a hearing before the Tribunal; or

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(d) interrupts a hearing before the Tribunal; or

(e) assaults or obstructs a person attending a hearing before the Tribunal; or

- (f) without lawful excuse disobeys a direction or summons of the Tribunal—  
the Tribunal may direct the apprehension of that person and, if the Tribunal thinks fit, may commit that person to prison for any time not exceeding 14 days or may impose on that person a fine of not more than \$1000. 5
- (2) In dealing with a person under sub-section (1), the Tribunal may—
- (a) hear the case immediately or give notice of the hearing; and 10
- (b) accept an apology instead of imposing a fine or committing the person to prison.
- (3) An order made under sub-section (1) committing a person to prison does not take effect until 48 hours after the making of the order or, if an appeal is made under sub-section (4), until the appeal is determined. 15
- (4) A person who has been ordered to be imprisoned under this section and who considers that the punishment is too severe may, within 48 hours after the making of the order, appeal from the order to the Supreme Court. 20
- (5) If the Tribunal makes an order under sub-section (1) imposing a fine on a person and the fine is unpaid (either in whole or in part) at the end of the period specified in the order for payment of the fine, the Registrar may file a copy of the order with a Magistrates' Court and pay to the clerk of the Court the prescribed fee (if any) and the order must then be treated as an order of the Magistrates' Court and it may be enforced as if it were such an order. 25
- (6) A member of the police force must obey and execute any direction or order of the Tribunal under sub-section (1)."; 30
- (i) In section 57, for "\$100" substitute "\$200";
- (j) In section 61—
- (i) in sub-section (1), for paragraph (c), substitute— 35
- “(c) where the payment is made otherwise than in cash— shall, before the end of the third business day after the day on which the payment is received, give a receipt to the person who made the payment if that person requested a receipt at the time of making the payment.”; 40
- (ii) after sub-section (3), insert—
- “(4) For the purposes of this section a payment is made in cash if it is made by a tender of payment of money that is a legal tender under the *Currency Act 1965* of the Commonwealth as amended and in force for the time being.”; 45

(k) In section 62, after sub-section (2), insert—

“ (3) A landlord under a periodic tenancy agreement has, unless the tenancy agreement otherwise provides, the right to review the rent at intervals of not less than six months and, after the review, to increase the rent after giving the tenant at least 60 days’ notice in writing of the increase.”;

(l) In section 70 (1), for “\$100” substitute “\$200”;

(m) In section 72 (a), for “\$100” substitute “\$200”;

(n) In section 73 (1)—

(i) after “agreement” insert “or a person acting on behalf of the landlord under a tenancy agreement”;

(ii) after “landlord” (where secondly occurring) insert “or the person acting on behalf of the landlord”;

(o) In section 74 (1), for “\$100” substitute “\$200”;

(p) In section 75 (1), for “\$100” substitute “\$200”;

(q) In section 80—

(i) for “landlord under a proposed tenancy agreement who” substitute “person who in respect of a proposed tenancy agreement”;

(ii) in paragraph (a), for “landlord” (where first occurring) substitute “person”;

(iii) in paragraph (b), for “entering into the agreement” substitute “the agreement being entered into”;

(r) In section 81 (1), for “landlord” (where first occurring) substitute “person”;

(s) In section 122 (3), after “landlord” insert “or a person acting on behalf of a landlord”;

(t) In section 132, after sub-section (3), insert—

“ (4) The Tribunal may, on the application of the landlord, from time to time make an order extending the time in which a warrant of possession (whether issued before or after the commencement of section 6 (t) of the *Residential Tenancies (Amendment) Act 1987*) may be executed.

(5) An order made under sub-section (4) must not extend the time in which a warrant of possession may be executed by more than 30 days at any one time from the day on which the time for execution of the warrant would otherwise expire.

(6) An order may be made under sub-section (4) even if the time for execution of the warrant has expired.”;

(u) After section 137, insert—

**Goods abandoned by squatters.**

“137A. If—

- (a) premises have been occupied solely by a person or persons (not being a tenant under a tenancy agreement) who entered into or remained in occupation without the consent or licence of the person entitled to possession of the premises or that of any predecessor in title of that person; and 5
  - (b) at any time within the period of twelve months before the premises were so occupied, they were used as a residence by the owner of the premises or by a predecessor in title of the owner or by a person to whom they were let under a tenancy agreement; and 10
  - (c) the person entitled to possession of the premises obtains possession of them; and
  - (d) goods have been left on the premises— 15
- sections 136 and 137 apply as if— 20
- (e) the premises were rented premises under a tenancy agreement that is terminated; and
  - (f) the person entitled to possession of the premises were the former landlord; and
  - (g) the person or persons who were in occupation of the premises were the former tenant.”; 25
- (v) In section 151 (1)—
- (i) in paragraph (c), omit “not exceeding “\$10”;
  - (ii) in paragraph (d), omit “not exceeding “\$30”;
  - (iii) after paragraph (f), insert— 30
- “(fa) prescribing the monetary limit for the purposes of the jurisdiction of the Tribunal;”.

**Amendment of *Administrative Law Act 1978*.**

7. In section 8 (2) of the *Administrative Law Act 1978*, after “Small Claims Tribunal” insert “or the Residential Tenancies Tribunal”. 35





