Legislative Council—No 47
As introduced and read a first time, 30 July 2015

South Australia

Residential Tenancies (Domestic Violence Protections) Amendment Bill 2015

A BILL FOR

An Act to amend the *Residential Tenancies Act 1995*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Residential Tenancies (Domestic Violence Protections) Amendment Act 2015*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Residential Tenancies Act 1995*

4—Amendment of section 3—Interpretation

(1) Section 3(1)—before the definition of ***ancillary property*** insert:

abuse and ***act of abuse*** have the same meaning as in the *Intervention Orders (Prevention of Abuse) Act 2009*;

(2) Section 3(1)—after the definition of ***Commissioner*** insert:

co-tenant means a tenant who is 1 of 2 or more tenants under a residential tenancy agreement;

(3) Section 3(1)—after the definition of ***Deputy Registrar*** insert:

domestic abuse means an act of abuse committed by a person against a domestic associate or a former domestic associate of the person;

domestic associate—2 persons are domestic associates, 1 of the other, if—

(a) they are married to each other; or

(b) they are domestic partners; or

(c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affect the other; or

(d) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age); or

(e) 1 is a child, stepchild or grandchild, or is under the guardianship, of a person who is or was formerly in a relationship with the other under paragraph (a), (b) or (c) (regardless of age); or

(f) 1 is a child and the other is a person who acts in *loco parentis* in relation to the child; or

(g) 1 is a child who normally or regularly resides or stays with the other; or

(h) they are brothers or sisters or brother and sister; or

(i) they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or

(j) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or

(k) 1 is the carer (within the meaning of the *Carers Recognition Act 2005*) of the other;

(4) Section 3(1)—after the definition of ***domestic facility requiring instructions*** insert:

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

(5) Section 3(1)—after the definition of ***housing improvement notice*** insert:

intervention order means an intervention order issued by a court under the *Intervention Orders (Prevention of Abuse) Act 2009*;

5—Amendment of section 5—Application of Act

Section 5(2)—after paragraph (ca) insert:

(cb) section 89A (*Termination based on domestic abuse)*;

6—Amendment of section 72—Right of entry

Section 72(1)—after paragraph (c) insert:

or

(ca) to inspect the premises in accordance with an order of the Tribunal under section 89A(4)(b); or

7—Insertion of section 89A

After section 89 insert:

89A—Termination based on domestic abuse

(1) The Tribunal may, on application by a tenant or a co-tenant, terminate a residential tenancy from a date specified in the Tribunal's order if satisfied—

(a) that an intervention order is in force against a person who resides at the residential premises for the protection of—

(i) the applicant; or

(ii) a domestic associate of the applicant who normally or regularly resides at the residential premises; or

(b) that a person who resides at the residential premises has committed domestic abuse against—

(i) the applicant; or

(ii) a domestic associate of the applicant who normally or regularly resides at the residential premises.

(2) The Tribunal may, on application by the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust, terminate a residential tenancy from a date specified in the Tribunal's order if satisfied—

(a) that an intervention order is in force against the tenant for the protection of a person who normally or regularly resides at the residential premises; or

(b) that the tenant has committed domestic abuse against a person who normally or regularly resides at the residential premises.

(3) For the purposes of an application under this section, the applicant, the landlord and any tenant or co-tenant under the residential tenancy agreement are parties to proceedings concerning the tenancy dispute.

(4) The Tribunal may, on application by a party to proceedings under this section, make 1 or more of the following additional orders:

(a) subject to this section, an order requiring the landlord to enter into a new residential tenancy agreement with the applicant or a co-tenant under the terminated agreement (or both) for the remainder of the term of the tenancy;

(b) an order that the landlord may enter the residential premises at a time determined by the Tribunal to inspect the premises before a determination is made under this section;

(c) an order for possession of the premises on a date specified by the Tribunal;

(d) if the Tribunal is satisfied that—

(i) the applicant did not cause or reasonably cause a breach of the residential tenancy agreement; or

(ii) the nature of any breach of the residential tenancy agreement resulted from an act of abuse or domestic abuse against the applicant,

an order that the landlord, landlord's agent or a database operator must not list the applicant's personal information in a residential tenancy database under section 99F(1).

(5) The Tribunal must not make an order under subsection (4)(a) requiring the landlord to enter into a new residential tenancy agreement with a co-tenant who is—

(a) the person referred to in subsection (1)(a) against whom an intervention order is in force; or

(b) the person referred to in subsection (1)(b) whom the Tribunal is satisfied has committed domestic abuse against an applicant or a domestic associate of the applicant who normally or regularly resides at the residential premises,

if the landlord indicates, as part of proceedings before the Tribunal, that the landlord considers it would be unreasonable for such an order to be made.

(6) Before making an order under subsection (4)(a), the Tribunal must be satisfied—

(a) that any tenant or co-tenant under the new residential tenancy agreement could reasonably be expected to comply with the obligations under the agreement; and

(b) in a case where the landlord is the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust—that any tenant under the new residential tenancy agreement meets the eligibility requirements of the Trust.

(7) If the landlord or any co-tenant objects to an application for the making of an order under subsection (1) or (4)(a), the Tribunal must not make the order unless satisfied that the hardship likely to be suffered by the applicant or a domestic associate of the applicant who normally or regularly resides at the residential premises would, if the order were not made, be greater than any hardship likely to be suffered by the objector as a consequence of the making of the order.

(8) A new residential tenancy agreement entered into by order of the Tribunal under subsection (4)(a) must be on the same terms and conditions as the terminated tenancy agreement, subject to any changes determined by the Tribunal.

(9) In considering an application under this section, the Tribunal must have regard to such of the following orders and proceedings (if any) as are relevant to the application:

(a) an order, injunction, undertaking, plan, recognisance or other form of obligation imposed or agreement made under the *Family Law Act 1975* of the Commonwealth;

(b) an order made under the *Children's Protection Act 1993*;

(c) an order made under the *Intervention Orders (Prevention of Abuse) Act 2009*;

(d) a pending application for an order referred to in paragraph (a), (b) or (c);

(e) any other relevant legal proceedings.

(10) If a residential tenancy is terminated under this section because of an intervention order in force against a co-tenant under the residential tenancy agreement, or because a co-tenant under the agreement has committed domestic abuse, the Tribunal may order the co-tenant to make a payment of compensation to the landlord for loss and inconvenience resulting, or likely to result, from the termination of the tenancy or from any additional order made under subsection (4).

(11) If the Tribunal finds, in relation to a residential tenancy that is terminated under this section, that 1 or more, but not all, of the co-tenants under the residential tenancy agreement are responsible for damage to the residential premises or ancillary property, the Tribunal may determine that the responsible co-tenant or co-tenants are liable (to the exclusion of other co-tenants) for making any payment of compensation ordered under section 110(1)(c).

(12) If 1 or more, but not all, of the co-tenants under a residential tenancy agreement are liable under subsection (10) or (11) for making a payment of compensation, the Tribunal may give a direction under section 110(1)(i) that the bond (if any) be paid to the landlord and any co-tenant who is not liable for making the payment in such proportions as the Tribunal thinks fit (but not so as to unduly disadvantage the landlord).

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

(1) Section 99F(1)—delete "must not list personal information about a person in a residential tenancy database unless" and substitute:

may only list personal information about a person in a residential tenancy database if

(2) Section 99F(1)—after paragraph (d) insert:

and

(e) the Tribunal has not made an order under section 89A(4)(d) prohibiting the listing.

9—Insertion of section 105UA

After section 105U insert:

105UA—Termination based on abuse of rooming house resident

(1) The Tribunal may, on application by a resident, terminate a rooming house agreement from a date specified in the Tribunal's order if satisfied—

(a) that an intervention order is in force against a person who resides in the same rooming house as the applicant (whether or not under the same rooming house agreement as the applicant) for the protection of—

(i) the applicant; or

(ii) a domestic associate of the applicant who normally or regularly resides in the rooming house; or

(b) that a person who resides in the same rooming house as the applicant (whether or not under the same rooming house agreement as the applicant) has committed domestic abuse against—

(i) the applicant; or

(ii) a domestic associate of the applicant who normally or regularly resides in the rooming house.

(2) For the purposes of an application under this section, the applicant, the proprietor and any other resident under the rooming house agreement are parties to proceedings concerning the tenancy dispute.

(3) If the Tribunal makes an order under subsection (1)—

(a) the Tribunal may, subject to this section, also make an order requiring the proprietor to enter into a new rooming house agreement with the applicant or another resident under the terminated rooming house agreement (or both) for the remainder of the term of the agreement; and

(b) the new rooming house agreement must be on the same terms and conditions as the terminated rooming house agreement, subject to any changes determined by the Tribunal.

(4) The Tribunal must not make an order under subsection (3) requiring the proprietor to enter into a new rooming house agreement with a resident under the terminated rooming house agreement who is—

(a) the person referred to in subsection (1)(a) against whom an intervention order is in force; or

(b) the person referred to in subsection (1)(b) whom the Tribunal is satisfied has committed domestic abuse against an applicant or a domestic associate of the applicant who normally or regularly resides in the rooming house,

if the proprietor indicates, as part of proceedings before the Tribunal, that the proprietor considers it would be unreasonable for such an order to be made.

(5) The Tribunal must, before making an order under subsection (3) requiring a proprietor to enter into a new rooming house agreement, be satisfied that the resident or residents under the new rooming house agreement could reasonably be expected to comply with the obligations under the new agreement.

(6) If a party to proceedings on an application under this section objects to an application for the making of an order under subsection (1) or (3), the Tribunal must not make the order unless satisfied that the hardship likely to be suffered by the applicant or a domestic associate of the applicant who normally or regularly resides in the rooming house would, if the order were not made, be greater than any hardship likely to be suffered by the objector as a consequence of the making of the order.

(7) In considering an application under this section, the Tribunal must have regard to such of the following orders and proceedings (if any) as are relevant to the application:

(a) an order, injunction, undertaking, plan, recognisance or other form of obligation imposed or agreement made under the *Family Law Act 1975* of the Commonwealth;

(b) an order made under the *Children's Protection Act 1993*;

(c) an order made under the *Intervention Orders (Prevention of Abuse) Act 2009*;

(d) a pending application for an order referred to in paragraph (a), (b) or (c);

(e) any other relevant legal proceedings.

(8) If a rooming house agreement is terminated under this section because of an intervention order in force against a resident under the agreement, or because a resident under the agreement has committed domestic abuse, the Tribunal may order the resident to make a payment of compensation to the proprietor for loss and inconvenience resulting, or likely to result, from the termination of the agreement or from an order under subsection (3).

(9) If the Tribunal finds, in relation to a rooming house agreement that is terminated under this section, that 1 or more, but not all, of the residents under the agreement are responsible for damage to the rooming house or property provided by the proprietor, the Tribunal may determine that the responsible resident or residents are liable (to the exclusion of other residents under the agreement) for making any payment of compensation ordered under section 110(1)(c).

(10) If 1 or more, but not all, of the residents under a rooming house agreement are liable under subsection (8) or (9) for making a payment of compensation, the Tribunal may give a direction under section 110(1)(i) that the bond (if any) be paid to the proprietor and any resident under the agreement who is not liable for making the payment in such proportions as the Tribunal thinks fit (but not so as to unduly disadvantage the proprietor).

10—Amendment of section 112—Restraining orders

Section 112—after subsection (1) insert:

(1a) If the Tribunal is satisfied, on application by a tenant, that there is a risk that a co-tenant or a person permitted on the premises by a co-tenant may—

(a) cause serious damage to property; or

(b) cause personal injury; or

(c) if the co-tenant is a domestic associate or former domestic associate of the tenant—commit an act of domestic abuse,

the Tribunal may make a restraining order restraining the co-tenant and other persons on the premises from engaging in conduct of a kind described in the order.

(1b) In considering an application under subsection (1a), the Tribunal must have regard to such of the following orders and proceedings (if any) as are relevant to the application:

(a) an order, injunction, undertaking, plan, recognisance or other form of obligation imposed or agreement made under the *Family Law Act 1975* of the Commonwealth;

(b) an order made under the *Children's Protection Act 1993*;

(c) an order made under the *Intervention Orders (Prevention of Abuse) Act 2009*;

(d) a pending application for an order referred to in paragraph (a), (b) or (c);

(e) any other relevant legal proceedings.