

**Legislative Council—No 62**

As introduced and read a first time, 9 September 2020

South Australia

**Residential Tenancies (Miscellaneous) Amendment  
Bill 2020**

A BILL FOR

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

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### Part 2—Amendment of *Residential Tenancies Act 1995*

- 4 Amendment of section 3—Interpretation
  - 5 Substitution of section 47A
    - 47A Disclosures to be made by landlords before residential tenancy agreement entered
    - 47B Misleading or deceptive conduct etc inducing a person to enter residential tenancy agreement
    - 47C Misleading or deceptive conduct etc inducing landlord etc to enter residential tenancy agreement
  - 6 Insertion of section 52A
    - 52A Premises to be offered for rent at fixed amount
  - 7 Amendment of heading to Part 4 Division 7
  - 8 Insertion of section 67A
    - 67A Landlord to ensure premises meets minimum standards
  - 9 Amendment of section 79A—Agreement for fixed term continues if not terminated
  - 10 Amendment of section 81—Termination because possession is required by landlord for certain purposes
  - 11 Insertion of section 81A
    - 81A Wrongful termination under section 81
  - 12 Repeal of section 83
  - 13 Substitution of section 85A
    - 85A Termination by tenant where contravention of section 47A or 47B
  - 14 Amendment of section 88—Termination on application by tenant
  - 15 Insertion of Part 7A
    - Part 7A—Register of non-compliance by landlords, rooming house proprietors and agents
      - 105X Application of Part
      - 105Y Commissioner to establish register of non-compliant landlords, rooming house proprietors and agents
      - 105Z Person may apply to Commissioner for correction etc of Register
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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

- 5 This Act may be cited as the *Residential Tenancies (Miscellaneous) Amendment Act 2020*.

#### 2—Commencement

This Act comes into operation 1 month after the day on which it is assented to by the Governor.

### 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*

### 5 4—Amendment of section 3—Interpretation

Section 3(1), definition of *tenancy dispute*—after paragraph (b) insert:

- (ba) a dispute arising out of the operation of section 47A, 47B or 47C of this Act; or

### 10 5—Substitution of section 47A

Section 47A—delete section 47A and substitute:

#### 47A—Disclosures to be made by landlords before residential tenancy agreement entered

- 15 (1) Before entering a residential tenancy agreement, a landlord must give to a tenant a written notice that discloses such of the following as may be applicable:
- 15 (a) if the premises to which the residential tenancy agreement relates are for sale—details of any existing sales agency agreement for the sale;
- 20 (b) if the landlord intends to sell or otherwise dispose of the premises, or the landlord's interest in the premises, to which the residential tenancy agreement relates for sale prior to the end of the tenancy period—that fact;
- 25 (c) if a mortgagee has commenced a proceeding to enforce a mortgage over the premises to which the agreement relates—that a mortgagee is taking action for possession of the premises;
- 30 (d) if the landlord is not the owner of the premises to which the agreement relates—that the landlord has a right to let the premises;
- 35 (e) if the premises to which the agreement relates are supplied with electricity from an embedded electricity network—the prescribed details of the operator of the embedded electricity network;
- 35 (f) if the landlord or owner of the premises to which the agreement relates are aware that there is asbestos, or any other prescribed material, in or on the premises—the nature and location of the asbestos or other material;
- 40 (g) if the premises to which the agreement relates are the subject of a rating under the Nationwide House Energy Rating Scheme—that rating;

(h) any other information prescribed by the regulations for the purposes of this paragraph.

(2) A landlord who contravenes subsection (1) is guilty of an offence.  
Maximum penalty: \$5 000.

**Note—**

A contravention of this section may also result in termination of the residential tenancy agreement—see sections 85A and 88.

**47B—Misleading or deceptive conduct etc inducing a person to enter residential tenancy agreement**

(1) This section applies to the following persons:

- (a) a landlord who is not acting in trade or commerce in entering into a residential tenancy agreement;
- (b) the agent of a landlord referred to in paragraph (a) who is not acting in trade or commerce.

(2) A person to whom this section applies must not induce a person to enter into a residential tenancy agreement by engaging in conduct, or making an omission, that is misleading or deceptive, or that is likely to mislead or deceive.

(3) A person to whom this section applies must not induce a person to enter into a residential tenancy agreement by making a false or misleading representation concerning any of the following:

- (a) the landlord's interest in the land;
- (b) the rent payable under the agreement;
- (c) the location of the premises to be let under the agreement;
- (d) the characteristics of the premises to be let under the agreement;
- (e) the use to which the premises to be let under the agreement are capable of being put or may lawfully be put;
- (f) the existence or availability of facilities associated with the premises to let under the agreement.

(4) A person who contravenes subsection (2) or (3) is guilty of an offence.

Maximum penalty: \$5 000.

**Note—**

A contravention of this section may also result in termination of the residential tenancy agreement—see sections 85A and 88.

(5) Nothing in this section limits the operation of the *Fair Trading Act 1987* or the *Australian Consumer Law (SA)*.

**47C—Misleading or deceptive conduct etc inducing landlord etc to enter residential tenancy agreement**

- 5
- (1) A person must not induce a person to whom section 47B applies to enter into a residential tenancy agreement by engaging in conduct, or making an omission, that is misleading or deceptive, or that is likely to mislead or deceive.
- (2) A person must not induce a person to whom section 47B applies to enter into a residential tenancy agreement by making a false or misleading representation.
- 10
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence.  
Maximum penalty: \$5 000.
- (4) Nothing in this section limits the operation of the *Fair Trading Act 1987* or the *Australian Consumer Law (SA)*.

15 **6—Insertion of section 52A**

Before section 53 insert:

**52A—Premises to be offered for rent at fixed amount**

- 20
- (1) A landlord, or an agent of a landlord, must not advertise or otherwise offer premises for rent under a residential tenancy agreement unless the rent under the agreement is advertised or offered as a fixed amount.  
Maximum penalty: \$5 000.
- (2) However, nothing in subsection (1) prevents a person from placing a sign at or near premises for rent that—
- 25
- (a) advertises or offers premises for rent; and  
(b) does not state an amount of rent for premises.
- (3) A landlord, or an agent of a landlord, must not solicit or otherwise invite an offer of an amount of rent under a residential tenancy agreement that is higher than the advertised amount of rent for the premises.
- 30
- Maximum penalty: \$5 000.
- (4) Nothing in this section limits the operation of the *Fair Trading Act 1987* or the *Australian Consumer Law (SA)*.

**7—Amendment of heading to Part 4 Division 7**

35 Heading to Part 4 Division 7—delete "condition of the"

## **8—Insertion of section 67A**

After section 67 insert:

### **67A—Landlord to ensure premises meets minimum standards**

- 5 (1) A landlord must (at the landlord's expense) ensure that premises the  
subject of a residential tenancy agreement comply with the following  
requirements:
- 10 (a) the premises must contain—
    - (i) a toilet; and
    - (ii) cooking facilities; and
    - 15 (iii) a sink and food preparation area; and
    - (iv) hot and cold water connections in the kitchen,  
bathrooms and laundry;
  - (b) each external door and window must be able to be secured  
to prevent entry;
  - 20 (c) each bedroom, bathroom and toilet window must have  
appropriate curtains or blinds, or be constructed of frosted  
glass or other appropriate material, so as to ensure privacy;
  - (d) each window through which a person in the premises can be,  
or is likely to be, seen by a person outside of the premises  
(whether in a neighbouring property or a public place) must  
have appropriate curtains or blinds so as to ensure privacy;
  - (e) there must be a vermin proof rubbish bin or bins at the  
premises;
  - 25 (f) any other requirements set out in the regulations for the  
purposes of this paragraph.
- (2) For the purposes of this Act, a reference to a required item or area in  
subsection (1) will be taken to be a reference to an item or area  
that—
- 30 (a) is functional and otherwise in good condition; and
  - (b) is, having regard to the intended use of the premises, of an  
appropriate size and kind; and
  - (c) is in all respects fit for purpose.
- (3) A failure by a landlord to comply with this section will, for the  
purposes of this Act, be taken to be a breach of a residential tenancy  
agreement.
- 35 (4) This section is in addition to, and does not derogate from, a provision  
of a building code, or a provision of this or any other Act or law.

**9—Amendment of section 79A—Agreement for fixed term continues if not terminated**

Section 79A—after subsection (2) insert:

- 5 (3) To avoid doubt, nothing in this section prevents the parties to a residential tenancy agreement contemplated by subsection (1) from entering a new residential tenancy agreement for a fixed term.

**10—Amendment of section 81—Termination because possession is required by landlord for certain purposes**

- (1) Section 81(3), penalty provision—delete "\$2 500." and substitute:

10 \$5 000.

- (2) Section 81(4)—delete subsection (4) and substitute:

- (4) A landlord who recovers possession of premises under this section must not, without the consent of the Tribunal—

15 (a) grant a fresh tenancy over the premises within 6 months after recovering possession; or

(b) use the premises for a purpose other than—

(i) the purpose stated in the notice of termination; or

(ii) a purpose otherwise referred to in subsection (1) as a ground of termination,

20 within 6 months after recovering possession.

Maximum penalty: \$5 000.

- (5) However, subsection (4)(a) does not apply in relation to a fresh tenancy granted to a tenant under the periodic residential tenancy terminated under this section.

25 **11—Insertion of section 81A**

After section 81 insert:

**81A—Wrongful termination under section 81**

- (1) If—

30 (a) a periodic residential tenancy is terminated under section 81; and

(b) 1 or more of the following applies in relation to the termination:

(i) a landlord or other person is charged with, or found guilty of, an offence against section 81(3) or (4);

35 (ii) the ground of termination stated in the notice of termination under section 81 (or some other purpose that amounts to a ground of termination under section 81(1)) does not occur—

(A) within 6 months after recovering possession of the premises under that section; or

(B) before the end of the current period of the tenancy (had the termination not occurred),

whichever is the longer;

(iii) the termination occurs in, or otherwise involves, circumstances prescribed by the regulations for the purposes of this paragraph,

then a tenant under the periodic residential tenancy may apply to the Tribunal for an order under this section.

(2) The Tribunal may, on application under this section, make 1 or more of the following orders:

(a) an order reinstating rights under the periodic residential tenancy;

(b) an order that the landlord enter a new periodic residential tenancy with the applicant on the same terms and conditions as the terminated rooming house agreement, subject to any changes determined by the Tribunal;

(c) an order that the landlord compensate the applicant in relation to the wrongful termination;

(d) any other order that the Tribunal considers appropriate.

## **12—Repeal of section 83**

Section 83—delete the section

## **13—Substitution of section 85A**

Section 85A—delete the section and substitute:

### **85A—Termination by tenant where contravention of section 47A or 47B**

(1) The tenant under a residential tenancy agreement may, by notice of termination given to the landlord, terminate the tenancy if—

(a) within 2 months after the start of the agreement, the landlord enters into a contract for the sale of the residential premises and landlord did not, before the residential tenancy agreement was entered into, advise the tenant as required under section 47A; or

(b) the landlord contravened section 47A or 47B in relation to the residential tenancy agreement.

- 5
- (2) A notice of termination for the purposes of subsection (1)(a) must, if the landlord has given written notice advising the tenant of the contract for the sale of the residential premises (whether in accordance with section 71A(2) or otherwise), be given to the landlord within 2 months after the day on which the notice was given to the tenant.
- (3) The minimum period of notice under this section is 14 days.

#### 14—Amendment of section 88—Termination on application by tenant

Section 88(a) and (b)—delete paragraphs (a) and (b) and substitute:

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- (a) the landlord has committed a breach of the residential tenancy agreement and the breach is sufficiently serious to justify termination of the tenancy<sup>1</sup>; or
- (b) the landlord contravened section 47A or 47B in relation to the residential tenancy agreement.

#### 15—Insertion of Part 7A

After section 105W insert:

### **Part 7A—Register of non-compliance by landlords, rooming house proprietors and agents**

#### **105X—Application of Part**

- 20
- (1) This Part applies in relation to the following persons:
- (a) a landlord against whom 1 or more prescribed orders have been made by the Tribunal;
- (b) a rooming house proprietor against whom 1 or more prescribed orders have been made by the Tribunal;
- 25
- (c) an agent of a landlord or rooming house proprietor against whom 1 or more prescribed orders have been made by the Tribunal.
- (2) For the purposes of subsection (1), a reference to a landlord, rooming house proprietor or agent will be taken to include a reference to a person who was at the relevant time, but is no longer, a landlord, rooming house proprietor or agent (as the case requires).
- 30
- (3) In this section—

***prescribed order*** means—

- 35
- (a) an order that requires a person to remedy a breach of this Act, a residential tenancy agreement, a rooming house agreement, or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or

(b) an order that requires a person to comply with an obligation under this Act, a residential tenancy agreement, a rooming house agreement or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or

5 (c) an order that restrains a person from taking action that is in breach of this Act, a residential tenancy agreement, a rooming house agreement, or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or

10 (d) an order that requires a person to make a payment (which may include compensation) for a breach of this Act, a residential tenancy agreement, a rooming house agreement, or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or

15 (e) any other order declared by the regulations to be included in the ambit of this paragraph.

**105Y—Commissioner to establish register of non-compliant landlords, rooming house proprietors and agents**

20 (1) The Commissioner must establish and maintain a register of persons in relation to whom this Part applies (the *register of non-compliant landlords, rooming house proprietors and agents* or the *Register*).

(2) The Register must contain the following information in relation to each person on the Register:

(a) the full name of the person;

25 (b) the address of any premises to which a prescribed order made against the person relates;

(c) details of each prescribed order made against the person;

(d) if the landlord or rooming house proprietor has an agent or agents—the name and business address of each such agent;

30 (e) any other information required by the regulations for the purposes of this paragraph,

and may contain any other information the Commissioner thinks appropriate.

35 (3) The Register may be kept electronically, and may, if the Commissioner considers it appropriate, be combined with another register or database kept under this Act.

(4) The Commissioner must correct an entry in the Register that is not, or has ceased to be, correct.

40 (5) The Commissioner must cause a copy of the Register, as in force from time to time, to be published on a website determined by the Commissioner.

(6) The Register (including the copy of the Register published under subsection (5)) may be inspected (without charge) by any person.

**105Z—Person may apply to Commissioner for correction etc of Register**

- 5
- (1) A person to whom this Part applies may make a written request to the Commissioner to remove or correct (as the case requires) any information contained in the register in relation to the person that is incorrect.
- (2) The Commissioner must, if satisfied that the information is incorrect, remove or correct the information (as the case requires).
- 10
- (3) The Commissioner must take reasonable steps to notify the person who makes a request under subsection (1) whether or not the request is to be granted.
- (4) If the Commissioner refuses to grant a request under subsection (1), the person who made the request may, within 1 month after receiving notification of that decision, apply in writing to the Ombudsman for a review of the decision.
- 15
- (5) In conducting a review under this section, the Ombudsman may exercise the same powers as it may exercise in conducting a review of a determination under the *Freedom of Information Act 1991*.