

Legislative Council—No 25

As introduced and read a first time, 6 July 2022

South Australia

**Residential Tenancies (Rent Control) Amendment
Bill 2022**

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

- 5 This Act may be cited as the *Residential Tenancies (Rent Control) Amendment Act 2022*.

2—Commencement

This Act comes into operation 4 months after the day on which it is assented to by the Governor.

Part 2—Amendment of *Residential Tenancies Act 1995*

10 3—Insertion of section 51A

After section 51 insert:

51A—Landlord must not advertise, offer or accept rent greater than indexed rent amount

- 15 (1) This section applies to premises where a residential tenancy agreement for the premises has previously been entered into, whether or not the landlord is the same person as the landlord for the prior residential tenancy agreement.

- (2) A landlord or landlord's agent must not—
- (a) invite a person to enter into a residential tenancy agreement (including by advertisement) if the amount of rent payable under the proposed agreement is greater than the indexed rent amount for the proposed agreement; or
 - (b) enter into a residential tenancy agreement for an amount of rent greater than the indexed rent amount for the agreement.

Maximum penalty: \$5 000

- (3) However, subsection (2) does not apply where—
- (a) additional services, facilities or goods are to be provided to the prospective tenant for the tenancy under the new agreement; or
 - (b) the amenity or standard of the premises has increased substantially since the last rent increase, or if the rent has not been increased, since the rent was fixed; or
 - (c) the amount of statutory charges payable by the landlord for a year for the premises has increased by more than 20% since the last rent increase, or if the rent has not been increased, since the rent was fixed.

- (4) For the purposes of this section, the *indexed rent amount* for a residential tenancy agreement, or proposed residential tenancy agreement, is the amount determined as follows:

$$A = R \times B / C$$

Where—

A is the indexed rent amount

R is the rent payable under the most recent residential tenancy agreement relating to the premises

B is the latest CPI published for the quarter before—

- (a) in the case of a proposed agreement—the quarter in which the invitation to enter into the agreement is made; and
- (b) in the case of an agreement that has been entered into—the quarter in which the agreement commences

C is the CPI published for the corresponding quarter in the year in which the rent was last increased, or if the rent has not been increased, in which the rent was fixed

- (5) In this section—

CPI for a quarter, means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics for that quarter;

quarter means any of the following periods in a year—

- (a) 1 January to 31 March;

- (b) 1 April to 30 June;
- (c) 1 July to 30 September;
- (d) 1 October to 31 December.

4—Insertion of section 52A

Before section 53 insert:

52A—Meaning of indexed rent amount for a residential tenancy agreement

- (1) For the purposes of this Part (other than section 51A), the *indexed rent amount* for a residential tenancy agreement where the rent payable under the agreement is to be increased under section 55 is the amount determined as follows:

$$A = R \times B / C$$

Where—

A is the indexed rent amount

R is the rent payable under the residential tenancy agreement immediately before the rent is increased

B is the latest CPI published for the quarter before the commencement of the rent increase

C is the CPI published for the corresponding quarter in the year in which the rent was last increased, or if the rent has not been increased, in which the rent was fixed

- (2) In this section—

CPI for a quarter, means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics for that quarter;

quarter means any of the following periods in a year—

- (a) 1 January to 31 March;
- (b) 1 April to 30 June;
- (c) 1 July to 30 September;
- (d) 1 October to 31 December.

5—Amendment of section 55—Variation of rent

- (1) Section 55(2)(c)—delete "12" first occurring and substitute:

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- (2) Section 55(2)(c)(iii)—delete "12" wherever occurring and substitute in each case:

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- (3) Section 55(2a)—after "may" insert:

, subject to subsection (8),

(4) Section 55(6)—delete the subsection and substitute:

(6) Subject to subsection (6a), this section does not affect the operation of a provision of a residential tenancy agreement entered into before the commencement of section 5 of the *Residential Tenancies (Rent Control) Amendment Act 2022* under which the rent payable under the agreement changes automatically at stated intervals on a basis set out in the agreement.

(5) Section 55—after subsection (6) insert:

(6a) A provision of a residential tenancy agreement entered into before the commencement of section 5 of the *Residential Tenancies (Rent Control) Amendment Act 2022* which would operate automatically at any point to increase the rent payable under the agreement to an amount greater than the indexed rent amount instead operates to increase the rent to an amount equal to the indexed rent amount.

(6) Section 55(7)—delete "12" and substitute:

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(7) Section 55—after subsection (7) insert:

(8) Despite subsection (1), the landlord must not increase the total rent payable under a residential tenancy agreement to an amount greater than the indexed rent amount for the agreement unless the landlord gives notice of the proposed rent increase to the tenant and—

- (a) the tenant agrees to the increased rent; or
- (b) the Tribunal makes an order under section 55A for a rent increase to an amount that is greater than the indexed rent amount.

(9) This section applies whether or not the landlord who increases the rent is the same person as the landlord who last increased the rent.

6—Insertion of section 55A

After section 55 insert:

55A—Landlord may apply to Tribunal for rent increase greater than indexed rent amount

(1) A landlord may apply to the Tribunal for an order under this section if—

- (a) the landlord gives the tenant a notice of a proposed rent increase under section 55(8); and
- (b) the proposed rent is greater than the indexed rent amount for the residential tenancy agreement; and
- (c) the tenant does not agree to the proposed rent increase.

- (2) In deciding whether to make an order under this section, the Tribunal must have regard to—
- (a) whether additional services, facilities or goods are to be provided to the tenant under the residential tenancy agreement compared to when the rent was last increased, or if the rent has not been increased, compared to when the rent was fixed; and
 - (b) whether the amenity or standard of the premises has increased substantially since the rent was last increased, or if the rent has not been increased, since the rent was fixed; and
 - (c) whether the amount of statutory charges payable by the landlord for a year for the premises has increased by more than 20% since the rent was last increased, or if the rent has not been increased, since the rent was fixed; and
 - (d) the proposed increased rent compared to the current rent; and
 - (e) the state of repair of the premises; and
 - (f) the term of the residential tenancy agreement.
- (3) If the Tribunal finds, on an application under this section, that it is just in the circumstances to order an increase in the rent under a residential tenancy agreement above the indexed rent amount for the agreement, the Tribunal may, by order—
- (a) fix the rent payable for the premises and vary the agreement by increasing the rent payable under the agreement accordingly; and
 - (b) fix a date (which cannot be before the date of the application) from which the variation takes effect.
- (4) Without limiting the Tribunal's powers, the Tribunal may make an interim order about payment of a rent increase pending its final decision on the application.

7—Insertion of section 103A

After section 103 insert:

103A—Meaning of indexed rent amount for a rooming house agreement

- (1) For the purposes of this Part (other than section 104A), the *indexed rent amount* for a rooming house agreement where the rent payable under the agreement is to be increased under section 105I is the amount determined as follows:

$$A = R \times B / C$$

Where—

A is the indexed rent amount

R is the rent payable under the rooming house agreement when the proposal to increase the rent is made

B is the latest CPI published for the quarter before the commencement of the rent increase

C is the CPI published for the corresponding quarter in the year in which the rent was last increased, or if the rent has not been increased, in which the rent was fixed

(2) In this section—

CPI for a quarter, means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics for that quarter;

quarter means any of the following periods in a year—

- (a) 1 January to 31 March;
- (b) 1 April to 30 June;
- (c) 1 July to 30 September;
- (d) 1 October to 31 December.

8—Insertion of section 104A

After section 104 insert:

104A—Proprietor must not advertise, offer or accept rent greater than indexed rent amount

(1) This section applies to accommodation to be provided under a rooming house agreement where a prior rooming house agreement relating to the accommodation has previously been entered into, whether or not the proprietor is the same person as the proprietor for the prior rooming house agreement.

(2) A proprietor or proprietor's agent must not—

- (a) invite a person to enter into a rooming house agreement (including by advertisement) if the amount of rent payable under the proposed agreement is greater than the indexed rent amount for the agreement; or
- (b) enter into a rooming house agreement that includes an amount of rent greater than the indexed rent amount for the agreement.

Maximum penalty: \$5 000

(3) However, subsection (2) does not apply where—

- (a) additional services, facilities or goods are to be provided to the prospective resident for the residency under the new agreement; or
- (b) the amenity or standard of the premises has increased substantially since the last rent increase, or if the rent has not been increased, since the rent was fixed; or

- (c) the amount of statutory charges payable by the proprietor for a year for the premises has increased by more than 20% since the last rent increase, or if the rent has not been increased, since the rent was fixed.

- 5 (4) For the purposes of this section, the ***indexed rent amount*** for a rooming house agreement, or proposed rooming house agreement, is the amount determined as follows:

$$A = R \times B / C$$

Where—

10 ***A*** is the indexed rent amount

R is the rent payable under the most recent rooming house agreement relating to the accommodation provided under the rooming house agreement, or proposed agreement

B is the latest CPI published for the quarter before—

- 15 (a) in the case of a proposed agreement—the quarter in which the invitation to enter into the agreement is made; and
- (b) in the case of an agreement that has been entered into—the quarter in which the agreement commences

20 ***C*** is the CPI published for the corresponding quarter in the year in which the rent was last increased, or if the rent has not been increased, in which the rent was fixed

- (5) In this section—

25 ***CPI*** for a quarter, means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics for that quarter;

quarter means any of the following periods in a year—

- (a) 1 January to 31 March;
- (b) 1 April to 30 June;
- (c) 1 July to 30 September;
- 30 (d) 1 October to 31 December.

9—Amendment of section 105I—Rent increases

- (1) Section 105I(2)(c)—delete "6" and substitute:

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- (2) Section 105I(5)—delete the subsection and substitute:

- 35 (5) Subject to subsection (5a), this section does not affect the operation of a provision of a rooming house agreement entered into before the commencement of section 9 of the *Residential Tenancies (Rent Control) Amendment Act 2022* under which the rent payable under the agreement changes automatically at stated intervals on a basis set out in the agreement.
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(3) Section 105I—after subsection (5) insert:

(5a) A provision of a rooming house agreement entered into before the commencement of section 9 of the *Residential Tenancies (Rent Control) Amendment Act 2022* which would operate automatically at any point to increase the rent payable under the agreement to an amount greater than the indexed rent amount instead operates to increase the rent to an amount equal to the indexed rent amount.

(4) Section 105I(6)—delete "6" and substitute:

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(5) Section 105I—after subsection (6) insert:

(7) Despite subsection (1), the proprietor must not increase the total rent payable to an amount greater than the indexed rent amount unless the proprietor gives notice of the proposed rent increase to the resident; and—

(a) the resident agrees to the increased rent; or

(b) the Tribunal makes an order under section 105IA for a rent increase to an amount that is greater than the indexed rent amount.

(8) This section applies whether or not the proprietor who increases the rent is the same person as the proprietor who last increased the rent.

10—Insertion of section 105IA

After section 105I insert:

105IA—Proprietor may apply to Tribunal for rent increase greater than indexed rent amount

(1) A proprietor may apply to the Tribunal for an order under this section if—

(a) the proprietor gives the resident a notice of proposed rent increase under section 105I(7); and

(b) the proposed rent is greater than the indexed rent amount for the rooming house agreement; and

(c) the resident does not agree to the proposed rent increase.

(2) In deciding whether to make an order under this section, the Tribunal must have regard to—

(a) whether additional services, facilities or goods are to be provided to the tenant under the agreement compared to when the rent was last increased, or if the rent has not been increased, compared to when the rent was fixed; and

(b) whether the amenity or standard of the premises has increased substantially since the rent was last increased, or if the rent has not been increased, since the rent was fixed; and

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- (c) whether the amount of statutory charges payable by the proprietor for a year for the premises has increased by more than 20% since the rent was last increased, or if the rent has not been increased, since the rent was fixed; and
- (d) the proposed increased rent compared to the current rent; and
- (e) the state of repair of the premises; and
- (f) the term of the rooming house agreement.
- 10 (3) If the Tribunal finds, on an application under this section, that it is just in the circumstances to order an increase in the rent under a rooming house agreement above the indexed rent amount for the agreement, the Tribunal may, by order—
- 15 (a) fix the rent payable for the premises and vary the agreement by increasing the rent payable under the agreement accordingly; and
- (b) fix a date (which cannot be before the date of the application) from which the variation takes effect.
- 20 (4) Without limiting the Tribunal's powers, the Tribunal may make an interim order about payment of a rent increase pending its final decision on the application.