

South Australia

# Housing Improvement Act 2016

An Act to provide for measures to address housing that is unsafe or unsuitable for human habitation; to control the rent of unsafe or unsuitable housing; to amend the *Residential Parks Act 2007* and the *Residential Tenancies Act 1995*; to repeal the *Housing Improvement Act 1940*; and for other purposes.

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## Legislative history

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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 *Housing Improvement Act 2016*.

### 2—Commencement

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

### 3—Objects of Act

The objects of this Act are—

- (a) to ensure that housing meets the prescribed minimum housing standards; and
- (b) to regulate unsafe or unsuitable housing and the rent payable in respect of such housing; and
- (c) to raise community awareness of the prescribed minimum housing standards.

### 4—Interpretation

- (1) In this Act, unless the contrary intention appears—

**authorised officer** means a person appointed to be an authorised officer under Part 2 Division 2;

**council** has the same meaning as in the *Local Government Act 1999*;

**decision**, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

**Deputy President** means a Deputy President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

**Deputy Registrar** means a Deputy Registrar of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

**director** of a body corporate includes a person occupying or acting in the position of director of the governing body of the body corporate and includes any person in accordance with whose directions or instructions the directors of the governing body are accustomed to act;

**Fund** means the Residential Tenancies Fund under the *Residential Tenancies Act 1995*;

**housing assessment order**—see section 13;

**housing demolition order**—see section 15;

**housing improvement order**—see section 14;

**housing improvement tenancy dispute** means—

- (a) a dispute between parties or former parties to a residential tenancy agreement about matters arising under this Act; or
- (b) any matter that may be the subject of an application under this Act to the Tribunal;

**land** includes any legal estate or interest in, or right in respect of, land;

**landlord** means—

- (a) the person who grants the right of occupancy under a residential tenancy agreement; or
- (b) a successor in title to the tenanted premises whose title is subject to the tenant's interest,

and includes a prospective landlord and a former landlord;

**lawyer** means a person entitled to practise the profession of the law under the *Legal Practitioners Act 1981*;

**notice to vacate**—see section 22;

**owner** of land means—

- (a) if the land is unalienated from the Crown—the Crown; or
- (b) if the land is alienated from the Crown by grant in fee simple—the owner (at law or in equity) of the estate in fee simple; or
- (c) if the land is held from the Crown by lease or licence—the lessee or licensee; or
- (d) if the land is held by a Minister or any other agency or instrumentality of the Crown in prescribed circumstances—the Minister or agency or instrumentality of the Crown; or
- (e) if the land is under the care, control and management of a council in prescribed circumstances—the council,

and includes any other person of a prescribed class included within the ambit of this definition by the regulations;

**preliminary rent control notice**—see section 25(2);

**premises** includes a part of premises;

**prescribed minimum housing standards**—see section 5;

**prescribed residential tenancy agreement** means a residential tenancy agreement other than—

- (a) a residential park agreement within the meaning of the *Residential Parks Act 2007*; or

- (b) a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1995* to which that Act applies; or
- (c) a rooming house agreement within the meaning of the *Residential Tenancies Act 1995*;

**President** means the President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

**Registrar** means the Registrar of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

**related body corporate** has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

**rent** means an amount payable under a residential tenancy agreement for the right to occupy premises for a period of the tenancy;

**rent control notice**—see section 25(1);

**residential premises** means premises used, intended to be used, or reasonably capable of being used, as a place of residence and includes any yard, garden, outbuildings, appurtenances or area belonging to, or usually used in connection with, such premises, but does not include premises of a kind excluded from the ambit of this definition by the regulations;

**residential tenancy agreement** means an agreement under which a person grants another person, for valuable consideration, a right (which may, but need not, be an exclusive right) to occupy residential premises, but does not include a residential tenancy agreement of a kind excluded from the ambit of this definition by the regulations;

**tenant** means—

- (a) the person who is granted a right of occupancy under a residential tenancy agreement; or
- (b) the person to whom the right passes by assignment or operation of law,

and includes a prospective tenant and a former tenant;

**Tribunal** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (2) For the purposes of this Act, a person is an **associate** of another if—
- (a) they are partners; or
  - (b) 1 is a spouse, domestic partner, parent or child of another; or
  - (c) they are both trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
  - (d) 1 is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
  - (e) 1 is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate or other entity; or

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- (f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (g) a relationship of a prescribed kind exists between them; or
  - (h) a chain of relationships can be traced between them under any 1 or more of the above paragraphs.
- (3) For the purposes of subsection (2), a *beneficiary* of a trust includes an object of a discretionary trust.

## 5—Prescribed minimum housing standards

- (1) The Governor may make regulations establishing the standards that must be met for residential premises to be considered safe and suitable for human habitation (the *prescribed minimum housing standards*).
- (2) Without limiting the generality of subsection (1), regulations made under this section may make provision for or in relation to any of the following:
  - (a) the construction, condition, utility, amenity and situation of premises and any fixtures, fittings or facilities provided with premises;
  - (b) the cleanliness and sanitation of premises and any fixtures, fittings or facilities provided with premises;
  - (c) the alteration, relocation, repair and maintenance of premises and any fixtures, fittings or facilities provided with premises;
  - (d) environmental performance (including water and energy efficiency) of premises and any fixtures, fittings or facilities provided with premises;
  - (e) the dimensions of rooms of premises;
  - (f) access to and within premises, and egress from premises;
  - (g) toilet, bathroom, laundry and kitchen areas and facilities in premises;
  - (h) drainage, ventilation and lighting of premises;
  - (i) the supply of water, gas and electricity to premises;
  - (j) construction materials used in premises, and any fixtures, fittings or facilities provided with premises, that pose or may pose a risk to human health;
  - (k) the protection of premises from flooding, damp, dust and other external pollutants and infestation by vermin;
  - (l) the fire safety of premises.

## 6—Application of Act

- (1) Subject to this section, this Act is in addition to, and does not limit or derogate from the provisions of any other Act.
- (2) If residential premises consist of a site, or a dwelling installed or located on a site, to which a residential park agreement within the meaning of the *Residential Parks Act 2007* applies, this Act applies as if—
  - (a) a reference to residential premises were a reference to the site or dwelling;  
and

- (b) a reference to a residential tenancy agreement were a reference to the residential park agreement; and
  - (c) a reference to a landlord were a reference to the person (whether or not the park owner within the meaning of the *Residential Parks Act 2007*) who grants another person, for valuable consideration, a right of occupancy of the site or dwelling for residential purposes; and
  - (d) a reference to a tenant were a reference to the resident or any other person who is granted, for valuable consideration, a right of occupancy of the site or dwelling for residential purposes.
- (3) If residential premises consist of premises to which a rooming house agreement within the meaning of the *Residential Tenancies Act 1995* applies, this Act applies as if—
- (a) a reference to a residential tenancy agreement were a reference to the rooming house agreement; and
  - (b) a reference to a landlord were a reference to the rooming house proprietor; and
  - (c) a reference to a tenant were a reference to the rooming house resident.

## **Part 2—Administration**

### **Division 1—Minister**

#### **7—Functions**

- (1) The Minister's functions in connection with the administration of this Act include the following (to be performed to such extent as the Minister considers appropriate):
- (a) to further the objects of this Act;
  - (b) to promote safe and suitable standards of housing within the State by ensuring that adequate measures are taken to give effect to the provisions of this Act and to ensure compliance with this Act;
  - (c) to develop or adopt codes of practice or guidelines that are relevant to—
    - (i) the scope of the general duty under Part 4; or
    - (ii) setting standards in connection with any activity, material, substance or equipment associated with safe or suitable standards of housing; or
    - (iii) providing for other matters relevant to the operation or administration of this Act, for matters that may be subject to regulations under this Act, or for such other matters as the Minister thinks fit;
  - (d) to be a primary source of advice to the Government about preserving, protecting and promoting safe and suitable standards of housing;
  - (e) any other functions assigned to the Minister by this Act.



- (2) In addition, the Minister has the power to do anything necessary, expedient or incidental to—
- (a) performing the functions of the Minister under this Act; or
  - (b) administering this Act; or
  - (c) furthering the objects of this Act.

## **8—Delegation**

- (1) The Minister may delegate a function or power conferred on the Minister under this Act—
- (a) to a specified person or body; or
  - (b) to a person occupying or acting in a specified office or position.
- (2) A delegation—
- (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
  - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
  - (c) is revocable at will and does not prevent the delegator from acting personally in a matter.

## **Division 2—Authorised officers**

### **9—Appointment of authorised officers**

- (1) The Minister may appoint a suitably qualified person to be an authorised officer for the purposes of this Act.
- (2) An appointment under this section may be made subject to such conditions or limitations as the Minister thinks fit.
- (3) An authorised officer is subject to direction by the Minister.
- (4) The Minister may vary or revoke an appointment at any time.

### **10—Identity cards**

- (1) An authorised officer must be issued with an identity card in a form approved by the Minister—
- (a) containing the person's name and a photograph of the person; and
  - (b) stating that the person is an authorised officer for the purposes of this Act.
- (2) The identity card must be issued as soon as is reasonably practicable after the appointment is made.
- (3) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act, produce for the inspection of the person his or her identity card.

- (4) An authorised officer appointed under this Act must, on ceasing to be an authorised officer for any reason, surrender his or her identity card to the Minister.

Maximum penalty: \$250.

## **11—Powers of authorised officers**

- (1) Subject to this section, an authorised officer may, for any reasonable purpose connected with the administration or enforcement of this Act—
- (a) enter the premises for the purposes of carrying out an inspection of the premises, provided that—
    - (i) if the authorised officer believes on reasonable grounds that the premises pose or may pose an imminent risk of death or serious injury or illness to occupiers of the premises—the owner or occupier is notified prior to the proposed entry; or
    - (ii) in any other case—at least 5 working days notice is given to the owner or occupier of the proposed entry (or such shorter period as may be requested or consented to by the owner or occupier); and
  - (b) during the course of the inspection—
    - (i) ask questions of any person found in the premises; and
    - (ii) inspect any article or substance found in the premises; and
    - (iii) take and remove samples of any substance or other thing found in the premises; and
    - (iv) require any person to produce any plans, specifications, books, papers or documents; and
    - (v) examine, copy and take extracts from any plans, specifications, books, papers or documents; and
    - (vi) take photographs, films or video recordings; and
    - (vii) take measurements, make notes and carry out tests; and
    - (viii) remove any article that may constitute evidence of the commission of an offence against this Act; and
  - (c) require any person to answer any question that may be relevant to the administration or enforcement of this Act.
- (2) An authorised officer's powers under subsection (1) are qualified as follows:
- (a) the authorised officer must not exercise the power of entry in relation to residential premises unless there are reasonable grounds to believe that the premises—
    - (i) are or may be unsafe or unsuitable for human habitation; or
    - (ii) are occupied under a residential tenancy agreement;
  - (b) if, after entering residential premises, the authorised officer forms the view that the premises are not unsafe or unsuitable for human habitation, the officer must leave the premises immediately.

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- (3) In the exercise of powers under this Act, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.
- (4) An authorised officer may use reasonable force to enter any residential premises—
- (a) on the authority of a warrant issued by a magistrate; or
  - (b) if the officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.
- (5) A magistrate must not issue a warrant under subsection (4) unless satisfied—
- (a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed; or
  - (b) that the warrant is reasonably required in the circumstances.
- (6) If an authorised officer is inspecting residential premises under this section, the person in charge of the premises must provide such assistance as the authorised officer reasonably requires to facilitate the inspection.
- (7) A person who—
- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this section; or
  - (b) having been asked a question under this section, does not answer the question to the best of his or her knowledge, information and belief; or
  - (c) being the person in charge of premises subject to an inspection and having been required to provide reasonable assistance to facilitate the inspection, refuses or fails to provide such assistance,
- is guilty of an offence.  
Maximum penalty: \$5 000.
- (8) Despite any preceding provision of this section, a person is excused from answering a question or providing information or a document under this section on the ground that the answer to the question, or the information or document, may tend to incriminate that person or expose that person to a penalty.

## 12—Offences by authorised officers etc

An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to any other person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: \$5 000.

## **Part 3—Orders, notices and other action to deal with unsafe or unsuitable housing conditions**

### **Division 1—Housing assessment orders, housing improvement orders and housing demolition orders**

#### **13—Housing assessment orders**

- (1) The Minister may issue a *housing assessment order* to the owner of residential premises if the Minister has reason to believe that the premises are or may be unsafe or unsuitable for human habitation.
- (2) A housing assessment order—
  - (a) must be in the form of a written order served on the person to whom it is issued; and
  - (b) must specify the premises to which the order applies; and
  - (c) must include a requirement for assessments to be carried out of or in relation to the nature and extent of the defects in respect of the premises; and
  - (d) must include a requirement for a written report of the assessments to be submitted to the Minister in a specified form within a specified period; and
  - (e) may include a requirement that a person with specified qualifications be appointed or engaged—
    - (i) to carry out the assessments; or
    - (ii) to prepare the written report of the assessments; and
  - (f) may include an authorisation for the assessments or some of the assessments to be undertaken on behalf of the Minister by an authorised officer or other person authorised by the Minister; and
  - (g) must state that the person may, within 28 days, apply to the Tribunal for a review of the order.
- (3) The Minister may, by written order served on a person to whom a housing assessment order has been issued, vary or revoke the order.
- (4) A person to whom a housing assessment order has been issued must comply with the order.

Maximum penalty: \$10 000.

#### **14—Housing improvement orders**

- (1) The Minister may issue a *housing improvement order* to the owner of residential premises if the Minister has reason to believe that the premises are unsafe or unsuitable for human habitation and that works are required to remediate defects in respect of the premises.
- (2) A housing improvement order—
  - (a) must be in the form of a written order served on the person to whom it is issued; and

- (b) must specify the premises to which the order applies; and
  - (c) must include particulars of the defects identified in respect of the premises; and
  - (d) may include requirements for—
    - (i) preparing, in accordance with specified requirements and to the satisfaction of the Minister, a plan of works for the premises; and
    - (ii) complying with such a plan to the satisfaction of the Minister; and
  - (e) may include requirements for the person to whom it is issued to carry out specified works and may include a requirement that the works be completed within a specified period; and
  - (f) may include an authorisation for the works or some of the works to be undertaken on behalf of the Minister by an authorised officer or other person authorised by the Minister; and
  - (g) may include a requirement for the person to whom it is issued to ensure that the premises, if occupied, are vacated and, in any case, remain unoccupied for a specified period or until the completion, to the satisfaction of the Minister, of specified works; and
  - (h) must state that the person may, within 28 days, apply to the Tribunal for a review of the order.
- (3) An authorised officer may, if of the opinion that urgent action is required to address unsafe or unsuitable conditions of residential premises, issue an **emergency housing improvement order** imposing requirements of a kind that may be imposed under subsection (2) as reasonably required to address the conditions.
- (4) An emergency housing improvement order may be issued orally, but, in that event, the person to whom the order is issued must be advised forthwith of the person's right to apply to the Tribunal for a review of the order.
- (5) If an emergency housing improvement order is issued to a person, the order will cease to have effect on the expiration of 3 business days from the time of its issuing unless confirmed by a written housing improvement order issued by the Minister and served on the person.
- (6) The Minister may, by written order served on a person to whom a housing improvement order has been issued, vary or revoke the order.
- (7) A person to whom a housing improvement order has been issued must comply with the order.

Maximum penalty: \$10 000.

## 15—Housing demolition orders

- (1) The Minister may issue a **housing demolition order** to the owner of residential premises if the Minister has reason to believe that the premises are so unsafe or unsuitable that it would be impracticable or unreasonable to undertake works to remediate the defects.

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Division 1—Housing assessment orders, housing improvement orders and housing demolition orders

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- (2) A housing demolition order—
- (a) must be in the form of a written order served on the person to whom it is issued; and
  - (b) must specify the premises to which the order applies; and
  - (c) must include particulars of the defects identified in respect of the premises; and
  - (d) must require the premises to be demolished within a specified period being not less than 28 days after the service of the order; and
  - (e) must include requirements for the person to whom it is issued to ensure that the premises, if occupied, are vacated and, in any case, remain unoccupied at all times prior to demolition or until the completion, to the satisfaction of the Minister, of specified works; and
  - (f) may include authorisation for the demolition works or some of those works to be undertaken on behalf of the Minister by an authorised officer or other person authorised by the Minister; and
  - (g) must state that the person may, within 28 days, apply to the Tribunal for a review of the order.
- (3) The Minister may, by written order served on a person to whom a housing demolition order has been issued, vary or revoke the order.
- (4) A person to whom a housing demolition order has been issued must comply with the order.
- Maximum penalty: \$10 000.

**16—Registration of housing assessment order, housing improvement order or housing demolition order**

- (1) If a housing assessment order, housing improvement order or housing demolition order has been issued to a person in respect of residential premises, the Minister may apply to the Registrar-General for registration of the order in relation to land owned by the person on which the premises are located.
- (2) An application under this section must be in a form approved by the Registrar-General and must—
- (a) describe the land to which it relates; and
  - (b) do either or both of the following as the case may require:
    - (i) state that the registration of the order in relation to the land will, by virtue of subsection (5), result in the order becoming binding on each owner from time to time of the land;
    - (ii) state that the registration of the order in relation to the land will operate as a charge on the land, securing payment to the Minister of costs and expenses incurred by the Minister or by an authorised officer or other person acting on behalf of or under the authority of the Minister in taking action in the event of non-compliance with requirements of the order or in taking action in pursuance of the order.

- (3) An application must be accompanied by—
  - (a) a copy of the housing assessment order, housing improvement order or housing demolition order; and
  - (b) such information or material as the Registrar-General may require.
- (4) The Registrar-General must, on application by the Minister in accordance with this section, register the relevant order by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as the Registrar-General thinks fit.
- (5) If a housing assessment order, housing improvement order or housing demolition order is registered under this section in relation to land, the order is binding on each owner from time to time of the land, and this Division applies as if the order had been issued to each owner.
- (6) If a housing assessment order, housing improvement order or housing demolition order is registered under this section in relation to land, the Minister must, as soon as reasonably practicable, notify, in writing, each owner of the land, and each registered mortgagee or encumbrancee (if any) of the land, of the registration.
- (7) The Registrar-General must, on application by the Minister, cancel the registration of a housing assessment order, housing improvement order or housing demolition order in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as he or she thinks fit.
- (8) The Minister must make an application under subsection (7)—
  - (a) if, to the extent that may be relevant to the grounds on which the order was registered, the requirements of the order have been satisfied; and
  - (b) if the Minister takes action under this Division to carry out the requirements of the order—on payment to the Minister of the amount recoverable by the Minister under this Division in relation to the action so taken.

**17—Action by Minister on non-compliance with housing assessment order, housing improvement order or housing demolition order**

- (1) If the requirements of a housing assessment order, housing improvement order or housing demolition order are not complied with, the Minister may take any action required by the order.
- (2) Any action to be taken by the Minister under subsection (1) may be taken on the Minister's behalf by an authorised officer or another person authorised by the Minister for the purpose.
- (3) If a person other than an authorised officer is authorised to take action under subsection (2), the following provisions apply:
  - (a) the Minister must issue the person with an instrument of authority;
  - (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
  - (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;

- (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.

## **18—Recovery of costs and expenses incurred by Minister**

- (1) If action has been taken in relation to residential premises by the Minister either on non-compliance with the requirements of a housing assessment order, housing improvement order or housing demolition order or in pursuance of such an order, the Minister may recover, in accordance with this section, the reasonable costs and expenses incurred by the Minister in taking that action as a debt from the person to whom the order was issued.
- (2) If—
  - (a) a housing assessment order, housing improvement order or housing demolition order has been registered in relation to land under section 16; or
  - (b) the registration of a housing assessment order, housing improvement order or housing demolition order in relation to land has been cancelled under that section,

the Minister may recover, in accordance with this section, an amount prescribed by regulation in respect of the registration or cancellation (as the case may be) as a debt from the owner of the residential premises at the time of registration or cancellation.

- (3) If an amount is recoverable from an owner by the Minister under this section, the following provisions apply:
  - (a) the Minister may, by notice in writing to the owner, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the owner, and, if the amount is not paid by the owner within that period, the owner is liable to pay interest charged at the prescribed rate per annum on the amount unpaid;
  - (b) if the relevant order is registered under section 16, the unpaid amount together with any interest charge payable under paragraph (a) is, until paid, a charge in favour of the Minister on the land owned in relation to which the order is registered;
  - (c) if the premises to which the relevant order applies are occupied under a residential tenancy agreement, the unpaid amount together with any interest charge payable under paragraph (a) may be recovered in the form of rent as follows:
    - (i) the Minister may recover the amount by giving notice in the prescribed form to the tenant requiring the tenant to pay rent to the Minister, for a specified period or until the debt has been satisfied;
    - (ii) if the tenant fails to pay rent to the Minister in accordance with the requirements of the notice, the Minister may, in respect of any amount in arrears, exercise all remedies that would otherwise be enforceable by a landlord against a tenant for recovery of rent in arrears;
    - (iii) the Minister may, by further notice in writing to the tenant vary or revoke a notice given under subparagraph (i);



- (iv) the Minister must give notice in writing to the landlord of any action taken by the Minister under this subsection.
- (4) A landlord who is given notice under subsection (3)(c)(iv) must ensure that any rent received by or on behalf of the landlord in respect of the premises is forwarded to the Minister within 14 days.  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (5) Any amount recovered under subsection (3)(c) will be set-off against the debt applying under subsection (1).
- (6) A charge imposed on land by this section has priority over—
  - (a) any prior charge imposed on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
  - (b) any other charge on the land other than a charge registered prior to the registration of the housing assessment order, housing improvement order or housing demolition order in relation to the land.
- (7) If any default is made in payment of an amount that is, by virtue of this section, a charge on land in favour of the Minister, the Minister has the same powers in respect of the land charged as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in payment of money secured by the mortgage.

### **19—Action, and recovery of costs and expenses, by registered mortgagee or encumbrancee or by tenant**

- (1) If the requirements of a housing assessment order, housing improvement order or housing demolition order are not complied with, any tenant or registered mortgagee or encumbrancee of the premises to which the order applies may take such action required by the order as may be authorised by the Minister.
- (2) An authorisation of the Minister under subsection (1)—
  - (a) must be in writing; and
  - (b) may be subject to conditions; and
  - (c) may be varied or revoked by the Minister at any time.
- (3) If action has been taken by a tenant under subsection (1), the reasonable costs and expenses incurred by the tenant in taking that action—
  - (a) are recoverable by the tenant as a debt from the person to whom the housing assessment order, housing improvement order or housing demolition order was issued; and
  - (b) may be deducted by the tenant from any rent payable in respect of the premises,
 despite any covenant or agreement to the contrary.

## **Housing Improvement Act 2016—3.4.2017 to 31.7.2017**

Part 3—Orders, notices and other action to deal with unsafe or unsuitable housing conditions

Division 1—Housing assessment orders, housing improvement orders and housing demolition orders

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- (4) If action has been taken by a registered mortgagee or encumbrancee under subsection (1), the reasonable costs and expenses incurred by the registered mortgagee or encumbrancee in taking that action, are—
- (a) recoverable as a debt from the person to whom the housing assessment order, housing improvement order or housing demolition order was issued; and
  - (b) in the case of action taken by a registered mortgagee on notice in writing given to the mortgagor—taken, on notice in writing given to the mortgagor, to be added to the principal sum owing under the mortgage, and until repaid, subject to interest at the same rate and payable at the same times as the balance of the amount owing under the mortgage,

despite any covenant or agreement to the contrary or the provisions of the *Real Property Act 1886*.

### **20—Owner of residential premises may seek reimbursement of costs and expenses from other owners**

The Tribunal may, on application by an owner of residential premises who has been issued with a housing assessment order, housing improvement order or housing demolition order and who has incurred costs and expenses in carrying out the requirements of the order or reimbursing the Minister for action taken in pursuance of the order, make an order for payment of the whole or a portion of the costs and expenses, as the Tribunal considers appropriate, against one or more other owners of the premises.

### **21—Interaction of this Division with *Real Property Act 1886***

- (1) The provisions of this Division relating to registration by the Registrar-General and the priority of charges apply despite the provisions of the *Real Property Act 1886*.
- (2) Without limiting subsection (1), despite the provisions of the *Real Property Act 1886*, a charge imposed on land under this Division is not discharged by the exercise of a power of sale or foreclosure under that Act and is not discharged by the exercise of a power of sale under any other Act.

## **Division 2—Notice to vacate**

### **22—Notice to vacate**

- (1) If a housing improvement order or housing demolition order issued in respect of residential premises imposes a requirement for the premises to be vacated, the Minister must issue a notice to the occupiers of the premises to vacate the premises (a *notice to vacate*).
- (2) A notice to vacate must—
  - (a) be in the form of a written notice served on the occupiers of the premises; and
  - (b) specify the premises; and
  - (c) state the reasons for issuing the notice; and
  - (d) require the occupiers to vacate the premises by a specified date (allowing as much time as the circumstances will safely permit); and

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- (e) if the premises are occupied under a residential tenancy agreement, state that, by force of the notice—
    - (i) the tenancy will be terminated on the specified date; and
    - (ii) the tenant must give up possession of the premises on or before that date; and
    - (iii) the landlord is authorised to take possession of the premises on that date; and
  - (f) state that the persons to whom the notice is issued may, within 28 days, apply to the Tribunal for a review of the notice.
- (3) The Minister may vary or revoke a notice under this section by subsequent written notice.
  - (4) A person to whom a notice to vacate has been issued—
    - (a) must comply with the notice; and
    - (b) must not let or sublet the premises to which it applies, or cause the premises to be let or sublet.

Maximum penalty: \$2 500.

### **23—Power of Tribunal to make order for ejectment or compensation**

- (1) If 1 or more occupiers of premises in respect of which a notice to vacate has been issued have not given up possession of the premises by the date specified in the notice, the Tribunal may, on application by the owner of the premises or the Minister, make an order for the ejectment of the occupier or occupiers.
- (2) If premises in respect of which a notice to vacate has been issued have been occupied under a residential tenancy agreement, the Tribunal may, on application by the tenant, if the Tribunal considers it appropriate to do so in the circumstances, make an order requiring the landlord to compensate the tenant for loss and inconvenience resulting, or likely to result, from the early termination of the tenancy under this Division (including, but not limited to, the reasonable costs incurred by the tenant in relocating to other premises).

### **24—Enforcement of ejectment order**

- (1) If an order for ejectment is made by the Tribunal under section 23(1) and the person in whose favour the order was made advises the Tribunal, within 14 days of the day on which the order takes effect or such longer period as the Tribunal may allow, that the order has not been complied with—
  - (a) the order is enforceable by a bailiff (and, subject to subsection (3), only by such a bailiff); and
  - (b) the bailiff must enforce the order as soon as is practicable after the Tribunal is advised that it has not been complied with.
- (2) A bailiff enforcing an order for ejectment in relation to premises may enter the premises, ask questions and take all steps as are reasonably necessary for the purpose of enforcing the order.
- (3) A police officer must, if requested by a bailiff, assist the bailiff in enforcing an order for possession.

- (4) In the exercise of the powers conferred by this section, a bailiff may use the force that is reasonable and necessary in the circumstances.
- (5) A person must not hinder or obstruct a bailiff in the exercise of the powers conferred by this section.  
Maximum penalty: \$1 250.
- (6) A person questioned pursuant to this section must not refuse or fail to answer the question to the best of his or her knowledge, information and belief.  
Maximum penalty: \$1 250.
- (7) However, a person is not obliged to answer a question under this section if to do so might tend to incriminate the person or to make the person liable to a penalty, or would require the disclosure of information that is privileged under the principles of legal professional privilege.
- (8) In this section—  
*bailiff* means a bailiff appointed under the *South Australian Civil and Administrative Tribunal Act 2013*.

## **Division 3—Rent control notices**

### **25—Rent control notices**

- (1) The Minister may, if a housing improvement order has been issued in respect of residential premises, by notice in the Gazette, declare the premises to be subject to rent control (a *rent control notice*).
- (2) Before making a notice under subsection (1), the Minister must give the owner of the residential premises a preliminary notice (a *preliminary rent control notice*)—
  - (a) stating the intention of the Minister to make the rent control notice; and
  - (b) specifying the premises to which the rent control notice is intended to apply; and
  - (c) stating the maximum rent proposed for the premises as fixed by the Minister after taking into account—
    - (i) the condition of the premises; and
    - (ii) the capital value of the premises as determined under the *Valuation of Land Act 1971*; and
    - (iii) to the extent that the Minister may reasonably be able to determine, the market rent for residential premises of that kind in the same or similar localities; and
    - (iv) any other factors prescribed by regulation or considered relevant by the Minister; and
  - (d) inviting the person to show, within a specified time not exceeding 14 days why a rent control notice should not be made (by making representations to the Minister).

- (3) A notice under subsection (2) may state varying amounts as the proposed maximum rent for the premises according to—
  - (a) whether the rent applies in relation to the premises as a whole or in part; or
  - (b) whether the premises are furnished or unfurnished.
- (4) After considering any representations made within the time specified under subsection (2)(d), the Minister may—
  - (a) proceed with making the rent control notice—
    - (i) in accordance with the terms of the preliminary rent control notice; or
    - (ii) with modifications from the terms of the preliminary rent control notice; or
  - (b) determine not to proceed with the rent control notice.
- (5) The Minister may, on application by the owner of premises to which a rent control notice applies or on the Minister's own initiative, by subsequent notice in the Gazette, vary or revoke the rent control notice if satisfied that it is just or reasonable to do so.
- (6) A rent control notice—
  - (a) comes into operation on the day on which it is made or such later date as may be specified in the notice; and
  - (b) remains in force according to the terms of the notice—
    - (i) for a period specified in the notice; or
    - (ii) until revoked by the Minister,

(despite any change in ownership or occupancy of the residential premises).

#### **26—Offence to charge more than maximum rent under rent control notice**

If a rent control notice applies to residential premises, a person must not charge, demand or receive rent in respect of the premises that is more than the maximum rent fixed under the notice.

Maximum penalty: \$2 500.

Expiation fee: \$210.

### **Division 4—Special provisions relating to prescribed residential tenancy agreements**

#### **27—Landlord must give notice of intention to carry out inspections or works under housing assessment order or housing improvement order**

- (1) A landlord under a prescribed residential tenancy agreement in respect of residential premises to which a housing assessment order or housing improvement order applies must comply with the following requirements:
  - (a) the landlord may enter the premises to inspect the premises in connection with the order, but only in accordance with a written notice given to the tenant no less than 7 and no more than 14 days before the day of entry—

- (i) stating the purpose of the proposed entry and the date of the proposed entry; and
    - (ii) specifying a period of up to 2 hours (which must be between 8 am and 8 pm on any day other than a Sunday or public holiday) within which the proposed entry will occur,  
  
(however, if the premises are in a remote location or it is necessary for the landlord to be accompanied by a person for the purposes of the inspection, the notice need not specify a 2 hour period within which the proposed entry is to occur, but the entry must occur between 8 am and 8 pm on any day other than a Sunday or public holiday);
  - (b) the landlord may enter the premises to carry out works required by the order but only at a time between 8 am and 8 pm on any day other than a Sunday or public holiday of which the tenant has been given at least 48 hours notice.
- (2) Subsection (1) does not apply if the inspection or works are required to be carried out in an emergency.

## **28—Landlord must keep and provide record of rent if rent control notice applies**

A landlord who receives rent under a prescribed residential tenancy agreement in respect of residential premises to which a rent control notice applies must comply with the following requirements:

- (a) the landlord must keep a record of the following details for the rent:
  - (i) the date on which the rent was received;
  - (ii) the name of the person paying the rent;
  - (iii) the amount paid;
  - (iv) the period of the tenancy to which the rent relates;
  - (v) the address of the premises to which the rent relates;
- (b) the landlord must keep the record for a period of 2 years from the date of the receipt of the rent;
- (c) if the rent was paid other than into an ADI account, the landlord must, within 48 hours after receiving the rent, give the tenant a copy of the details referred to in paragraph (a) in respect of the rent;
- (d) if the rent was paid into an ADI account, the landlord is only required to provide the tenant with a copy of the details referred to in paragraph (a) in respect of the rent if the tenant makes a written request for it, in which case the landlord must give the tenant such a copy in respect of the period specified in the request within 7 days of the making of the request.

Maximum penalty: \$1 250.

Expiation fee: \$160.

**29—Termination of prescribed residential tenancy agreement by tenant**

- (1) The tenant under a prescribed residential tenancy agreement in respect of residential premises to which an order or notice under this Part applies, may, by notice of termination given to the landlord, terminate the tenancy without specifying a ground of termination.
- (2) The minimum period of notice under this section is 7 days.

**30—Termination or variation of prescribed residential tenancy agreement by landlord**

- (1) If a landlord gives a tenant a notice of termination, or a notice of variation of a prescribed kind, of a prescribed residential tenancy agreement in respect of residential premises—
  - (a) that have, within the preceding 6 months, been the subject of an inspection by an authorised officer under section 11; or
  - (b) to which an order or notice under this Part applies (other than a notice to vacate),

the notice will be ineffectual unless it is given in the prescribed manner and form on 1 or more grounds prescribed by regulation for the purposes of this subsection and the Tribunal has confirmed the notice in accordance with subsection (2).

- (2) The Tribunal may, on application by a landlord who gives, or a tenant who receives, a notice referred to in subsection (1)—
  - (a) if the Tribunal is satisfied of the genuineness of the landlord's grounds for the giving of the notice, do 1 or both of the following:
    - (i) confirm the notice;
    - (ii) make an order—
      - (A) in the case of a notice of termination—for termination of the residential tenancy agreement and for possession of the residential premises; or
      - (B) in the case of a notice of variation—for variation of the residential tenancy agreement; and
  - (b) if the Tribunal is not satisfied of the genuineness of the landlord's grounds for the giving of the notice, do 1 or both of the following:
    - (i) set aside the notice;
    - (ii) make an order reinstating the residential tenancy on such conditions (if any) as the Tribunal considers appropriate.
- (3) The Tribunal may, if it considers it appropriate to do so in the circumstances of the case, make an order compensating the tenant for loss or inconvenience resulting, or likely to result, from the termination or variation of the tenancy under this section (including, but not limited to, the reasonable costs incurred by the tenant in relocating to other premises).

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- (4) A landlord who recovers possession of premises under this section must not, without the consent of the Tribunal, grant a fresh tenancy over the premises within 6 months after recovering possession.

Maximum penalty: \$1 250.

- (5) In this section—

*variation of a prescribed kind*, in relation to a prescribed residential tenancy agreement, means a variation that has the effect of—

- (a) removing property or rights ordinarily enjoyed by the tenant in connection with the premises; or
- (b) making such property or rights subject to a new or additional charge or other consideration.

## **Division 5—Obligation to publicise orders and notices**

### **31—Orders and notices under this Part to be displayed on premises**

The owner of residential premises to which an order or notice under this Part (other than a preliminary rent control notice) applies must ensure that a copy of the order or notice showing the terms of each order or notice is displayed in legible form in a prominent position at the premises as directed by the Minister.

Maximum penalty: \$2 500.

Expiation fee: \$210.

### **32—Orders and notices under this Part to be declared in advertisements for sale or lease of land and in lease agreement**

- (1) If residential premises to which an order or notice under this Part (other than a preliminary rent control notice) applies are offered for sale, the vendor must ensure that each advertisement published or caused to be published by the vendor in relation to the sale includes a statement that such order or notice applies to the premises.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) If residential premises to which an order or notice under this Part (other than a preliminary rent control notice) applies are offered for lease, the lessor must ensure that—

- (a) each advertisement published or caused to be published by the lessor for the lease, and the lease agreement, includes a statement that such order or notice applies to the premises; and
- (b) if a rent control notice applies to the premises—any oral or written representation made to a lessee about the amount of rent payable for the premises includes a statement that the rent payable is the amount fixed under the rent control notice.

Maximum penalty: \$2 500.

Expiation fee: \$210.



- (3) A statement required to be made under subsection (1) or (2) in an advertisement or document must be in legible form and appear in a reasonably prominent position in the advertisement or document.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (4) If a person fails to comply with subsection (2), the lessee may rescind the lease by giving notice to the person in the prescribed manner and form of the lessee's intention not to be bound by the lease.

- (5) In this section—

*lessee*, in relation to premises, includes a prospective lessee and a person authorised to act on behalf of a lessee or prospective lessee in the lease of the premises;

*lessor*, in relation to premises, includes a prospective lessor and a person authorised to act on behalf of a lessor or prospective lessor in the lease of the premises;

*vendor*, in relation to premises, includes a prospective vendor and a person authorised to act on behalf of a vendor or prospective vendor in the sale of the premises.

## Division 6—Review by Tribunal

### 33—Review by Tribunal

- (1) Application for review may be made to the Tribunal as follows:
- (a) a person who has been issued with a housing assessment order, a housing improvement order, a housing demolition order or a notice to vacate may apply for a review by the Tribunal of the order or notice, or a variation of the order or notice, under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*;
  - (b) the owner of premises in respect of which a rent control notice has been made may apply for a review by the Tribunal of the notice, or a variation of the notice, under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (2) The application must be made within 28 days after the order or notice is issued or made or any variation of the order or notice is made (unless the Tribunal allows an extension of time).

## Part 4—General duty

### 34—General duty

- (1) The owner of residential premises must take reasonable steps to ensure that the premises are safe and suitable for human habitation.
- (2) Without limiting subsection (1), in the case of residential premises that are occupied under a residential tenancy agreement—
- (a) the landlord must take reasonable steps to ensure that the premises are, and remain, safe and suitable for human habitation; and
  - (b) the tenant must take reasonable steps—

- (i) to comply with any action taken by the landlord to ensure that the premises are safe and suitable for human habitation; and
  - (ii) to ensure that the premises are maintained in a reasonable state for the purposes of human habitation.
- (3) In determining what is reasonable for the purposes of subsections (1) and (2)(a), regard must be had, amongst other things, to—
  - (a) the prescribed minimum housing standards; and
  - (b) a relevant code of practice prescribed or approved under the regulations; and
  - (c) the potential impact on occupiers of the premises of a failure to comply with the duty; and
  - (d) any matter prescribed by regulation.
- (4) A person will be taken not to be in breach of this section if the person is acting in circumstances prescribed by regulation.
- (5) Subject to subsections (6) and (7), a person who breaches this section is not, on account of the breach alone, liable to any civil or criminal action.
- (6) If an owner breaches subsection (1), compliance with the provision may be enforced by the issuing of a housing assessment order, housing improvement order or housing demolition order.
- (7) Subsection (5) does not limit or derogate from any other provision of this Act.

## **Part 5—South Australian Civil and Administrative Tribunal**

### **35—Jurisdiction of Tribunal**

- (1) The Tribunal has jurisdiction to deal with a housing improvement tenancy dispute.
- (2) However, the Tribunal does not have jurisdiction to deal with a monetary claim under this Act if the amount claimed exceeds \$40 000 unless the parties to the proceedings consent in writing to the claim being dealt with by the Tribunal (and if consent is given, it is irrevocable).
- (3) If a monetary claim under this Act is above the Tribunal's jurisdictional limit, the claim and any other claims related to the same residential tenancy agreement may be brought in a court competent to hear and determine a claim founded on contract for the amount of the claim.
- (4) A court in which proceedings are brought under subsection (3) may exercise the powers of the Tribunal under this Act and, to such extent as may be necessary and appropriate, the powers of the Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013*.

### **36—Intervention by Minister**

- (1) The Minister may intervene in proceedings before the Tribunal or a court concerning a housing improvement tenancy dispute.
- (2) If the Minister intervenes in proceedings, he or she becomes a party to the proceedings and has all the rights (including rights of appeal) of a party to the proceedings.

### **37—Amendment of proceedings**

The Tribunal may amend proceedings if satisfied that the amendment will contribute to the expeditious and just resolution of the questions in issue between the parties.

### **38—General powers of Tribunal to resolve housing improvement tenancy disputes**

- (1) The Tribunal may, on application by a party to a housing improvement tenancy dispute—
  - (a) restrain an action in breach of this Act; or
  - (b) require a person to comply with an obligation under this Act; or
  - (c) order a person to make a payment (which may include compensation) under this Act for a breach of this Act; or
  - (d) modify a residential tenancy agreement to enable the tenant to recover compensation payable to the tenant by way of a reduction in the rent otherwise payable under the agreement; or
  - (e) relieve a party to a residential tenancy agreement from the obligation to comply with a provision of the agreement; or
  - (f) terminate a residential tenancy agreement or declare that a residential tenancy agreement has, or has not, terminated; or
  - (g) reinstate rights under a residential tenancy agreement that have been forfeited or have otherwise terminated; or
  - (h) require payment of rent into the Fund until conditions stipulated by the Tribunal have been complied with; or
  - (i) require that rent so paid into the Fund be paid out and applied as directed by the Tribunal; or
  - (j) require a tenant to give up possession of residential premises to the landlord; or
  - (k) make orders to give effect to rights and liabilities arising from the assignment of a residential tenancy agreement; or
  - (l) exercise any other power conferred on the Tribunal under this Act; or
  - (m) do anything else necessary or desirable to resolve a housing improvement tenancy dispute.
- (2) The Tribunal does not have jurisdiction to award compensation for damages arising from personal injury.

### **39—Restraining orders**

- (1) The Tribunal may, on application by the owner or occupier of residential premises, if satisfied—
  - (a) that a person who, following—
    - (i) the issuing of an order or notice under Part 3 in relation to the premises; or
    - (ii) the making of a decision by the Tribunal in relation to the premises,

is causing or may cause serious damage to property; or

- (b) that a person is failing to comply with the general duty under Part 4 in relation to the premises in any material respect,

may make an order (a *restraining order*) restraining the person on the premises from engaging in conduct of a kind described in the order.

- (2) An application for a restraining order may be made without notice to the person against whom the order is sought but, if the order is made without giving the person a reasonable opportunity to respond to the allegations against him or her, the Tribunal must allow him or her a reasonable opportunity to satisfy it that the order should not continue in operation.

#### **40—Special powers to make orders**

- (1) The Tribunal may in proceedings under this Act make an order in the nature of—
- (a) an injunction (including an interim injunction); or
  - (b) an order for specific performance.
- (2) However, a member of the Tribunal who is not legally qualified cannot make an order under subsection (1) without the approval of the President or a Deputy President of the Tribunal.
- (3) The Tribunal may, in the exercise of its jurisdiction under this Act, make ancillary or incidental orders.

#### **41—Application to vary or set aside order**

- (1) A party to proceedings before the Tribunal under this Act may apply to the Tribunal for an order varying or setting aside an order made in the proceedings.
- (2) An application to vary or set aside an order must be made within 1 month of the making of the order (unless the Tribunal allows an extension of time).
- (3) If the reasons of the Tribunal are not given in writing at the time of making an order and the applicant for an order varying or setting aside the order then requests the Tribunal to state its reasons in writing, the time for making the application runs from the time when the applicant receives the written statement of the reasons.
- (4) This section does not limit any provision of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (5) Proceedings under this section do not constitute a review of a decision for the purposes of sections 34 or 70 of the *South Australian Civil and Administrative Tribunal Act 2013*.

#### **42—Reasons for decisions**

The Tribunal must, if requested by a person affected by a decision of the Tribunal, where written reasons have not been given, state in writing the reasons for the Tribunal's decision.

#### 43—Time for application for review or instituting appeal

Furthermore, if the reasons for a decision of the Tribunal have not been given in writing and—

- (a) an applicant for review of the decision of the Tribunal under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*; or
- (b) a person appealing against a decision of the Tribunal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013*,

requests the Tribunal within 1 month of the making of the decision to state the reasons in writing, the time for making the application for review or instituting the appeal (as the case may be) runs from the time when the person receives the written statement of reasons.

#### 44—Representation in proceedings before Tribunal

- (1) A party to a housing improvement dispute may only be represented in proceedings before the Tribunal (including a conference or mediation under sections 50 and 51 respectively of the *South Australian Civil and Administrative Tribunal Act 2013*) in accordance with this section.
- (2) A party may be represented by a lawyer if—
  - (a) all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage a party who does not have a professional representative; or
  - (b) the Tribunal is satisfied that the party is unable to present the party's case properly without assistance; or
  - (c) another party to the dispute is a lawyer, or is represented by a professional representative; or
  - (d) the Minister has intervened in, or is a party to, the proceedings.
- (3) A party may be represented by a person who is not a lawyer if—
  - (a) the party is a body corporate and the representative is an officer or employee of the body corporate; or
  - (b) the party is a landlord and the representative is an agent, or an officer or employee of an agent, appointed by the landlord to manage the premises on the landlord's behalf; or
  - (c) all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage an unrepresented party; or
  - (d) the Tribunal is satisfied that the party is unable to present the party's case properly without assistance.
- (4) In this section—

***professional representative*** means a lawyer, a law clerk, or a person who holds or has held legal qualifications under the law of the State or another place.

## **45—Remuneration of representative**

A person must not ask for or receive a fee for representing a party to a housing improvement tenancy dispute in proceedings before the Tribunal (including a conference or mediation under sections 50 and 51 respectively of the *South Australian Civil and Administrative Tribunal Act 2013*) unless—

- (a) the representative is a lawyer or a law clerk employed by a lawyer; or
- (b) the representative is an officer or employee of a body corporate who represented the body corporate in the proceedings; or
- (c) the representative is an agent, or an officer or employee of an agent, who represented a landlord in the proceedings whose premises the agent had been appointed to manage on behalf of the landlord.

Maximum penalty: \$7 500.

## **Part 6—Register**

### **46—Register**

- (1) The Minister must keep a register in accordance with this section.
- (2) The register is to be in a form determined by the Minister.
- (3) The Minister must record in the register—
  - (a) the address of each residential premises to which an order or notice under Part 3 applies; and
  - (b) in the case of residential premises to which a rent control notice applies—the maximum rent fixed for the premises; and
  - (c) such other information as is prescribed by regulation.
- (4) The register must be kept available for inspection, without fee, by members of the public—
  - (a) during ordinary office hours at a public office, or public offices, determined by the Minister; and
  - (b) on a website determined by the Minister.
- (5) The Minister may, in his or her absolute discretion, exclude particular details in the register from inspection by members of the public.
- (6) A member of the public may, on payment of the fee fixed by regulation, obtain a copy of any part of a register.

## **Part 7—Miscellaneous**

### **47—Contract to avoid Act**

- (1) An agreement or arrangement that is inconsistent with this Act or purports to exclude, modify or restrict the operation of this Act, is (unless the inconsistency, exclusion, modification or restriction is expressly permitted under this Act) to that extent void.
- (2) A purported waiver of a right under this Act is void.

- (3) A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of this Act (directly or indirectly) is guilty of an offence.

Maximum penalty: \$5 000.

#### **48—Protection from liability**

- (1) No civil or criminal liability will attach to an authorised officer or other person engaged in the administration of this Act for an act or omission in good faith—
- (a) in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act; or
  - (b) in the carrying out of any direction or requirement given or imposed in accordance with this Act.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

#### **49—Offences by bodies corporate**

- (1) If a body corporate is guilty of an offence against this Act, each director and the manager of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director or the manager (as the case may be) proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (2) A person referred to in this section may be prosecuted and convicted of an offence against this section whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.

#### **50—Tribunal may exempt agreement or premises from provision of Act**

- (1) The Tribunal may, on application by an interested person, if the Tribunal considers it necessary or desirable in the circumstances, order that a provision of this Act will not apply in relation to a prescribed residential tenancy agreement or prospective prescribed residential tenancy agreement or to particular residential premises occupied under a prescribed residential tenancy agreement, or will apply in a modified manner (and the order will have effect accordingly).
- (2) An order may be made on conditions that the Tribunal considers appropriate.
- (3) A person must not contravene a condition of an order.

Maximum penalty: \$1 250.

#### **51—Service**

- (1) An order, notice or other document required or authorised to be given to a person under this Act may—
- (a) in the case of a tenant, subtenant or occupier of residential premises, be given to the person—
    - (i) personally; or
    - (ii) by leaving it for the person at the premises with someone apparently over the age of 18 years; or
    - (iii) by posting it to the person at the premises; or

- (iv) by transmitting it to the person by fax or email to a fax number or email address provided by the person for the purposes of service under this Act (in which case the notice or document will be taken to have been given or served at the time of transmission); or
  - (v) by fixing it on a conspicuous part of the premises; or
  - (vi) by giving it in some other manner permitted by the Tribunal;
- (b) in any other case, be given to the person, or an agent of the person—
- (i) personally; or
  - (ii) by leaving it for the person, or agent of the person, at the person's or agent's place of residence, employment or business with someone apparently over the age of 18 years; or
  - (iii) by posting it to the person, or agent of the person, at the person's or agent's last known place of residence, employment or business; or
  - (iv) by transmitting it to the person, or agent of the person, by fax or email to a fax number or email address provided by the person or agent for the purposes of service under this Act (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) If 2 or more persons are owners, occupiers, landlords, tenants or subtenants of residential premises, an order, notice or other document is duly given if given to any one of those persons, provided that reasonable attempts have been made to locate, and effect service on, each of the other relevant persons.
- (3) An order, notice or other document required or authorised to be given to an occupier or subtenant under this Act need not address the occupier or subtenant by name.

## **52—False or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.

Maximum penalty: \$10 000.

## **53—Continuing offences**

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—
- (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence; and
  - (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.



- (2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done regardless of whether any period within which, or time before which, the act is required to be done has expired or passed.

#### **54—Commencement of proceedings for summary offences**

- (1) Proceedings for an offence against this Act may only be commenced by—
- (a) the Minister; or
  - (b) an authorised officer.
- (2) Proceedings for an offence against this Act may be commenced at any time within 3 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time after the date of the alleged commission of the offence.
- (3) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

#### **55—Orders in respect of contraventions**

- (1) If, in proceedings for an offence under this Act, the court finds that the defendant contravened this Act and the contravention has resulted in injury or loss to a person, or damage to property of the person, the court may, in addition to any penalty it may impose, do one or more of the following:
- (a) order the defendant to take specified action to prevent further injury or loss to the person, or damage to property of the person;
  - (b) order the defendant to pay—
    - (i) to any public authority that has incurred costs or expenses in taking action to prevent the injury, loss or damage; and
    - (ii) to any person who has suffered injury or loss, or damage to property, as a result of the contravention, or incurred costs or expenses in taking action to prevent such injury, loss or damage,the reasonable costs and expenses so incurred, or compensation for the injury, loss or damage suffered, as the case may be, in such amount as is determined by the court.
- (2) If a person is found by a court to have contravened this Act, the court may, in addition to any penalty it may impose, order the person to pay to the Minister an amount not exceeding the court's estimation of the amount of the economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (3) For the purposes of subsection (2), an economic benefit obtained by delaying or avoiding costs will be taken to be an economic benefit acquired as a result of a contravention if the contravention can be attributed (in whole or in part) to that delay or avoidance.
- (4) The court may, by an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(5) An amount paid to the Minister in accordance with an order under subsection (2) must be paid into the consolidated account.

(6) In this section—

*public authority* includes a Minister, statutory authority or council.

## **56—Recovery from related bodies corporate**

If—

- (a) an amount is payable by a body corporate pursuant to this Act or an order of a court made under this Act; and
- (b) at the time of the contravention giving rise to that liability, that body and another body were related bodies corporate,

the related bodies corporate are jointly and severally liable to make the payment.

## **57—Joint and several liability**

Where an amount is recoverable by the Minister from 2 or more persons under a provision of this Act, the provision is to be construed as if those persons were jointly and severally liable to pay the amount to the Minister.

## **58—Evidentiary provisions**

(1) In any proceedings, a certificate executed by the Minister certifying as to a matter relating to—

- (a) the appointment or non-appointment of a person as an authorised officer under this Act; or
- (b) a delegation or authority under this Act; or
- (c) an order, notice, requirement or direction of the Minister under this Act; or
- (d) any other decision of the Minister; or
- (e) the receipt or non-receipt by the Minister of a notification or information required to be given or furnished to the Minister under this Act,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(2) In any proceedings for the recovery of reasonable costs and expenses incurred by the Minister or a person or body authorised by the Minister to take action under this Act, a certificate executed by the Minister detailing the costs and expenses and the purpose for which they were incurred constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(3) An apparently genuine document purporting to be an order, notice, authorisation, certificate or other document, or a copy of an order, notice, authorisation, certificate or other document, issued or executed—

- (a) by the Minister or an authorised officer under this Act; or
- (b) a person or body authorised by the Minister for the purpose of recovering costs and expenses incurred by the person or body under this Act,

will be accepted as such in the absence of proof to the contrary.

## 59—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
  - (a) prescribe fees and expenses in connection with any matter arising under this Act, which may be of varying amounts according to factors prescribed by regulation; and
  - (b) provide for the payment and recovery of prescribed fees and expenses; and
  - (c) empower or require the Minister to refund, reduce or remit any fee payable under this Act; and
  - (d) exempt, either unconditionally or subject to conditions—
    - (i) a class of persons; or
    - (ii) an entity; or
    - (iii) circumstances; or
    - (iv) a part of the State,from this Act or specified provisions of this Act; and
  - (e) prescribe penalties, not exceeding \$5 000, for breach of any regulation; and
  - (f) fix expiation fees, not exceeding \$315, for alleged offences against the regulations.
- (3) The regulations may—
  - (a) be of general application or limited application (including so as to apply only to a specified part of the State); and
  - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (c) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed person or body, as in force from time to time or as in force at a specified time; and
  - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another prescribed person or body.
- (4) If the regulations refer to a code, standard or other document—
  - (a) a copy of the code, standard or document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
  - (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and

- (c) the code, standard or other document has effect as if it were a regulation made under this Act.

## **Schedule 1—Related amendments, repeal and transitional provisions**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

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

### **Part 2—Amendment of *Residential Parks Act 2007***

#### **2—Amendment of section 3—Interpretation**

- (1) Section 3(1), definition of *housing improvement notice*—delete the definition and substitute:

*housing assessment order* has the same meaning as in the *Housing Improvement Act 2016*;

*housing demolition order* has the same meaning as in the *Housing Improvement Act 2016*;

*housing improvement order* has the same meaning as in the *Housing Improvement Act 2016*;

- (2) Section 3(1), after the definition of *motor vehicle* insert:

*notice to vacate* has the same meaning as in the *Housing Improvement Act 2016*;

- (3) Section 3(1), after the definition of *personal documents* insert:

*preliminary rent control notice* has the same meaning as in the *Housing Improvement Act 2016*;

- (4) Section 3(1), after the definition of *rent* insert:

*rent control notice* has the same meaning as in the *Housing Improvement Act 2016*;

#### **3—Amendment of section 21—Variation of rent**

- (1) Section 21(3)—delete "the maximum rent for the rented property has been fixed by a housing improvement notice, and the notice is revoked" and substitute:

a rent control notice that has applied in respect of the rented property ceases to be in force

- (2) Section 21(3)—delete "revocation of the housing improvement notice" and substitute:

the rent control notice ceases to be in force

#### **4—Amendment of section 35—Park owner's obligation to repair**

- (1) Section 35(3)—delete subsection (3) and substitute:
  - (3) However, the park owner will not be regarded as being in breach of the obligation to repair unless the park owner—
    - (a) has notice of the defect requiring repair; and
    - (b) fails to act with reasonable diligence to have the defect repaired.
- (2) Section 35(5)—delete subsection (5)

#### **5—Amendment of section 40—Residential park tenancy agreement—right of entry**

Section 40—after paragraph (e) insert:

- (ea) the entry is made for the purpose of carrying out the requirements of a housing assessment order or housing improvement order at a reasonable time of which the resident has been given at least 48 hours notice; or

#### **6—Amendment of section 52—Termination of residential park agreement**

Section 52—after paragraph (d) insert:

- (da) the tenancy terminates by force of a notice to vacate issued in respect of the property; or

#### **7—Amendment of section 55—Limitation of right to terminate**

- (1) Section 55(1)(a)—delete paragraph (a) and substitute:
  - (a) rented property—
    - (i) has, within the preceding 6 months, been the subject of an inspection by an authorised officer within the meaning of the *Housing Improvement Act 2016* in connection with the administration or enforcement of that Act; or
    - (ii) is subject to a housing assessment order, housing improvement order, housing demolition order, preliminary rent control notice or rent control notice; or
- (2) Section 55—after subsection (2) insert:
  - (2a) This section does not apply if a notice to vacate applies in respect of the rented property.

#### **8—Amendment of section 60—Termination where periodic tenancy and no specified ground of termination**

Section 60(2)(a)—delete paragraph (a) and substitute:

- (a) a housing assessment order, housing improvement order, housing demolition order, preliminary rent control notice or rent control notice applies in respect of the rented property; or

## 9—Amendment of section 85—Repossession of rented property

Section 85—after paragraph (a) insert:

- (ab) the person is authorised to take possession of the rented property by force of a notice to vacate issued in respect of the rented property; or

## Part 3—Amendment of *Residential Tenancies Act 1995*

### 10—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *housing improvement notice*—delete the definition and substitute:

*housing assessment order* has the same meaning as in the *Housing Improvement Act 2016*;

*housing demolition order* has the same meaning as in the *Housing Improvement Act 2016*;

*housing improvement order* has the same meaning as in the *Housing Improvement Act 2016*;

- (2) Section 3(1), after the definition of *no premium retirement village* insert:

*notice to vacate* has the same meaning as in the *Housing Improvement Act 2016*;

- (3) Section 3(1), after the definition of *personal documents* insert:

*preliminary rent control notice* has the same meaning as in the *Housing Improvement Act 2016*;

- (4) Section 3(1), after the definition of *rent* insert:

*rent control notice* means a notice under Part 3 Division 3 of the *Housing Improvement Act 2016* fixing the maximum rent payable for premises;

### 11—Amendment of section 55—Variation of rent

- (1) Section 55(2)(c)(i)—delete "the maximum rent for the premises has been fixed by a housing improvement notice, and the notice is revoked" and substitute:

a rent control notice that has applied in respect of the rented property ceases to be in force

- (2) Section 55(2)(c)(i)—delete "revocation of the housing improvement notice" and substitute:

the rent control notice ceases to be in force

### 12—Amendment of section 68—Landlord's obligation to repair

- (1) Section 68(2)(c)—delete paragraph (c)  
(2) Section 68(4)—delete subsection (4)

### **13—Amendment of section 70—Alteration of premises**

Section 70—after subsection (1a) insert:

- (1b) Subsection (1) does not apply in relation to an alteration or addition required under a housing improvement order or a housing demolition order that the tenant has been authorised to carry out under section 19 of the *Housing Improvement Act 2016* by the Minister responsible for the administration of that Act.

### **14—Amendment of section 72—Right of entry**

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

- (ea) to carry out the requirements of a housing assessment order or housing improvement order at a reasonable time of which the tenant has been given at least 48 hours notice; or

### **15—Amendment of section 79—Termination of residential tenancy**

Section 79—after paragraph (e) insert:

- (ea) the tenancy terminates by force of a notice to vacate issued in respect of the premises; or

### **16—Amendment of section 83—Termination by landlord without specifying a ground of termination**

Section 83(2)(a)(ii)—delete subparagraph (ii) and substitute:

- (ii) a housing assessment order, housing improvement order, housing demolition order, preliminary rent control notice or rent control notice applies in respect of the premises; or

### **17—Amendment of section 84—Limitation of right to terminate**

(1) Section 84(1)—delete subsection (1) and substitute:

- (1) If—
  - (a) premises to which a residential tenancy agreement applies—
    - (i) have, within the preceding 6 months, been the subject of an inspection by an authorised officer within the meaning of the *Housing Improvement Act 2016* in connection with the administration or enforcement of that Act; or
    - (ii) are subject to a housing assessment order, housing improvement order, housing demolition order, preliminary rent control notice or rent control notice; or
  - (b) an order is in force under section 56 (Excessive rent) in respect of the premises or proceedings for such an order have been commenced,

the landlord may only terminate the tenancy by notice of termination under this Part if the notice of termination is given on 1 or more grounds prescribed by regulation for the purposes of this subsection and the Tribunal authorises the notice of termination.

- (2) Section 84(3)(b)—after "rent" insert:

lawfully owed to the landlord

- (3) Section 84—after subsection (3) insert:

- (4) This section does not apply if a notice to vacate applies in respect of the premises.

### **18—Amendment of section 95—Repossession of premises**

Section 95—after paragraph (a) insert:

- (ab) the person is authorised to take possession of the premises by force of a notice to vacate issued in respect of the premises; or

### **19—Amendment of section 105I—Rent increases**

Section 105I(3)—delete subsection (3) and substitute:

- (3) If a rent control notice that has applied in respect of the rooming house ceases to be in force, the proprietor may, by notice given under this section within 4 weeks after the rent control notice ceases to be in force, increase the rent for accommodation at the rooming house from a date falling at least 14 days after the notice is given.

### **20—Amendment of section 105P—Obligation to repair and keep room and premises clean**

Section 105P(3)—delete subsection (3) and substitute:

- (3) However, the proprietor will not be regarded as being in breach of the obligation to repair unless the proprietor—
- (a) has notice of the defect requiring repair; and
  - (b) fails to act with reasonable diligence to have the defect repaired.

### **21—Amendment of section 105U—Termination of rooming house agreement**

Section 105U—after subsection (6) insert:

- (6a) Despite subsection (6), if a rooming house has, within the preceding 6 months, been the subject of an inspection by an authorised officer within the meaning of the *Housing Improvement Act 2016* in connection with the administration or enforcement of that Act, the proprietor may only terminate a rooming house agreement by notice under that subsection if the notice is given on 1 or more grounds prescribed by regulation for the purposes of this subsection and the Tribunal authorises the giving of the notice.
- (6b) Subsection (6a) does not apply if a notice to vacate applies in respect of the premises.



## **Part 4—Repeal of *Housing Improvement Act 1940***

### **22—Repeal of Act**

The *Housing Improvement Act 1940* is repealed.

## **Part 5—Transitional provisions**

### **23—Interpretation**

In this Part—

*repealed Act* means the *Housing Improvement Act 1940*.

### **24—Declarations by councils that houses unfit for habitation**

A declaration under section 23(1) of the repealed Act that a house is undesirable or unfit for human habitation and in force immediately before the commencement of this clause continues, on that commencement, as if it were a housing improvement order issued under section 14 of this Act in respect of residential premises.

### **25—Notice of intention to declare house sub-standard**

- (1) A notice under section 52(1) of the repealed Act—
  - (a) stating that the housing authority intends to declare a house to be sub-standard; and
  - (b) in force immediately before the commencement of this clause,continues, on that commencement, as if it were a housing improvement order issued in respect of residential premises under section 14 of this Act.
- (2) Any unexpired appeal period under the notice immediately before the commencement of this clause will continue, on that commencement, in relation to the housing improvement order, as if it were the period during which the person to whom it is issued may apply for a review by the Tribunal of the order under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* (despite the fact that the period may exceed 28 days).
- (3) In this clause—

*appeal period*, in relation to a notice under section 52(1) of the repealed Act, means the period fixed in the notice during which the person served with the notice may submit to the housing authority (within the meaning of that Act) any matters that the person wishes the housing authority to consider before making a declaration under section 52(3) of that Act.

### **26—Notice declaring house to be sub-standard**

- (1) A notice under section 52(3) of the repealed Act—
  - (a) declaring a house to be sub-standard for the purposes of Part 7 of that Act; and
  - (b) in force immediately before the commencement of this clause,continues, on that commencement, as if it were a housing improvement order issued in respect of residential premises to the owner of the premises under section 14 of this Act.

(2) Any unexpired appeal period under the notice immediately before the commencement of this clause will continue, on that commencement, in relation to the housing improvement order, as if it were the period during which the person to whom it is issued may apply for a review by the Tribunal of the order or notice, or a variation of the order or notice, under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* (despite the fact that the period may exceed 28 days).

(3) In this clause—

*appeal period*, in relation to a notice under section 52(3) of the repealed Act, means the period (referred to in section 53(1) of the repealed Act) of 1 month from the publication of the notice in the Gazette during which the owner or registered mortgagee of the house may appeal against the declaration in the notice to the Administrative and Disciplinary Division of the District Court.

### **27—Notice fixing maximum rental**

- (1) A notice under section 54 of the repealed Act fixing the maximum rental payable in respect of a house and in force immediately before the commencement of this clause continues, on that commencement, as if it were a rent control notice made under this Act in respect of residential premises.
- (2) A notice that continues as a rent control notice by virtue of subclause (1) is subject to the same terms and conditions as applied under the notice as in force immediately before the commencement of this clause.

### **28—Notice fixing maximum rental for partial letting or subletting**

- (1) A notice under section 57 of the repealed Act fixing the maximum rental payable in respect of the letting or subletting of part of a house and in force immediately before the commencement of this clause continues, on that commencement, as if it were a rent control notice made under this Act in respect of residential premises.
- (2) A notice that continues as a rent control notice by virtue of subclause (1) is subject to the same terms and conditions as applied under the notice as in force immediately before the commencement of this clause.

### **29—Notice fixing maximum rental for furniture**

- (1) A notice under section 58 of the repealed Act fixing the maximum rental payable that includes payments for the use of furniture and in force immediately before the commencement of this clause continues, on that commencement, as if it were a rent control notice made under this Act in respect of residential premises.
- (2) A notice that continues as a rent control notice by virtue of subclause (1) is subject to the same terms and conditions as applied under the notice as in force immediately before the commencement of this clause.

**30—Continuation of action in progress immediately before commencement of this Part**

Despite clauses 25 and 26—

- (a) if a person has, before the commencement of this Part, submitted matters to the housing authority that the person wishes the housing authority to consider under section 52(2)(b) of the repealed Act, section 52 of the repealed Act continues in operation for the purposes of enabling the housing authority to complete the exercise of its powers under that section; and
- (b) if a person has instituted an appeal under section 53 of the repealed Act and the appeal has not, immediately before the commencement of this Part, been finally determined or withdrawn, sections 53 and 54 of the repealed Act continue in operation until the appeal has been so determined or withdrawn.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2016	36	<i>Housing Improvement Act 2016</i>	4.8.2016	3.4.2017 ( <i>Gazette 7.3.2017 p830</i> )
2017	13	<i>Statutes Amendment (Registered Relationships) Act 2017</i>	26.4.2017	Pt 6 (s 10)—1.8.2017 ( <i>Gazette 1.8.2017 p3039</i> )