

South Australia

# Residential Tenancies (Protection of Prospective Tenants) Amendment Act 2023

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

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Residential Tenancies (Protection of Prospective Tenants) Amendment Act 2023*.

### 2—Commencement

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

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

### 3—Insertion of section 47B

After section 47A insert:

#### **47B—Prospective tenant—requirements relating to provision of information**

- (1) A landlord, or an agent of a landlord, must not request a prospective tenant to disclose prescribed information.  
Maximum penalty: \$20 000.  
Expiation fee: \$1 200.
- (2) Subsection (1) does not apply to—
  - (a) an entity, or a class of entities, prescribed by the regulations;  
or
  - (b) a provider of a housing assistance program, or a class of housing assistance programs, prescribed by the regulations.
- (3) The regulations may include requirements relating to the provision of information to or by a prospective tenant in connection with the prospective tenant applying to enter into a residential tenancy agreement (including requirements relating to the manner or form in which information is to be provided).
- (4) A person who contravenes a requirement prescribed under subsection (3) is guilty of an offence.  
Maximum penalty: \$20 000.  
Expiation fee: \$1 200.

### 4—Insertion of sections 52A and 52B

Before section 53 insert:

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

- (1) A landlord, or an agent of a landlord, must not advertise or otherwise offer premises for rent under a residential tenancy agreement unless the rent under the agreement is advertised or offered as a fixed amount.  
Maximum penalty: \$20 000.  
Expiation fee: \$1 200.
- (2) Nothing in subsection (1) prevents a person from placing a sign at or near premises for rent that—
  - (a) advertises or offers premises for rent; and
  - (b) does not state an amount of rent for premises.

- (3) A landlord, or an agent of a landlord, must not solicit or otherwise invite an offer of an amount of rent under a residential tenancy agreement that is higher than the advertised amount of rent for the premises.

Maximum penalty: \$20 000.

Expiation fee: \$1 200.

- (4) This section does not apply to—
- (a) the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust; or
  - (b) a registered community housing provider.

### **52B—Special provision relating to assessments etc of prospective tenants**

- (1) A person acting in trade or commerce (other than an agent of a landlord) must not provide an assessment or rating of the suitability of a prospective tenant to enter into a residential tenancy agreement if a basis of the assessment or rating relates to—

- (a) in the case of premises advertised or otherwise offered for rent as a fixed amount under the residential tenancy agreement—the fact that the amount of rent that the prospective tenant is willing to pay under the residential tenancy agreement is higher than the fixed amount; or
- (b) in any other case—the amount of rent that the prospective tenant is willing to pay under the residential tenancy agreement.

Maximum penalty: \$20 000.

- (2) A person must not, except in prescribed circumstances, require or receive from a prospective tenant a payment (however described) for the provision of an assessment or rating of the suitability of the prospective tenant to enter into a residential tenancy agreement.

Maximum penalty: \$20 000.

Expiation fee: \$1 200.

## **5—Insertion of Part 4 Division 14A**

Part 4—after Division 14 insert:

### **Division 14A—Tenant information**

#### **76A—Preliminary**

- (1) In this Division—

*national privacy principles* means the principles stated in Schedule 1 of the *Privacy Act 1988* of the Commonwealth;

**successful tenant** means a person who, after providing tenant information for the purposes of applying to enter into a residential tenancy agreement, enters into the residential tenancy agreement in accordance with the application;

**tenant information**—see section 76B(1).

- (2) This Division does not limit the operation of—
  - (a) Part 5A; or
  - (b) the national privacy principles.
- (3) This Division does not apply to—
  - (a) the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust; or
  - (b) a registered community housing provider; or
  - (c) an agency or instrumentality of the Commonwealth or the State prescribed by the regulations.

#### **76B—Dealing with tenant information**

- (1) A person who holds personal information provided for the purposes of applying to enter into a residential tenancy agreement (**tenant information**) must take such steps as are reasonable in the circumstances to protect the tenant information—
  - (a) from misuse, interference or loss; and
  - (b) from unauthorised access, modification or disclosure.

Maximum penalty: \$20 000.

Expiation fee: \$1 200.

- (2) A person who holds tenant information must take such steps as are reasonable in the circumstances to destroy the tenant information—
  - (a) in the case of tenant information provided by a successful tenant—as soon as practicable after the day that falls 3 years after the date on which the end of the tenancy occurs; or
  - (b) in any other case—
    - (i) if the person who provided the tenant information consents to the tenant information being dealt with under this subparagraph, as soon as practicable after the day that falls 6 months after the date on which the information was provided; or
    - (ii) if subparagraph (i) does not apply, as soon as practicable after the day that falls 30 days after the date on which the residential tenancy agreement was entered into.

Maximum penalty: \$20 000.

Expiation fee: \$1 200.

- (3) A person who holds tenant information must not disclose the tenant information except—
- (a) with the consent of the person to whom the tenant information relates; or
  - (b) as required or authorised by this Act, any other Act or law, or a residential tenancy agreement to which the person who provided the tenant information is a party; or
  - (c) in accordance with an order of a court or tribunal; or
  - (d) in prescribed circumstances.

Maximum penalty: \$20 000.

Expiation fee: \$1 200.

### **76C—Powers of Tribunal**

- (1) The Tribunal may, on the application of the Commissioner or a person to whom tenant information relates, make such orders against a person as may be necessary or expedient in the opinion of the Tribunal to ensure compliance with this Division or any provision of this Division.
- (2) If a person commits an offence against this Division, the Tribunal may, on the application of the Commissioner, make an order requiring the person to comply with conditions specified in the order in relation to tenant information held by the person.
- (3) An order under subsection (1) or (2) is effective for such period as may be specified in the order or until further order of the Tribunal.

### **6—Amendment of section 101—Application of income**

Section 101(1)—after paragraph (a) insert:

- (ab) for the benefit of an industrial association or organisation registered under a law of the State or of the Commonwealth that the Commissioner is satisfied has a primary purpose of advocating for and representing the interests of tenants, rooming house residents and residents of residential parks; and

## **Schedule 1—Transitional provisions**

### **1—Transitional provisions**

- (1) Subject to this clause, Part 4 Division 14A applies to a person who holds tenant information on or after the commencement of this subclause, whether the tenant information was provided before or after that commencement.

(2) However—

- (a) section 76B(2)(a) of Part 4 Division 14A does not apply to a person who holds tenant information provided by a successful tenant in respect of a residential tenancy agreement where the tenancy ended more than 2 years before the commencement of this subclause if the person takes such steps as are reasonable in the circumstances to destroy the tenant information within 12 months of that commencement; and
- (b) paragraph (b) of section 76B(2) of Part 4 Division 14A does not apply to a person who holds tenant information to which that paragraph would otherwise apply if the person takes such steps as are reasonable in the circumstances to destroy the tenant information within 12 months of the commencement of this subclause.

(3) In this clause—

***Part 4 Division 14A*** means Part 4 Division 14A of the *Residential Tenancies Act 1995* (as inserted by section 5 of this Act).

(4) Terms used in this clause and in Part 4 Division 14A have the same meaning in this clause as they do in Part 4 Division 14A.