



TASMANIA

**RESIDENTIAL TENANCY AMENDMENT ACT
2018**

No. 38 of 2018

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RESIDENTIAL TENANCY AMENDMENT ACT 2018

No. 38 of 2018

***An Act to amend the Residential Tenancy Act 1997 and the
Family Violence Act 2004***

[Royal Assent 17 December 2018]

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Residential Tenancy Amendment Act 2018*.

2. Commencement

This Act commences on a day to be proclaimed.

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**PART 2 – RESIDENTIAL TENANCY ACT 1997
AMENDED**

3. Principal Act

In this Part, the *Residential Tenancy Act 1997**
is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as
follows:

- (a) by inserting the following definition after
the definition of *domestic partner* in
subsection (1):

dwelling-house has the same meaning
as in the *Homes Act 1935*;

- (b) by inserting the following definition after
the definition of *early vacation* in
subsection (1):

eligible person has the same meaning
as in the *Homes Act 1935*;

- (c) by inserting the following definition after
the definition of *holding fee* in subsection
(1):

housing support provider has the
same meaning as in the *Homes
Act 1935*;

*No. 82 of 1997

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- (d) by inserting the following definition after the definition of *inaccessible light globes or light tubes* in subsection (1):

NDIS participant means a participant within the meaning of the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

- (e) by inserting the following definition after the definition of *rent* in subsection (1):

rent assistance means the provision by the Director of Housing under section 15AB of the *Homes Act 1935*, or the provision by another social housing provider or a housing support provider, of an amount or amounts –

- (a) to an eligible person who, under a residential tenancy agreement, is leasing or sub-leasing a dwelling-house; or
- (b) to a social housing provider or other person who is leasing, or sub-leasing, a dwelling-house to an eligible person under a residential tenancy agreement –

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for the purpose of paying all, or part of, the eligible person's rent under that agreement;

- (f) by inserting the following definition after the definition of *residential tenancy agreement* in subsection (1):

SDA has the same meaning as in –

- (a) the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* of the Commonwealth, as amended from time to time; or
- (b) any rules of the Commonwealth, as amended from time to time, which are made in substitution for those rules;
- (g) by omitting the definitions of *social housing* and *social housing provider* from subsection (1) and substituting the following definitions:

social housing means –

- (a) residential premises owned in whole or in part by the Director of Housing; or

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- (b) residential premises declared to be social housing under subsection (3); or
 - (c) residential premises of a kind declared to be social housing under subsection (3); or
 - (d) residential premises used, or proposed to be used, for a purpose declared under subsection (3);

social housing provider, in relation to residential premises, means –

- (a) the Director of Housing unless there is, in relation to those premises, a person referred to in paragraph (b), (c) or (d); or
- (b) a registered community housing provider in relation to those premises; or
- (c) if those premises are social housing by reason of paragraph (b), (c) or (d) of the definition of social housing and a person, or a person of a class of persons, is declared in the

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notice under subsection (3) to be the social housing provider in respect of those premises, that person or the person of that class who leases or sub-leases, or proposes to lease or sub-lease, those premises to an eligible person; or

(d) if those premises are social housing by reason of paragraph (b), (c) or (d) of the definition of social housing and a person, or a person of a class of persons, is not declared in the notice under subsection (3) to be the social housing provider in respect of those premises, the person who leases or sub-leases, or proposes to lease or sub-lease, those premises to an eligible person;

(h) by omitting subsection (3) and substituting the following subsection:

(3) The Minister from time to time responsible for social housing, by notice, may do any one or more of the following:

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- (a) declare residential premises specified in the notice to be social housing;
 - (b) declare residential premises of a kind specified in the notice to be social housing;
 - (c) declare residential premises used, or proposed to be used, for a purpose specified in the notice to be social housing;
 - (d) declare a person, or a person of a class of persons, specified in the notice to be a social housing provider or the social housing provider in relation to premises referred to in paragraph (a), (b) or (c).

5. Section 6 amended (Non-application of Act)

Section 6(1) of the Principal Act is amended by inserting after paragraph (da) the following paragraph:

- (db) any lease to a person of residential premises which are intended to be sub-leased to an eligible person; or

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6. Section 11 amended (Expiry)

Section 11 of the Principal Act is amended by inserting after subsection (4) the following subsections:

(5) If –

- (a) a notice to vacate in relation to premises, in respect of which there is a residential tenancy agreement for a fixed period, has been served under section 42 on the grounds specified in section 42(1)(d); and
- (b) that agreement, but for subsection (4), would have expired; and
- (c) the notice is withdrawn before it takes effect –

the residential tenancy agreement expires on the day on which the notice is withdrawn and a new residential tenancy agreement is established on that day.

- (6) A residential tenancy agreement established under subsection (5) –
 - (a) is for a fixed period of 28 days commencing on the day on which the agreement is so established; and

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- (b) is otherwise subject to the same terms and conditions of the residential tenancy agreement that existed before the notice to vacate was served.

7. Section 17 amended (Money other than rent)

Section 17 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Subsection (1) does not apply to a requirement to provide, or a receipt of, money or other consideration for the provision of any service, that is not the provision of accommodation, to an NDIS participant at accommodation which is SDA.

8. Section 20 amended (Increase in rent)

Section 20 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) For the avoidance of doubt, it is stated that if –
 - (a) a social housing provider or housing support provider is providing rent assistance to, or in relation to, an eligible person; and
 - (b) the social housing provider or housing support provider reduces

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the amount or amounts he or she is paying so as to cause the eligible person to pay a higher contribution towards the rent in respect of which he or she is or was receiving rent assistance –

the reduction of the amount or amounts that the social housing provider or housing support provider is paying does not constitute an increase in rent.

9. Section 25 amended (Security deposits)

Section 25 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (1):

(1A) If a residential tenancy agreement relates to SDA and the prospective tenant is an NDIS participant, a security for the performance of obligations under the agreement may relate only to that part of the residential premises in respect of which the prospective tenant has the right of exclusive occupation.

(b) by omitting from subsection (2)(b) “agent.” and substituting “agent; or”;

(c) by inserting the following paragraphs after paragraph (b) in subsection (2):

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- (c) if the residential premises are social housing, to the Authority or the social housing provider; or
 - (d) if a council is the owner of the residential premises, to the Authority or the council.
- (d) by inserting the following subsection after subsection (2):
- (2A) If the owner of residential premises under a residential tenancy agreement is a social housing provider or a council and agrees to it, a security deposit may be paid in instalments as agreed between the owner and prospective tenant.
- (e) by omitting subsection (3A) and substituting the following subsections:
- (3A) A social housing provider or council who receives a security deposit in full from or on behalf of a tenant must deposit that money with the Authority within 10 working days after receiving it.
 - (3B) A social housing provider or council who receives a security deposit in instalments from or on behalf of a tenant –

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- (a) may keep all instalments received until the final instalment is paid; and
 - (b) must deposit all money so received with the Authority within 10 working days after receiving the final instalment.
- (3C) Despite subsection (3B)(a), if the social housing provider or council makes a claim, or is notified that a claim has been made, to the Authority for the disbursement of the security deposit, the social housing provider or council is to deposit with the Authority, as soon as reasonably practicable, all money paid to the social housing provider or council in instalments towards payment of the security deposit.
- (3D) A person who pays or deposits a security deposit, or deposits an instalment towards a security deposit, with the Authority is to include with the payment or deposit the form specified in section 27(a).

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PART 3 – FAMILY VIOLENCE ACT 2004 AMENDED

10. Principal Act

In this Part, the *Family Violence Act 2004** is referred to as the Principal Act.

11. Section 17 amended (Issue of replacement residential tenancy agreement)

Section 17 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

(1) In this section –

original agreement means a residential tenancy agreement in relation to residential premises referred to in subsection (2);

replacement agreement means a residential tenancy agreement established under subsection (1A)(b) or (c).

(1A) If the person against whom an FVO is to be made is a tenant of residential premises occupied by an affected person, a court may make an order under section 16 to –

(a) terminate the original agreement;
or

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- (b) terminate the original agreement and establish a new residential tenancy agreement for the benefit of the affected person and any other party who was a party to the terminated agreement, other than the person against whom the FVO is to be made; or
- (c) terminate the original agreement and establish a new residential tenancy agreement for the benefit of the person against whom the FVO is to be made and any other party who was a party to the terminated agreement, other than the affected person.

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Part 4 – Miscellaneous

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PART 4 – MISCELLANEOUS

12. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.

*[Second reading presentation speech made in:–
House of Assembly on 18 September 2018
Legislative Council on 27 September 2018]*