



## **RESIDENTIAL TENANCIES (HOUSING TRUST) AMENDMENT ACT 1993**

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**ELIZABETHAE II REGINAE**

A.D. 1993

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**No. 78 of 1993**

**An Act to amend the Residential Tenancies Act 1978, and to make consequential amendments to the South Australian Housing Trust Act 1936.**

[Assented to 27 October 1993]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Residential Tenancies (Housing Trust) Amendment Act 1993*.

(2) The *Residential Tenancies Act 1978* is referred to in this Act as “the principal Act”.

**Commencement**

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

**Substitution of s. 6**

3. Section 6 of the principal Act is repealed and the following section is substituted:

**Act binds Crown**

6. This Act binds the Crown in right of this State and (so far as the legislative power of the State permits) the Crown in any other capacity, but not so as to impose any criminal liability on the Crown.

**Amendment of s. 14—Residential Tenancies Tribunal**

4. Section 14 of the principal Act is amended—

(a) by striking out subsections (2a) and (2b) and substituting the following subsections:

(2a) The Governor may appoint a member of the Tribunal who is a legal practitioner to be the President of the Tribunal.

(2b) The Governor may appoint a member of the Tribunal who is a legal practitioner to be the Deputy President of the Tribunal.

(2c) In the absence of the President of the Tribunal, or if there is temporarily no President of the Tribunal, the Deputy President has all the powers, authorities, duties and obligations of the President of the Tribunal.;

(b) by inserting in subsection (4) "(other than the President)" after "deputy of a member".

**Amendment of s. 17—Registrar may exercise jurisdiction of Tribunal in certain matters**

5. Section 17 of the principal Act is amended by striking out "Chairman" and substituting "President".

**Amendment of s. 20—Constitution and times and places for proceedings of Tribunal**

6. Section 20 of the principal Act is amended by striking out from subsection (1) "Chairman" and substituting "President".

**Amendment of s. 22—Powers of Tribunal**

7. Section 22 of the principal Act is amended—

(a) by striking out from subsection (4) "local court nearest to the premises the subject of the residential tenancy agreement or nearest to the place where that firstmentioned person resides" and substituting "Magistrates Court";

(b) by striking out subsections (5) and (6) and substituting the following subsection:

(5) On registration of a certificate under subsection (4), the certificate has force and effect and proceedings may be brought on it as if it were a judgment of the Magistrates Court.

**Amendment of s. 24—Proceedings of Tribunal**

8. Section 24 of the principal Act is amended by inserting after paragraph (b) of subsection (4) the following paragraph:

(ba) decline to entertain the application, or adjourn the hearing, until the fulfilment of conditions fixed by the Tribunal with a view to promoting the settlement or resolution of matters in dispute between the parties.;

**Amendment of s. 29—Appeal to District Court**

9. Section 29 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) Subject to subsection (2), a right of appeal lies to the District Court against an order or decision of the Tribunal made in the exercise or purported exercise of its powers under this Act.;

(b) by striking out from subsection (4) "Local Court" and substituting "District Court";

(c) by striking out from subsection (7) "Local Court" and substituting "District Court";

(d) by striking out from subsection (8) "Local Court" twice occurring and substituting, in each case, "District Court";

- (e) by striking out subsection (9);
- (f) by striking out from subsection (10) "Local Court" and substituting "District Court".

**Amendment of s. 32—Security bond**

10. Section 32 of the principal Act is amended—

- (a) by inserting in subsection (2)(b) " , subject to subsection (3)," before "pay the security bond";
- (b) by inserting after subsection (2) the following subsection:

(3) Subsection (2)(b) does not apply to a security bond received by the South Australian Housing Trust.

**Amendment of s. 34—Variation of rent**

11. Section 34 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) This section does not apply to a residential tenancy agreement under which the South Australian Housing Trust is the landlord.

**Amendment of s. 35—Increase in security bond**

12. Section 35 of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) This section does not apply to a residential tenancy agreement under which the South Australian Housing Trust is the landlord.

**Amendment of s. 36—Excessive rent**

13. Section 36 of the principal Act is amended—

- (a) by striking out from subsection (1) "A" and substituting "Subject to this section, a";
- (b) by inserting after subsection (6) the following subsection:

(7) This section does not apply to a residential tenancy agreement under which the South Australian Housing Trust is the landlord.

**Amendment of s. 46—Landlord's responsibility for cleanliness and repairs**

14. Section 46 of the principal Act is amended by striking out subsections (2a) and (3) and substituting the following subsection:

(3) The terms prescribed by subsection (1)(b) and (c) do not apply—

- (a) to premises while a notice is in force under Part VII of the *Housing Improvement Act 1940* fixing the maximum rent in respect of the premises;
- (b) to things of a kind prescribed for the purposes of this paragraph where the landlord is the South Australian Housing Trust;

- (c) to things of a kind prescribed for the purposes of this paragraph where the landlord is a registered housing co-operative.

**Amendment of s. 52—Right of tenant to assign or sub-let**

15. Section 52 of the principal Act is amended by inserting after subsection (3) the following subsection:

- (3a) Subsections (1) and (3) do not apply to a residential tenancy agreement under which the South Australian Housing Trust is the landlord.

**Amendment of s. 64—Notice of termination by landlord on the ground that possession required for certain purposes**

16. Section 64 of the principal Act is amended—

- (a) by striking out from subsection (1) “A” and substituting “Subject to this section, a”;
- (b) by inserting after subsection (7) the following subsection:

- (8) This section does not apply to a residential tenancy agreement under which the South Australian Housing Trust is the landlord.

**Insertion of s. 64aa**

17. The following section is inserted after section 64 of the principal Act:

**Notice of termination by South Australian Housing Trust**

**64aa.** (1) Where the South Australian Housing Trust is the landlord under a residential tenancy agreement, the Trust may give notice of termination of the agreement on a ground prescribed by regulation under the *South Australian Housing Trust Act 1936*.

(2) Where the South Australian Housing Trust gives notice of termination on a prescribed ground under this section, the period of the notice must be not less than 120 days, or, if a greater period is prescribed by regulation under the *South Australian Housing Trust Act 1936* in relation to that ground, not less than that period.

**Amendment of s. 65—Notice of termination by landlord without any ground**

18. Section 65 of the principal Act is amended—

- (a) by striking out from subsection (1) “A” and substituting “Subject to this section, a”;
- (b) by inserting after paragraph (a) of subsection (3) the following paragraph:
- (ab) a residential tenancy agreement under which the South Australian Housing Trust is the landlord;

**Amendment of s. 81—Protection of tenants in relation to persons having superior title**

19. Section 81 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Where the South Australian Housing Trust would be the landlord in respect of a tenancy to be vested by order under subsection (2), the tenancy so vested may only be for a fixed term not exceeding 42 days.

**Amendment of s. 86—Application of income derived from investment of Fund**

20. Section 86 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Despite subsection (1), the costs of administering this Act incurred in respect of residential tenancy agreements under which the South Australian Housing Trust is the landlord are not to be met by the Fund.

**Transitional provisions**

21. (1) The principal Act as amended by this Act applies to a residential tenancy agreement whether made before or after the commencement of this Act, but subject, in the case of a residential tenancy agreement made by the South Australian Housing Trust before that commencement, to the following provisions:

- (a) proceedings (including the issuing of a notice to quit) may be commenced or continued or completed in relation to acts, omissions or matters occurring or arising before that commencement as if this Act had not been enacted;
- (b) proceedings may be brought under the principal Act as amended by this Act only in relation to acts, omissions or matters occurring or arising after that commencement.

(2) The person holding office as Chairman of the Residential Tenancies Tribunal immediately before the commencement of this Act will, subject to the principal Act, continue in office as the President of the Tribunal on and from that commencement.

**Amendment of South Australian Housing Trust Act 1936**

22. The *South Australian Housing Trust Act 1936* is amended as follows:

- (a) section 26 is amended by inserting “, the *Residential Tenancies Act 1978* and any other Act” after “Subject to this Act”;
- (b) section 27 is amended by striking out all the words of paragraph (c) occurring after “vary the rents of any such houses” and substituting “so that they are the same or similar in amounts for houses that provide similar accommodation and are situated in the same or a similar locality”;
- (c) section 32 is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Without limiting the effect of subsection (1), regulations may be made prescribing grounds on which the trust may give notice of termination of a residential tenancy agreement under the *Residential Tenancies Act 1978* and prescribing the minimum period of notice for termination on any such ground.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor