



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

EXPLANATORY MEMORANDUM

Residential Tenancies Amendment Bill 2023

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RESIDENTIAL TENANCIES AMENDMENT BILL 2023

Overview of the Bill

The *Residential Tenancies Act 1987* (WA) (Act) regulates the rights of tenants and lessors in the residential tenancy sector, including in social housing.

The Bill will implement a number of recommendations of a review of the Act, together with additional amendments aimed at improving the efficiency of the Act.

Key amendments will:

- limit the frequency of rent increases to once every 12 months;
- provide new processes to allow tenants to make minor modifications to premises, with the lessor only permitted to refuse consent in certain circumstances or with the approval of the Commissioner for Consumer Protection (the Commissioner);
- allow tenants to keep pets in most premises, with the lessor only permitted to refuse consent in certain circumstances or with the approval of the Commissioner;
- allow a tenant to seek a remedy in the event that a lessor takes retaliatory action in response to a tenant exercising their rights;
- streamline the bond disposal process;
- provide the Commissioner with the power to determine certain types of dispute, including disputes about disposal of bonds. More complex disputes and appeals from determinations of the Commissioner will be heard by the Magistrates Court;
- prohibit the solicitation of rent bidding; and
- permit the disclosure of bonds data to better enable the Bond Administrator to conduct its functions.

The Bill also makes technical amendments to family violence provisions in the Act and the *Residential Parks (Long-Stay Tenants) Act 2006* (WA).

Clause 1 Short title

The short title of the Act is the *Residential Tenancies Amendment Act 2023*.

Clause 2 Commencement

Provides that Part 1 of the Act is to come into operation on Royal Assent and the remainder of the Act will come into effect on a day fixed by proclamation. Different days may be fixed for different provisions.

A number of amendments to the Residential Tenancies Regulations 1989 (WA) will be required to enable the Act to operate effectively. The flexibility to fix commencement dates by proclamation is therefore required.

Clause 3 Act amended

Provides that this part amends the *Residential Tenancies Act 1987*.

Clause 4 Section 3 amended – Terms used

Section 3 is amended to insert additional definitions or to move definitions from other parts of the Act to section 3.

Clause 5 Section 3A inserted - References to residential premises or premises

New section 3A clarifies how references to residential premises in the Act are to be interpreted.

Clause 6 Section 8 amended – Functions of the Commissioner

Amends section 8 to:

- allow for the Commissioner to publish guidelines; and
- clarify that the functions of the Commissioner include any functions conferred or imposed on the Commissioner by this Act or prescribed in the regulations.

Clause 7 Section 9 amended – Commissioner may institute or defend proceedings for party

Deletes the definition of ‘party’ in subsection (1A). A new definition of ‘party’ is included in section 3.

Clause 8 Sections 10 and 11 replaced

Replaces sections 10 and 11 in relation to delegation and protection from liability. The new provisions reflect modern drafting conventions and are consistent with equivalent provisions in other consumer protection legislation.

Section 10 - Delegation

Provides for delegation of functions by the Commissioner and bond administrator to an employee of the Department.

Section 11 – Protection from liability

Provides for the protection from liability of any person acting in good faith in the performance of a function or purported function under the Act.

The protection from liability also extends to the State.

Clause 9 Section 11AA inserted – Disclosure of bond information

Provides for disclosure of bond information to relevant entities to the extent the information is required in the course of the entity's duties or functions.

Clause 10 Section 11A amended – Information officially obtained to be confidential

Amends subsection (2)(b) to permit disclosure of information if required or allowed under any written law.

Clause 11 Part III Division 1 inserted

Inserts a new **Division 1 – Provisions relating to applications made or referred to the Commissioner**.

This Division outlines the processes in relation to applications made or referred to the Commissioner under various provisions of the Act and includes requirements about notice, the making of submissions, giving of reasons and referral to the Magistrates Court.

Section 11C – Application of Division

Provides that this Division applies to certain types of application that may be made or referred to the Commissioner including:

- a lessor's application about pets or minor modifications - to refuse consent or impose conditions – sections 50E, 50F, 50S or 50T;
- a tenant's application about conditions imposed by the lessor in relation to pets or minor modifications – sections 50G, 50H, 50U or 50V;
- a security bond release application – section 81I; and
- an application in relation to a prescribed matter – section 11E(1).

Section 11D – Parties to application

Clarifies the persons who will be a party to an application under this Division.

Section 11E – Disputed tenancy matters

Provides that the regulations may prescribe additional matters in relation to the rights and obligations of the parties to a residential tenancy agreement that may be decided by the Commissioner as a disputed tenancy matter.

Section 11F – Notice of application and invitation to make submissions

Outlines the procedural requirements following receipt by the Commissioner of an application other than a security bond release application.

The Commissioner must give written notice of the application to each party, stating that the party may make a submission and that the Commissioner will take submissions into account in deciding the application.

Security bond release applications are dealt with separately in clause 81Q.

Section 11G – Commissioner may require further information

Provides that the Commissioner may give a party to an application a notice requesting information. The notice may require that the party provide evidence to support a claim and/or verify information or evidence.

If the party does not comply with the request, the Commissioner may decide the application without the person's information. The notice must state this fact.

The Commissioner may extend the timeframe for providing information.

Section 11H – False or misleading information

Provides that it is an offence to give the Commissioner information in relation to an application that the person knows or ought reasonably to know is false or misleading in a material particular.

Section 11I - Deciding application

Provides that the Commissioner must decide the application on the information available to the Commissioner.

The Commissioner must not make a decision before the date on which a party must make a submission or provide information to the Commissioner.

The Commissioner's powers of investigation provided for in section 11B of the Act do not apply for the purpose of deciding an application.

The Commissioner is not required to decide an application if the Commissioner refers the matter to the Magistrates Court under clause 11L.

Section 11J – Notice of Commissioner’s decision

Provides that the Commissioner must give notice of their decision to each party to the application. The notice must state the decision, reasons for the decisions and outline the right to appeal the decision.

If the decision is in relation to a security bond release application, a copy must be provided to the bond administrator.

Section 11K – Commissioner may publish decisions and reasons

Provides that the Commissioner may publish decisions or reasons for decision. A decision or reasons must not include information that could lead to identification of a party, another individual or the residential premises.

Section 11L – Commissioner may refer parties to Magistrates Court

Provides that the Commissioner decline to decide an application if the Commissioner:

- considers the application cannot be decided on the information available to the Commissioner;
- is aware that another dispute relating to the residential tenancy agreement is before the court;
- in relation to a bond release application - does not have contact details for a party or is of the view that or considers the amount in dispute is more than the security bond; or
- otherwise considers it is appropriate to refer the matter to the court.

If the Commissioner declines to decide an application, the Commissioner must notify the parties, provide reasons and advise that the party may apply to the Magistrates Court.

Clause 12 Part III Division 2 heading inserted

Inserts new heading for **Division 2 – Disputes determined by the Magistrates Court**.

Clause 13 Section 12 amended – Terms used

Replaces the definition of ‘prescribed dispute’ with an updated definition to take account of amendments to the Act made by the Bill.

The definition of prescribed dispute retains the requirement for a claim to be under the prescribed amount (currently \$10,000), unless it is a dispute about a security bond release application (which may be for a claim over the prescribed amount).

Clause 14 Section 13C inserted – Appeals from decisions of the Commissioner

Inserts new section 13C which provides that a person who is dissatisfied with the decision of the Commissioner under section 11I may appeal the decision to the Magistrates Court.

Subclause (2) clarifies that an appeal may be made in relation to a security bond release application, even if the bond has been paid to one or more of the parties.

An appeal must be commenced within 7 days from the date the parties are notified of the Commissioner's decision. This time period may be extended by a magistrate.

An appeal is to be by way of rehearing and the rules of the Magistrates Court will apply as if the appeal were an appeal of a decision of a registrar under the *Magistrates Court Act 2004* (WA). This means that the rules set out in the Magistrates Court (General Rules) 2005 (WA) will apply to the appeal. The applicable timeframe for commencement of the appeal is provided for in this clause (i.e. 7 days, subject to any extension granted by the court), not the 21 day timeframe for appeal from a decision of the registrar set out in section 29 of the *Magistrates Court Act 2004*.

Clause 15 Section 15 amended – Applications for relief and orders that may be made

Inserts new subsection 15(1A) to allow for a tenant or lessor to apply to the Magistrates Court in relation to a matter that the Commissioner has declined to decide under clause 11L.

Inserts new paragraph 15(2)(ba) to outline the orders the court may make in relation to payment of a security bond. This replaces current Schedule 1 clause 8(1).

Clause 16 Section 18A inserted – Notice of intention to dispute application for release of security bond

Outlines the Magistrates Court processes in relation to a bond release application. These are consistent with and replace the provisions currently set out in Schedule 1 clause 8.

The clause applies where a matter before the court relates only to a security bond release application.

Section 18(2) of the Act provides that before a court hears an application, the court must give the parties notice about the time and date for a hearing.

Clause 18A provides that before giving this notice under section 18(2) the court must give each party a notice inviting them to indicate whether they intend to dispute the application. If a party does not give an indication of an intention to dispute the application within seven days (or longer period allowed by the court), the court may order that the security bond be paid in the manner and amounts stated in the application. Section 18(2) will not apply in these circumstances.

Clause 17 Part III Division 3 inserted

Inserts new **Division 3 – Retaliatory action taken by lessor.**

This Division includes new provisions to allow a tenant to seek a remedy in the event that a lessor takes retaliatory action in response to a tenant's action to enforce their rights or complain to an authority.

Section 26A – Retaliatory action

Provides that a lessor takes retaliatory action against a tenant if the lessor takes action in relation to a matter referred to in clause 26B(2) and that action is wholly or partly motivated by the matter arising.

A lessor will be considered to take retaliatory action if the lessor:

- gives the tenant a notice of breach (other than failure to pay rent) and requires the tenant to remedy the breach;
- increases the rent;
- takes action to terminate the tenancy; or
- refuses to renew the tenancy agreement.

Section 26B – Retaliatory action taken by lessor

Applies if a tenant reasonably believes that the lessor has taken retaliatory action after any of the following arises:

- the tenant or a representative entity takes action to enforce the tenant's rights;
- the lessor or lessor's agent knows the tenant or a representative entity has complained to the Commissioner or another government entity about an act or omission of the lessor that adversely affected the tenant; or
- an order of a competent court is in force in relation to the lessor and tenant.

The tenant may apply to the court for relief.

If the court is satisfied that the lessor's action was likely to be retaliatory action, the court may make an appropriate order, which could include an order to set the action aside or that the lessor pay compensation.

Clause 18 Section 27A replaced – Written residential tenancy agreement to be in approved form

Revised provision provides that the form of tenancy agreement is to be approved by the Commissioner and makes it clear that a lessor or property manager must ensure that a written residential tenancy agreement is in the approved form.

Clause 19 Section 27B amended – Information to be given to tenant by lessor

This clause amends section 27B to make it clear that the obligation is also imposed on a property manager.

Clause 20 Section 27C amended – Property condition report at start and end of tenancy

This clause amends section 27C to make it clear that the obligations are also imposed on a property manager.

Clause 21 Section 27 amended – Restriction on consideration for tenancy agreement

This clause makes a drafting amendment to section 27.

Clause 22 Section 27AA inserted – Residential tenancy must be offered for rent at fixed amount

This clause includes new provisions to prevent ‘rent bidding’.

The clause provides that a person must not advertise or otherwise offer a tenancy unless the advertisement or offer states:

- a fixed amount of rent; or
- that the rent is calculated by reference to the tenant’s income.

A person does not commit an offence if a sign placed at or near the premises advertising the premises for rent does not state the amount of rent.

A person also must not solicit or otherwise invite a person to make an offer to become a tenant at a rent higher than the advertised rent.

Clause 23 Section 28 amended – Rent in advance

This clause makes a drafting amendment to replace ‘shall’ with ‘must’.

Clause 24 Section 29 amended – Security bonds

This clause deletes the definition of ‘pet’ in subsection 29(1A) as a new definition is included in section 3.

Amends subsection (1)(b) to expand the reasons for which a pet bond may be required to include the costs of any damage caused by a pet in addition to fumigation costs.

Amends subsection (4) to remove references to Schedule 1 clauses 5 and 5A, as these provisions have been deleted, and instead include the following specific requirements in section 29:

- to pay a bond to the bond administrator as soon as practicable, and in any event within 14 days, after it is received; and
- that a bond must be paid to the bond administrator in the prescribed way.

These specific requirements address the requirements currently set out in Schedule 1 clause 5A but have been amended to allow for greater flexibility in the way bonds can be paid by allowing for the payment methods to be prescribed.

The requirement to provide a receipt to the person who has paid the bond is also retained.

The prohibition in section 29(8) has been deleted and replaced by new clause 81C(5).

Drafting amendments are also made to section 29 to improve clarity.

Clause 25 Section 30 amended – Variation of rent (except where calculated by reference to tenant’s income)

Amends section 30 to change the minimum period between rent increases from six months to 12 months.

Clause 26 Section 31A amended – Variation of rent where calculated by reference to tenant’s income

Amends section 31A to change the minimum period between rent increases from six months to 12 months.

Clause 27 Section 31B replaced – Fixed term residential tenancy agreement continued as a new residential tenancy agreement

New section 31B provides that, for the purpose of working out when the rent was last increased under a tenancy agreement, a tenancy agreement will be considered to be a continuation of an existing agreement if the continuing agreement is between the same parties, for the same residential premises and starts immediately after the end of the term of the existing agreement.

The intention of this provision is to make sure that the minimum 12-month period between rent increases will apply even if the parties enter into two or more consecutive tenancy agreements during that period.

Clause 28 Section 31 amended – Increase in security bond

Amends section 31 to clarify how a security bond may be increased if the rent is increased under section 30 or 31A.

A lessor must give the tenant a written notice of the increase in security bond. The notice must state the amount of the increase and the date by which the additional amount is payable.

The date on which the additional amount is payable must be after the rent increase takes effect and at least 60 days after the notice is given.

Subclause (1C) clarifies that a person may receive, but may not require, payment of the additional amount before the date on which it is payable.

A person who receives the additional amount must provide a receipt and pay the amount to the bond administrator in accordance with subsections 29(4) and (5).

Clause 29 Part IV Division 2 heading amended – Standard terms

Amends the heading to 'General standard terms'.

Clause 30 Section 46 amended – Lessor's right of entry

Amended to replace 'form approved by the Commissioner' with 'approved form' as this is now a defined term included in section 3.

Clause 31 Section 47 deleted – Right of tenant to affix and remove fixtures etc

Deletes section 47. New provisions relating to modification of premises are included as Part IV Division 2B.

Clause 32 Section 49A amended – Lessor's and tenant's responsibilities in respect of public utilities services

Deletes the definition of strata company in subsection 49A(1) as a new definition is included in section 50A.

Clause 33 Part IV Divisions 2A and 2B inserted

Inserts new Divisions related to the keeping of pets and minor modifications made by tenants.

Division 2A – Standard terms related to keeping pets

This Division includes new provisions to allow tenants to keep a pet at premises with the consent of the lessor and to set out the circumstances where the lessor may withhold consent and impose conditions on consent.

The Division also outlines the process by which a tenant can seek approval for a pet and for resolution of disputes by the Commissioner.

Section 50A – Keeping pet at residential premises

Provides that a tenant may keep a pet at premises with the consent of the lessor.

The lessor's consent is not required to keep an assistance animal at premises.

Provides that it is a term of every residential tenancy agreement that the keeping of a pet or assistance animal at the premises is subject to a condition imposed by the lessor or the Commissioner and any written law, local law or scheme by-law.

Section 50B – Request for consent to keep a pet at premises

Sets out the process for seeking consent from the lessor to keep a pet at premises.

The tenant must make a request in the approved form.

The lessor must respond in writing within 14 days advising whether the lessor approves or refuses the request or intends to apply to the Commissioner to permit refusal. The response must also set out the following details:

- if the request is approved subject to conditions – details of the conditions;
- if the lessor intends to apply to the Commissioner for approval to impose conditions – that fact and details of the proposed conditions; or
- if the request is refused – the grounds for refusal and reasons the lessor believes those grounds apply.

Section 50C outlines the types of conditions that may be imposed on consent and section 50D sets out valid grounds for refusal.

A lessor is taken to have consented to the keeping of a pet if the lessor does not do one of the following within 14 days:

- provide a written response in accordance with subsection (3); or
- apply to the Commissioner for approval to refuse the request.

Section 50C – Conditions for approval to keep pet at premises

Outlines the types of conditions that a lessor may impose on consent to keep a pet at premises.

A lessor may impose a reasonable condition about the number of animals that may be kept at the premises, the cleaning, maintenance or fumigation of the premises or a prescribed matter.

A lessor may also apply to the Commissioner (under section 50F) for approval to impose another type of condition.

Section 50D – Grounds for refusing pet being kept at premises

Provides that the only grounds for a lessor to refuse a tenant's request to keep a pet at the premises are:

- if keeping the pet would contravene a written law, local law or scheme by-laws;
- with the approval of the Commissioner; or
- another prescribed ground.

Section 50E sets out the circumstances where the Commissioner may make an order allowing a lessor to refuse consent to the keeping of a pet

Section 50E – Lessor's application for approval to refuse consent to keep a pet at premises

Provides that the lessor may apply to the Commissioner for an order approving the lessor's refusal of a tenant's request for consent to keep a pet.

The Commissioner must approve the application or order that the lessor consent to the tenant's request to keep a pet.

The Commissioner may make an order allowing the lessor to refuse consent to keep a pet if the Commissioner is satisfied that one of the grounds set out in subclause (3) applies.

The Commissioner may also make an order that the lessor's consent to the keeping of a pet is subject to stated reasonable conditions.

Section 50F - Lessor's application for approval to impose conditions

The clause applies if the lessor wishes to impose a condition on approval to keep a pet, other than a condition provided for in clause 50C(a).

The lessor may apply to the Commissioner for an order approving imposition of the condition. The Commissioner must approve or refuse the application.

The Commissioner may also make an order that the lessor's consent to the keeping of a pet is subject to stated conditions.

Section 50G – Tenant's application for order that refusal not permitted

Provides that a tenant may apply to the Commissioner for an order that the lessor's refusal for consent to keep a pet is not permitted.

The Commissioner must make an order refusing the tenant's application (and permit the refusal) if satisfied that the lessor's refusal is permitted under section 50D or is satisfied that any of the grounds in section 50E(3) apply.

If the Commissioner is satisfied that that the refusal is not permitted, the Commissioner must order the lessor to consent. The Commissioner may also impose conditions on the consent.

Section 50H – Tenant’s application for order that conditions imposed on consent are unreasonable

Provides that a tenant may apply to the Commissioner for an order that a lessor’s proposed conditions on the keeping of a pet are unreasonable.

The Commissioner may make an order to approve or refuse the tenant’s application or for modification of the proposed condition. If the Commissioner orders that the condition is unreasonable, it will not apply.

Section 50I – Tenant responsibility for pet

Clarifies that a tenant is responsible for any nuisance and repair of damage caused by a pet.

Also provides that damage caused by a pet will not be considered fair wear and tear.

A tenant is generally not responsible for damage that is considered wear and tear, for example general wear of carpets due to age. This provision makes it clear that a tenant is responsible for repairing any damage caused by a pet, for example stains or damage to carpet caused by the pet.

Division 2B – Standard terms related to modifications to premises

This Division sets out provisions relating to a tenant’s right to make various types of modification to premises, consent of the lessor, conditions that may be imposed and applications to the Commissioner.

Subdivision 1 – Modifications by tenant to prevent furniture from falling

This subdivision includes provisions allowing tenants to secure furniture to a wall for the purpose of ensuring the safety of a child or a person with a disability (a furniture safety modification).

The provisions were previously included in section 47. Minor drafting amendments have been made to improve clarity, but the provisions have not been substantially changed.

Section 50J – Tenant may attach furniture to wall for safety of child or person with a disability

Provides that it is a term of every residential tenancy agreement that a tenant may attach furniture or a thing to attach furniture to a wall of premises for the purpose of ensuring the safety of a child or person with a disability, but only with the consent of the lessor.

This clause replicates current subsection 47(2A). Drafting amendments have been made to improve clarity.

Section 50K – Request for consent to make a furniture modification

Sets out the process for seeking consent from the lessor to make a furniture modification.

The tenant must make a request in the approved form.

The lessor must respond in writing within 14 days advising whether the lessor approves or refuses the request for consent. If the request is refused, the response must set out the grounds for refusal.

The lessor will be taken to have consented to the furniture modification if the lessor does not provide a written response within 14 days.

This clause is consistent with the requirements currently set out in subsection 47(2B). Drafting amendments have been made to improve clarity and for consistency with other provisions relating to modifications by tenants.

Section 50L – Grounds for refusing tenant's request to make furniture safety modifications

Outlines the only grounds on which a lessor may refuse a tenant's request to make a furniture modification.

The grounds set out in subsection (1) are consistent with those currently set out in subsection 47(2A)(b).

Subsection (2) also makes it clear that a lessor cannot refuse consent to a furniture safety modification in relation to a person with a disability if to do so would be unlawful under the *Equal Opportunity Act 1984* or the *Disability Discrimination Act 1992* (Cth).

Subdivision 2 – Modifications by tenant to prevent entry to premises in circumstances of family violence

This subdivision includes provisions allowing a tenant to make prescribed modifications for the purpose of preventing a person from entering the residential premises in order to prevent the commission of family violence.

The purpose of these provisions is to allow a tenant who is at risk of family violence to make premises as safe as possible without first needing to obtain the permission of the lessor.

The provisions were previously included in section 47. Minor drafting amendments have been made to improve clarity, but the provisions have not been substantially changed.

Section 50M – Tenant may make prescribed modifications to premises to prevent person from entering

Provides that it is a term of every residential tenancy agreement that a tenant may make a prescribed modification necessary to prevent a person from entering the premises:

- after termination of a former tenant's interest in the tenancy agreement on the ground of family violence under section 60(1)(c); or
- to prevent the commission of family violence which the tenant suspects on reasonable grounds is likely to be committed against the tenant or their dependant(s).

The tenant must notify the lessor of their intention to make the modification and provide details.

The prescribed modification must be carried out by a suitable tradesperson and the tenant must provide a copy of their invoice to the lessor.

This provision does not apply to premises entered in the register under the *Heritage Act 2018*.

Section 50K replicates current subsection 47(4) and parts of current subsection 47(5). Drafting amendments have been made to improve clarity.

Subdivision 3 – Minor modifications made by tenants

This subdivision includes new provisions to allow tenants to make minor modifications to premises with the consent of the lessor and to set out the circumstances where the lessor may withhold consent.

The subdivision also outlines the process by which a tenant can seek approval for a modification and for resolution of disputes by the Commissioner.

Section 50N – Tenant may make minor modifications to premises

Provides that it is a term of every residential tenancy agreement that a tenant may make a minor modification to premises, but only with the consent of the lessor. Conditions may be imposed on the making of minor modifications.

Section 50O – Request for approval to make minor modifications

Sets out the process for seeking consent from the lessor to a minor modification.

The tenant must make a request in the approved form and include a description of the proposed minor modification.

The lessor must respond in writing within 14 days advising whether the lessor approves or refuses the request or intends to apply to the Commissioner to permit refusal. The response must also set out the following details:

- if the request is approved subject to conditions – details of the conditions;
- if the lessor intends to apply to the Commissioner for approval to impose conditions – that fact and details of the proposed conditions; or
- if the request is refused – the grounds for refusal and reasons the lessor believes those grounds apply.

Section 50O outlines the types of conditions that may be imposed on consent and section 50P sets out valid grounds for refusal.

A lessor will be taken to have consented to the minor modification if the lessor does not do one of the following within 14 days:

- provide a written response in accordance with subsection (3); or
- apply to the Commissioner for approval to refuse the request.

Section 50P – Conditions for consent to make a minor modification

Outlines the types of conditions that a lessor may impose on consent to a minor modification.

A lessor may impose a reasonable condition about a prescribed matter or if the modification is of a type prescribed in the regulations – a condition that the work be carried out by an appropriately qualified person.

A lessor may also apply to the Commissioner under section 50S for approval to impose another type of condition.

Section 50Q – Grounds for refusing tenant's request to make a minor modification

Outlines the grounds on which a lessor may refuse a tenant's request for consent to a minor modification.

The lessor can also apply to the Commissioner under section 50S for an order allowing for the refusal of a minor modification.

Section 50R – Refusal of consent to make modification needed for disability access prohibited.

Provides that a lessor may not refuse a tenant's request to make a minor modification that is reasonably required to enable a person with a disability to access and use the premises if to do so would be unlawful under relevant equal opportunity or disability discrimination legislation.

Section 50S – Lessor's application for approval to refuse consent for minor modifications

Provides that the lessor may apply to the Commissioner for an order approving the lessor's refusal of a tenant's request to make a minor modification to the premises.

The Commissioner must approve the application or order that the lessor consent to the tenant's request to make a minor modification.

The Commissioner may make an order allowing the lessor to refuse consent to the minor modification if the Commissioner is satisfied that one of the grounds set out in subclause (3) applies.

The Commissioner may also make an order that the lessor's consent to the modification is subject to stated reasonable conditions.

Section 50T - Lessor's application for approval to impose conditions

Applies if the lessor wishes to impose a condition on approval for minor modification, other than a condition provided for in clause 50P(a) or (b).

The lessor may apply to the Commissioner for an order approving imposition of the condition. The Commissioner must approve or refuse the application.

The Commissioner may also make an order that the lessor's consent to the modification is subject to stated conditions.

Section 50U – Tenant's application for order that refusal not permitted

Provides that a tenant may apply to the Commissioner for an order that the lessor's refusal for consent to make a minor modification is not permitted.

The Commissioner must make an order refusing the tenant's application (and permit the refusal) if satisfied that the lessor's refusal is permitted under section 50Q or is satisfied that any of the grounds in section 50S(3) apply.

If the Commissioner is satisfied that that the refusal is not permitted, the Commissioner must order the lessor to consent. The Commissioner may also impose conditions on the consent.

Section 50V – Tenant may apply for order that conditions imposed are unreasonable

Provides that a tenant may apply to the Commissioner for an order that a lessor's proposed conditions on consent for the tenant to make a minor modification is unreasonable.

The Commissioner may make an order to approve or refuse the tenant's application or for modification of the proposed condition.

Subdivision 4 – Other modifications

This subdivision includes provisions in relation to the making of major modifications by tenants and modifications by lessors.

Some of these matters were previously included in section 47. Amendments have been made to improve clarity and include clear processes by which the parties can seek approval for modifications.

Section 50W – When tenant may make major modifications to premises

Defines major modification as a modification other than a minor modification, a furniture safety modification or a modification made to prevent a person from entering premises (section 50M).

Provides that a residential tenancy agreement may provide that:

- a tenant may make an agreed modification without the lessor's consent – the tenant must notify the lessor before making this type of modification;
- a tenant may make a major modification with the lessor's consent – the lessor cannot unreasonably withhold consent; or
- a tenant must not make major modifications to the premises.

A lessor may impose reasonable conditions on approval to make a major modification.

Section 50X - Lessor may make modifications to premises

Provides that it is a term of every residential tenancy agreement that the lessor may make a modification to the premises, but only with the consent of the tenant.

A tenant cannot unreasonably withhold consent.

The tenant's approval to modifications may be subject to reasonable conditions about the lessor's entry to the premises. The requirements of section 46(2)(e) about the lessor's obligation to give notice in relation to entry to premises apply, subject to any reasonable conditions imposed on entry under this clause.

Section 50Y – Request for approval to make other modifications

Sets out the process by which either a lessor or tenant can seek approval to make a major modification to premises.

The requesting party must make a request in the approved form.

The consenting party must respond in writing within 28 days advising whether they approve or refuse the request. The response must also set out the following details:

- if the request is approved subject to conditions - details of the conditions; or
- if the request is refused – the grounds for refusal and reasons the consenting party believes those grounds apply.

The consenting party will be taken to have approved to the modification if they do not respond within 28 days.

Section 50Z – Refusal of consent to make modification needed for disability access prohibited

Provides that a lessor may not refuse a tenant's request to make a major modification that is reasonably required to enable a person with a disability to access and use the premises if to do so would be unlawful under relevant equal opportunity or disability discrimination legislation.

Subdivision 5 – Tenant's responsibilities in relation to modifications to premises

This subdivision sets out the responsibilities of tenants when making modifications to premises.

These matters were previously included in section 47. Amendments have been made to improve clarity.

Section 50ZA – Purpose of subdivision

Provides that the matters set out in subdivision 5 are terms of every residential tenancy agreement and will apply if a tenant makes modifications to the premises.

Section 50ZB – Tenant bears costs of modifications and responsibility for repairs

Provides that a tenant is responsible for the costs of making modifications, maintaining modifications, removing a modification and restoring premises.

Section 50ZC – Modification to have regard to age and character of premises

Provides that a tenant must ensure that a modification is made in a way that has regard for the age and character of the premises and complies with any law or scheme by-law.

Section 50ZD – Tenant must remove modification and restore premises

Provides that, when the tenant vacates the premises at the end of the tenancy agreement, the tenant must remove a modification and restore the premises or compensate the lessor for the reasonable costs incurred in removal and restoration.

Subclause (2) applies to a modification made in accordance with section 50M (a security modification made to prevent entry in circumstances of family violence). A tenant will only be required to remove an attached thing, restore premises or compensate the lessor if requested to do so in writing by the lessor. If this work is done by a qualified tradesperson, a copy of their invoice must be provided to the lessor.

Section 50ZE – Tenant responsible for damage caused by making or removing modification or restoring premises

This section will apply if the tenant causes damage to premises when making or removing a modification or restoring premises.

Provides that the tenant must give the lessor written notice of the damage.

The lessor may require the tenant to repair the damage and restore the premises or compensate the lessor for the reasonable costs to repair the damage and restore the premises.

Clause 34 Section 64 amended – Notice of termination by lessor without any ground

Amends section 64 to delete subsection (3)(b) which provided that the tenant could make an application to the court on the ground that termination was motivated by the fact that the tenant had made a complaint or taken steps to enforce their rights.

This right is now addressed by new clause 26B which provides for the tenant to seek a remedy in relation to retaliatory action.

Clause 35 Section 71AB amended – Notice of termination of tenant's interest on ground that tenant subject to family violence

Amends subsection 71AB(2)(d) to replace the requirement to make an application in a 'form approved by the Minister' to an 'approved form' (with the form approved by the Commissioner under clause 88C).

Clause 36 Section 71 amended – Application by lessor for termination and order for possession

Amends subsection 71(3)(b)(i) to include a cross reference to new section 26B in relation to retaliatory action. This clause provides that the court may refuse to make an order for termination and vacant possession if satisfied that the lessor has taken retaliatory action.

Clause 37 Section 76A amended – Termination of agreement by lessor if premises abandoned

Amends section 76A to replace the requirement to make an application in a ‘form approved by the Minister’ with an ‘approved form’ (with the form approved by the Commissioner under clause 88C).

Clause 38 Section 76BA inserted – Order about payment of security bond

This clause makes it clear that the court may make an order about release of a security bond when making an order terminating a tenancy agreement. The court must provide a copy of the order to the bond administrator.

Clause 39 Section 77 amended – Abandonment of premises

Amends section 77 to replace the requirement to make an application in a ‘form approved by the Minister’ with an ‘approved form’ (with the form approved by the Commissioner under clause 88C).

Clause 40 Section 79 amended – Abandoned goods

Amends section 79 to replace ‘form approved by the Commissioner’ with ‘approved form’ as this is now a defined term included in section 3.

Clause 41 Section 81A amended – Mortgagee repossession of rented premises

Amends section 81A to replace the requirement to make an application in a ‘form approved by the Minister’ to an ‘approved form’ (with the form approved by the Commissioner under clause 88C).

Clause 42 Section 81B – Notice of proposed recovery of premises by person with superior title

Amends section 81B to replace the requirement to make an application in a ‘form approved by the Minister’ to an ‘approved form’ (with the form approved by the Commissioner under clause 88C).

Clause 43 Part 5A inserted – Release of security bond

New Part 5A includes provisions relating the release of security bonds and replaces provisions currently set out in Schedule 1 Division 2.

A lessor may require payment of a security bond under section 29 of the Act.

Security bonds are held by the bond administrator and are released at the end of the tenancy. A lessor may claim part or all of the security bond at the end of the tenancy for certain costs or amounts owing under the tenancy agreement. If the lessor is not entitled to payment, the security bond is released back to the tenant.

Schedule 1 Division 2 currently requires that an application for release of a security bond must be signed by all parties to the tenancy agreement and lodged with the bond administrator. If agreement cannot be reached, a party must apply to the Magistrates Court for an order for disposal of the security bond.

Part 5A outlines a new the process for release of a security bond, which will allow a party to unilaterally commence the process by making an application to the bond administrator. Part 5A also includes new mechanisms to give the Commissioner the power to make a determination about the release of a security bond in circumstances where the parties do not agree in relation to payment of the bond.

Division 1 - Application

Section 81C – Application for release of a security bond

Provides that one, some or all parties to a residential tenancy agreement may apply to the bond administrator for release of the security bond using the approved form. The application must set out the amount to be paid to each party.

An application for release of a security bond must not be made before the tenancy agreement terminates, except in limited circumstances set out in subclause (4).

A lessor or property manager must not ask or require a tenant to sign a bond release application unless the agreement has terminated or subclause (4) applies, and the application includes the amounts to be paid to the lessor and tenants. This is to prevent lessors or their agents from requiring tenants to sign incomplete bond release applications before the tenancy ends.

Section 81D – Application for partial release of security bond

Provides that an application may be made for partial release of a security bond to a tenant or tenants if:

- the rent payable has been reduced;
- the tenant has paid a pet bond under section 29(b)(ii) and the relevant pet is no longer being kept on the premises; or
- other prescribed circumstances exist.

This clause is consistent with regulations that currently allow for partial release of a security bond.

Section 81E – Amounts for which lessor is entitled to payment from security bond

Outlines the costs and other amounts for which a lessor is entitled to payment from a security bond.

Also provides that the regulations may prescribe amounts for which a lessor is not entitled to payment.

This provision is intended to provide greater clarity around the amounts that may be claimed by a lessor from a security bond.

Section 81F – Notice of security bond release application to other parties

This clause applies in circumstances where a security bond release application has not been agreed by all parties to the tenancy agreement.

The bonds administrator must give notice of the application to the other parties containing the information set out in subclause (3).

The notice must specify a date by which the party must respond – the period starting when the party is given the notice and ending on the day stated in the notice. This is the ‘notice period’.

Section 81G – Accepting security bond release application

Provides that a party may agree to the security bond release application or a variation of the application by giving the bond administrator notice in the prescribed way.

The bond administrator may accept a notice after the end of the notice period and must notify the Commissioner.

Section 81H – Disputing security bond release application

Provides that a party may dispute the security bond release application by giving the bond administrator notice in the prescribed way.

The bond administrator may accept a dispute notice after the notice period ends, provided security bond has not been paid out.

Section 81I – Referral of security bond release application

Provides that the bond administrator must refer a security bond release application to the Commissioner if the parties have been given notice and at least one party disputes the application, has not responded or has not agreed to the application.

Section 81J – Withdrawing dispute notice

Provides that a party may withdraw a dispute notice by giving written notice to the bond administrator advising that the party has withdrawn the dispute

and agrees to the security bond release application or a variation of the application. The bond administrator must notify the Commissioner.

Division 2 – Payment of security bond

Section 81K – Payment of security bond with agreement of all the parties

Provides that if all parties have agreed to a security bond release application or to a variation of the security bond release application, that the bond administrator must pay the security bond to the persons and in the amounts stated in the security bond release application or the varied application.

Section 81L – Payment of security bond following referral of application to Commissioner

Applies if the security bond release application is referred to the Commissioner under section 81I (i.e. where the parties have not agreed on release of the security bond).

The bond administrator is to pay the security bond in accordance with a decision of the Commissioner or the court, as the case may be.

Section 81M – Paying amount of bond assistance loan to Housing Authority

Applies if an amount of the security bond is payable to a tenant and the bond administrator is aware that the tenant has a security bond assistance loan that has not been paid in full.

Makes provision for the bond administrator to pay the Housing Authority an outstanding loan amount in relation to a bond assistance loan.

Section 81N – Payment of security bond in accordance with order of competent court

Provides that if a court makes an order about payment of the security bond for a residential tenancy agreement, the bond administrator must pay the security bond in accordance with the order.

A court may make an order in relation to a security bond under other Parts of the Act, for example, under section 17B in circumstances where a tenancy is terminated on the grounds of family violence.

Division 3 – Security bond release application decided by Commissioner

Section 81O – Application of Division

Provides that this Division applies if the security bond release application is referred to the Commissioner under section 81I (i.e. where the parties have not agreed on release of the security bond).

Section 81P – Known party to residential tenancy agreement

Defines 'known party' as a person the bond administrator has named as a known party to the residential tenancy agreement.

Section 81Q - Notice of receipt of security bond release application

Provides that the Commissioner must give notice to each known party stating that:

- the application has been referred to the Commissioner;
- advising that the party may make a submission; and
- if the party makes a submission by the date stated in the notice, that the Commissioner will take the submission into account in making a determination.

Section 81R - Deciding security bond release application

Outlines how the Commissioner is to decide a security bond release application. The clause requires that the Commissioner:

- decide whether the lessor is entitled to payment of an amount from the security bond under section 81E;
- work out the balance (if any) by subtracting the amount payable to the lessor from the amount of the security bond; and
- if there are two or more known parties who are tenants, deciding how the balance is to be divided between them.

Section 81S – When Commissioner is not required to decide security bond release application

Provides that the Commissioner is not required to decide a security bond release application if:

- the matter is referred to the Magistrates Court under section 11L; or
- the bond administrator notifies the Commissioner that the parties to the tenancy agreement have agreed on the release of the security bond (by agreeing to either the original application or a variation of the application).

Division 4 - General

Section 81T – Unclaimed security bonds

Applies if the bond administrator believes on reasonable grounds that the residential tenancy agreement has been terminated and six months have passed, but the security bond has not been paid to any of the parties to the agreement under Division 2.

Provides that the bond administrator must deal with the security bond in the prescribed way.

Regulations may provide for the process for dealing with an unclaimed security bond.

This clause replicates current Schedule 1 Clause 5(4). Drafting amendments have been made to improve clarity.

Clause 44 Section 82A amended

Deletes the definition of personal information as this is now included in section 4.

Clause 45 Sections 86A and 86B inserted

New sections 86A and 86B are intended to clarify how the obligations of a lessor are to apply in circumstances where a lessor has engaged a property manager to act on their behalf in relation to the leasing of residential premises.

Section 86A – Provision imposing obligation to act on lessor or property manager

Applies in relation to a provision of the Act imposing an obligation on a lessor or property manager.

Provides that:

- if the act is done, both the property manager and lessor will be taken to have complied; and
- if the act is not done, both the property manager and lessor will be taken to have contravened the provision and may be dealt with for the offence.

Section 86B – Lessor's property manager

Provides that if a provision of the Act refers to something being done or required to be done by the lessor without mentioning the property manager, the provision does not, by implication limit the extent to which a property manager can do the thing as an agent of the lessor.

Clause 46 Section 88C inserted - Approved forms

Provides that the bond administrator may approve forms for use in relation to bonds and the Commissioner may approve forms for other purposes.

Clause 47 Section 88 amended

Deletes section 88(3) which provides that regulations made under certain sections cannot come into operation for six months.

Clause 48 Part VII heading replaced

Inserts a new heading for **Part 7– Savings and transitional provisions.**

Clause 49 Part VII Division 1 heading inserted

Inserts a new heading for **Division 1 – Transitional and savings provision relating to the *Residential Tenancies Amendment Act 2011***.

Clause 50 Part VII Division 2 heading deleted

Deletes the heading to Part VII Division 2.

Clause 51 Section 92 amended – Terms used

Drafting amendment to replace ‘Part’ with ‘Division’.

Clause 52 Part VII Division 3 heading deleted

Deletes the heading to Part VII Division 2.

Clause 53 Part 8 heading deleted

Deletes the heading to Part 8.

Clause 54 Part VII Division 2 heading inserted

Inserts a new heading for **Division 2 – Transitional provision relating to the *Consumer Protection Legislation Amendment Act 2019***.

Clause 55 Part 7 Division 3 inserted

Inserts new **Division 3 — Transitional provisions relating to the *Residential Tenancies Amendment Act 2023***.

This Division outlines the transitional provisions in relation to the amendments made to the Act by this Bill.

Section 99 – Variation of rent for fixed term residential tenancy agreement entered into before commencement

Clause 25 amends sections 30 of the Act to change the minimum period between rent increases from six months to 12 months.

This clause outlines how the amendments in clause 24 of this Bill will apply to fixed term residential tenancy agreements entered into before the amendments in section 25 come into operation.

The amendments will not apply until the end of the current term. This will mean that during this period, the minimum interval between rent increases will continue to be six months.

Section 30(2)(a) requires a fixed term agreement must specify the amount of an increase or method for calculating the increase. This clause will allow those increases to apply, as agreed, at intervals of a minimum of six months until the end of the current fixed term.

Section 100 – Variation of rent for residential tenancy agreement, other than fixed term agreement, entered into before commencement

Clause 25 amends sections 30 and 31A of the Act to change the minimum period between rent increases from six months to 12 months.

This clause outlines how the amendments in clause 25 of this Bill will apply to agreements other than the agreements to which section 99 applies (fixed term residential tenancy agreements entered into before the commencement, where the rent is not calculated by reference to income).

Amended sections 30 and 31A will apply to these agreements. This will mean that the interval between rent increases must be a minimum of 12 months.

A notice of rent increase given under section 30 or 31A before commencement (and to take effect after commencement) will be of no effect unless it complies with the amended provisions – i.e. the rent increase must be at least 12 months from the start of the tenancy or the last rent increase.

Section 101 – Application of Part 5A in relation to existing residential tenancy agreements

Part 5A inserts new provision about release of security bonds.

This clause provides that Part 5A will apply to a residential tenancy agreement in force on the date on which Part 5A comes into operation.

However, the bond administrator may continue to deal with applications lodged before the commencement or using the forms previously approved by the Minister.

The court may also continue to deal with a matter relating to disposal of a security bond under Schedule 1 Clause 8 if the matter has not been finalised by the commencement.

Section 102 – Existing authorised agents of bond administrator

Schedule 1 Clause 1 currently provides for the appointment of authorised agents by the bond administrator. This will be replaced by new section 10 which gives the bond administrator the power to delegate any power or duty to an employee of the department.

This clause provides that on commencement of the relevant provisions, a person who immediately before commencement is an authorised officer appointed by the bond administrator, will be taken to have been delegated the powers and duties of the bond administrator.

Section 103 - Validation of r.12BA and 12CA

Validates:

- regulation 12BA which prescribes alterations to property that may be made to improve security in circumstances of family violence; and
- regulation 12CA, which prescribes a person or class of persons who may complete a report of family violence (to accompany a notice of termination by a tenant on the ground of family violence).

Provides that anything done on or after 15 April 2019 under these regulations will be lawful, valid and effective.

Clause 56 Schedule 1 clause 1 deleted

Deletes Schedule 1 clause 1 which provides for the bond administrator to appoint an authorised agent. This will be replaced by new section 10 which gives the bond administrator the power to delegate any power or duty to an employee of the department.

Clause 57 Schedule 1 clause 3 amended – Rental Accommodation Account

Drafting amendments to replace 'clause 5(1)' with 'Part 5A Division 2' and remove references to 'authorised agent'.

Clause 58 Schedule 1 clause 4 amended – Duties of bond administrator

Drafting amendment to replace 'clause 5' with 'Part 5A Division 2'.

Clause 59 Schedule 1 Division 2 deleted – Security bonds

Delete schedule 1 Division 2 – provisions related to payment of the security bond to the bond administrator and release of security bonds are now included in the Act.

Clause 60 Schedule 1 clause 10 amended – Disposal of tenant compensation bond to tenant by bond administrator

Amends clause 10 to replace the requirement to make an application in a 'form approved by the Minister' to an 'approved form' (with the form approved by the bond administrator under clause 88C). Also removes references to authorised agent.

Clause 61 Schedule 1 clause 11 amended – Disposal of tenant compensation bond to lessor by bond administrator

Amends clause 11 to replace the requirement to make an application in a 'form approved by the Minister' to an 'approved form' (with the form approved by the bond administrator under clause 88C). Also removes references to authorised agent.

Part 3 - Residential Parks (Long-stay Tenants) Act 2006 amended.

This Part includes consequential amendments and validation provisions.

Clause 62 Act amended

Provides that this Part amends the *Residential Parks (Long-stay Tenants) Act 2006*.

Clause 63 Section 22 amended – Payment to bond administrator

Amended to delete reference to authorised agent.

Clause 64 Section 95 amended – Regulations

Deletes section 95(4) which provides that regulations made under certain sections cannot come into operation for six months.

Clause 65 Part 7 Division 4 inserted – Validation provision for *Residential Tenancies Amendment Act 2023*

Section 117 – Validation of r.13A and 22

Validates:

- regulation 13A, which prescribes a person or class of persons who may complete a report of family violence (to accompany a notice of termination by a tenant on the ground of family violence); and
- regulation 22 which prescribes alterations to property that may be made to improve security in circumstances of family violence.

Provides that anything done on or after 15 April 2019 under these regulations will be lawful, valid and effective.