

Residential Tenancies Practice Note 11-05

Changes to the Residential Tenancies Act

Background

On 1 September 2011 significant changes to the *Residential Tenancies Act 1997* (RTA) will commence operation.

This is a very brief outline of these changes. More detailed practice notes regarding each area of change will be provided before the commencement date.

Caravan park amendments

New Part 4A of the RTA creates a new type of tenancy arrangement between a person who owns (either partially or fully) a certain type of dwelling (a 'Part 4A' dwelling) and a 'site owner'.

For the amendments to apply the dwelling must be 'designed, built or manufactured to be transported from one place to another for use as a residence'. Also the dwelling must not be registrable under the Road Safety Act 1986.

When a site agreement exists, the caravan park provisions (Part 4 of the RTA) do not apply. However Part 4 will apply to a person who resides in a Part 4A dwelling but who does not own it. Part 4A applies only to owner-renters. It applies to existing agreements and new agreements.

Part 4A confers significant advantages on site tenants:

- a site agreement is assignable and transferable;
- the minimum notice period for a 'no reason' notice to vacate or a notice for the end of a fixed term agreement is 365 days;
- a site tenant must be given details of all rent, fees and charges payable under the site agreement, has 20 days to consider a proposed written site agreement, and may rescind a site agreement within 5 business days after signing;

A Part 4A Park is an area of land where sites of land are available for occupation under a site agreement, Part 4A dwellings may be situated on those sites and common areas or facilities are available for the use of persons occupying a Part 4A site.

Where a dwelling is situated in a Part 4A park that is registered on or after the commencement of the amendments, the site owner must offer a minimum 5 year fixed term agreement.

Part 4A limits a site tenant's liability to pay compensation to a site owner in certain circumstances.



In relation to disputes relating to site agreements, VCAT's jurisdiction is increased from \$10,000 to \$100,000.

Residential tenancy databases

New Part 7 of the RTA regulates residential tenancy databases.

Part 7 restricts when a listing may be made on a database. Only certain breaches by a tenant justify listing, and the breach must result in the tenant owing the landlord more than the bond, or a possession order was made.

A listing must specify the breach and be accurate, complete and unambiguous.

Before making a listing a database operator must give the person a copy of the information, allow 14 days for the person to make an objection to the proposed listing, and consider any submissions.

A listing must be removed from the database after 3 years.

An application may be made to VCAT to remove a listing where:

- the database operator failed to notify the person as required;
- the listing is not for an allowable matter;
- the listing has been on the database for more than 3 years.

An application may be made to amend or remove a listing if it is not accurate, complete or unambiguous. This includes information that has become inaccurate since listing, such as a debt which has been paid by the tenant, or an order which was set aside on review.

Rooming house amendments

Regarding rooming houses, the amendments:

- provide a new power to make regulations prescribing minimum standards and requirements for rooming houses. No regulations can be made until the amendments commence on 1 September;
- require an owner of a building which is being let and used as a rooming house to give a notice to vacate to each resident of the rooming house if the owner gives the lessee a notice to vacate. The notice must allow the resident 45 days to vacate the room;
- allow the Director of Consumer Affairs to initiate investigation and compliance action without a resident's complaint, for example regarding a proposed rent increase or alleged failure to maintain the room or rooming house in good repair.

Urgent repairs

The amendments will enable a higher amount to be prescribed for urgent repairs under the Act. It should be noted that the amendment does not increase the current \$1,000 limit but only creates the ability for the Minister to set a higher amount by regulation.

Penalties

The amendments will increase the penalty for all offences under the RTA. Some penalties have increased by a substantial amount particularly for offences committed by bodies corporate (for example, companies)

What should you do?



The TUV will be producing further Practice Notes on some of the specific areas outlined above. The Part 4A amendments in particular are complex. Keep an eye out for Practice Notes to follow.

To familiarise yourself with the amendments you can obtain a copy of the *Residential Tenancies Amendment Act 2010* at www.legislation.vic.gov.au under 'Victorian Statute Book' and '2010' (legislation passed each year is listed alphabetically).

This Practice Note is a guide only and should not be used as a substitute for professional legal advice. If you have a question about this Practice Note or a specific case and you require advice, then you should contact us on **(03) 9411 1444**

Tenants Union Legal Team