



Australian Capital Territory

# Residential Tenancies Amendment Act 2017

A2017-32

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Australian Capital Territory

# Residential Tenancies Amendment Act 2017

**A2017-32**

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An Act to amend the *Residential Tenancies Act 1997*

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## **1 Name of Act**

This Act is the *Residential Tenancies Amendment Act 2017*.

## **2 Commencement**

- (1) This Act (other than schedules 2 and 3) is taken to have commenced on the day the bill for this Act was presented to the Legislative Assembly.
- (2) Schedules 2 and 3 commence on a day fixed by the Minister by written notice.

*Note 1* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

*Note 2* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

- (3) If schedule 3 has not commenced within 12 months beginning on this Act's notification day, it automatically commences on the first day after that period.
- (4) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to schedule 3.

## **3 Legislation amended**

This Act amends the *Residential Tenancies Act 1997*.

## Schedule 1 Commercial guarantees— stage 1 amendments

(see s 3)

### [1.1] Section 15 (4)

*substitute*

- (4) In subsection (1), a reference to a ***bond***—
- (a) includes a reference to a guarantee or an indemnity under section 16; but
  - (b) does not include a commercial guarantee.

### [1.2] New section 15 (7)

*insert*

- (7) In this section:
- commercial guarantee***, in relation to a residential tenancy agreement, means a contract or arrangement between the lessor, the tenant and a third party—
- (a) that is in addition to or in place of a bond; and
  - (b) under which the third party, for a fee, benefit or reward, gives a guarantee or indemnity to the lessor for the performance of the tenant's obligations under the residential tenancy agreement.

**[1.3] Section 16 (2)**

*substitute*

- (2) A guarantee or an indemnity under subsection (1) is only enforceable—
- (a) against the guarantor or indemnifier—
    - (i) if it is in addition to a bond—to the extent of the difference between the maximum amount that would have been payable by the tenant as a bond and the amount that is payable by the tenant as a bond; or
    - (ii) if it is in place of a bond—to the extent of the maximum amount that would have been payable by the tenant as a bond; and
  - (b) if the guarantee or indemnity is not a commercial guarantee.
- (3) In this section:  
*commercial guarantee*—see section 15 (7).

## Schedule 2 Commercial guarantees— stage 2 amendments

(see s 3)

### [2.1] Section 15 (4) (b)

*substitute*

- (b) if the guarantee or indemnity is a commercial guarantee—only includes a commercial guarantee that is consistent with a registered standard guarantee contract.

### [2.2] Section 15 (7)

*substitute*

- (7) In this section:

***registered standard guarantee contract*** means a standard guarantee contract registered under section 104.

### [2.3] Section 16 (2) and (3)

*substitute*

- (2) A guarantee or an indemnity under subsection (1) is only enforceable against the guarantor or indemnifier—
- (a) if it is in addition to a bond—to the extent of the difference between the maximum amount that would have been payable by the tenant as a bond and the amount that is payable by the tenant as a bond; or
- (b) if it is in place of a bond—to the extent of the maximum amount that would have been payable by the tenant as a bond.
- (3) A term of a commercial guarantee, in relation to a residential tenancy agreement, that is inconsistent with, or is in addition to, a registered standard guarantee contract is void.

- (4) If a regulation requires a commercial guarantee to include a term in the contract, the guarantee is taken to include the term.
- (5) If a regulation requires a matter to be excluded from a commercial guarantee, the guarantee is void to the extent that it includes the matter.
- (6) In this section:  
*registered standard guarantee contract* means a standard guarantee contract registered under section 104.

**[2.4] New part 8**

*insert*

## **Part 8 Registration of standard guarantee contract for commercial guarantee**

### **102 Meaning of *commercial guarantee* and *standard guarantee contract***

In this Act:

*commercial guarantee*, in relation to a residential tenancy agreement, means a contract or arrangement between the lessor, the tenant and a third party—

- (a) that is in addition to or in place of a bond; and
- (b) under which the third party, for a fee, benefit or reward, gives a guarantee or indemnity to the lessor for the performance of the tenant's obligations under the residential tenancy agreement.

*standard guarantee contract* means a form of contract for a commercial guarantee.



**103 Application for registration of standard guarantee contract**

- (1) A person may apply to the commissioner for fair trading to register a standard guarantee contract for a commercial guarantee.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the applicant's name, address, email address and phone number; and
  - (c) include any information prescribed by regulation.

*Note 1* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

*Note 2* A fee may be determined under s 134 for this provision.

**104 Commissioner must decide application**

- (1) Within 30 days after the day the application is received, the commissioner for fair trading must—
  - (a) register the standard guarantee contract; or
  - (b) register the standard guarantee contract subject to conditions; or
  - (c) refuse to register the standard guarantee contract.

*Note* Failure to decide the application within the required time is taken to be a decision not to register the applicant (see [ACT Civil and Administrative Tribunal Act 2008](#), s 12).

- (2) Before making a decision under subsection (1), the commissioner may ask an applicant to give the commissioner, within a stated time, information about the applicant or about the standard guarantee contract, that the commissioner reasonably needs to decide the application.

- (3) If the applicant does not give the commissioner the information requested under subsection (2), the commissioner may refuse to register the standard guarantee contract.
- (4) If the commissioner refuses to register the standard guarantee contract, or registers the standard guarantee contract subject to conditions, the applicant may apply to the ACAT for a review of the decision.

*Note 1* The commissioner for fair trading must take reasonable steps to give a reviewable decision notice to any person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

## **105 Register of standard guarantee contracts**

- (1) The commissioner for fair trading must keep a register of standard guarantee contracts.
- (2) The register must include—
  - (a) the business name and the trading name of the person who has registered a standard guarantee contract; and
  - (b) any information prescribed by regulation.
- (3) The register may include any other information the commissioner for fair trading believes will improve consumer protection.
- (4) The register may be kept in any form, including electronically, that the commissioner decides.

- (5) The commissioner must make the register available to the public.

*Note* The Territory privacy principles (the *TPPs*) apply to the commissioner for fair trading (see [Information Privacy Act 2014](#), sch 1). The TPPs deal with the collection, storage and exchange of personal information.

## 106 Relationship to Australian Consumer Law (ACT)

This part and section 16 (3) do not affect the operation of the Australian Consumer Law (ACT).

### [2.5] New section 134

*insert*

## 134 Determination of fees

- (1) The Minister may determine fees for this Act.

*Note* The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

### [2.6] New section 136 (2) (c)

*insert*

- (c) commercial guarantees, including the following:

- (i) grounds for registering, applying a condition to, or refusing to register a standard guarantee contract;
- (ii) a matter that must be included in, or excluded from, a commercial guarantee;
- (iii) requirements in relation to reporting on, record keeping for and the administration of commercial guarantees;

- (iv) if a person has registered a standard guarantee contract—  
information that the person must give to another person  
before entering into a commercial guarantee with the  
other person;
- (v) amending, renewing, ending or suspending the  
registration of a standard guarantee contract.

**[2.7] Schedule 1, clause 13 (1)**

*omit*

commissioner of fair trading

*substitute*

commissioner for fair trading

**[2.8] Dictionary, note 2**

*insert*

- Australian Consumer Law (ACT)

**[2.9] Dictionary, new definition of *commercial guarantee***

*insert*

*commercial guarantee*—see section 102.

**[2.10] Dictionary, definition of *commissioner***

*omit*

**[2.11] Dictionary, new definition of *standard guarantee contract***

*insert*

*standard guarantee contract*—see section 102.

## Schedule 3 Rental bond amendments

(see s 3)

### [3.1] Section 24

*substitute*

#### 24 Deposit of bond by tenant

- (1) If the lessor and the tenant agree to the tenant depositing the bond with the Territory—
  - (a) the tenant must deposit with the Territory the amount of the bond; and
  - (b) the tenant, or the lessor on the tenant's behalf, must lodge a notice in accordance with section 25.
- (2) Unless the lessor and the tenant otherwise agree, the tenant is not entitled to possession of the premises until—
  - (a) the tenant gives the lessor evidence that the bond has been deposited; or
  - (b) the Territory gives the lessor written notice that the bond has been deposited.

*Note* Under the [Electronic Transactions Act 2001](#), s 8 (1), information required to be in writing may be given electronically in certain circumstances.

### [3.2] Section 25 heading

*substitute*

#### 25 Notice about deposit

**[3.3] Section 25**

*omit*

or section 24 (1) (b)

*substitute*

, section 24 (1) (b) or section 26

**[3.4] Section 26**

*substitute*

**26 Acknowledgment of receipt of bond money**

If the Territory accepts an amount of bond, the Territory must—

- (a) if the tenant deposited the bond—give the tenant a receipt for the amount; and
- (b) give the tenant and lessor a notice in accordance with section 25.

*Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information required to be in writing under this section may be given electronically in certain circumstances.

**[3.5] Schedule 1, clause 19 (a) and (b)**

*substitute*

- (a) the tenant, or the lessor on the tenant's behalf, must complete the bond lodgment form provided by the Office of Rental Bonds and lodge the form with the Office;
- (b) the tenant must lodge the bond with the Office of Rental Bonds in the way permitted by the Office;

**[3.6] Schedule 1, clause 19 (c)**

*omit*

(such evidence includes the receipt of the Office of Rental Bonds)

*substitute*

or the Office of Rental Bonds notifies the lessor that the bond was received by the Office

**[3.7] Schedule 1, clause 20 (b), (c) and (d)**

*substitute*

- (b) the lessor must complete the bond lodgment form provided by the Office of Rental Bonds and lodge the form with the Office;

*Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information required to be in writing may be given electronically in certain circumstances.

- (c) the lessor must lodge the bond with the Office of Rental Bonds in the way permitted by the Office within—
- (i) the later of 2 weeks after receiving the bond and the commencement of the tenancy; or
  - (ii) if the lessor's real estate agent lodges the bond—the later of 4 weeks after receiving the bond and the commencement of the tenancy.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 14 September 2017.

**2 Notification**

Notified under the [Legislation Act](#) on 7 November 2017.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Residential Tenancies Amendment Bill 2017, which was passed by the Legislative Assembly on 24 October 2017.

Acting Clerk of the Legislative Assembly

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