

2008

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

LAND RENT BILL 2008

EXPLANATORY STATEMENT

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Land Rent Bill 2008

Summary

The Land Rent Act 2008 is an act to provide for the rental of a single dwelling house lease granted by the planning and land authority, to a person other than a territory authority.

Overview

The Government announced the Affordable Housing Action Plan on 12 April 2007. The Action Plan included, among other initiatives, the introduction of a land rent scheme targeted at individual private households who will be owner-occupiers. The land rent scheme will allow eligible people to access home ownership by reducing the upfront costs of financing the purchase of land and construction of a home on that land.

Initially access to the scheme is restricted to people on low to moderate incomes who meet eligibility for the discount rate of rent. After an initial period the scheme may be extended to other people who will pay the standard rate. The scheme has been designed to be flexible and allow households to move between the two rates as their circumstances change.

To protect households from large rental increases due to increases in unimproved land values rent increases will be capped.

The scheme has been designed to allow households to purchase the land at any time by applying to the planning and land authority for a variation of the lease to reduce the land rent payable to a nominal rent.

Commencement Date

This Bill will commence on a day fixed by the Minister by written notice.

Details of the Bill

Details of the Bill are attached.



Details of the Land Rent Bill 2008

Part 1 Preliminary

Clauses 1-4 name the Act the *Land Rent Act 2008*, give the commencement date as a date fixed by the Minister and provide that the dictionary contains definitions of important terms used in the Act. All notes in this legislation are explanatory and not part of the Act.

Clause 5 provides that the Act applies to a single dwelling house lease granted by the planning and land authority. Initially, it will only apply to those leases where the lessee is eligible for discounted land rent. From 31 December 2008, the Land Rent Act may apply to any single dwelling house leases granted by the planning and land authority other than to a Territory Authority. Prior to this date another date may be fixed by regulation.

Clause 6 states that the *Land Rent Act 2008* is a tax law under the *Taxation Administration Act 1999* (TAA) and is subject to its provisions about the administration and enforcement of tax laws generally as if land rent were a tax and the lessee a taxpayer (see Schedule 1 Part 1.4). Section 25 (Interest in relation to tax defaults), Division 5.2 (Penalty Tax) and section 110 (Interest payable on amounts to be paid by taxpayer) of the TAA do not apply, as non payment of land rent is not taken to be a tax default.

Part 2 Land rent – lease

Clause 7 allows an applicant for the grant of a lease to apply to the planning and land authority to pay land rent where the planning and land authority has invited applications for the ballot or direct sale of a single dwelling house lease that may be subject to the condition that the lessee pays land rent for the lease. If the application is in accordance with the regulations the lease must be granted subject to the condition that land rent is payable and it must indicate that it is a land rent lease.

Clause 8 (1) sets the amount of rent payable by a lessee for the year that the lease is first granted. The amount of rent is a percentage of the unimproved land value of the relevant parcel of land and can either be a discounted land rent if the lessee is eligible, or the standard land rent, if the lessee is not eligible for the discounted land rent.

Clause 8 (2) sets the amount of land rent payable by a lessee for the second and subsequent years.

Clause 8 (2) (a) if eligible for the discounted land rent, then the amount is the lesser of:

- (i) the discount percentage of the unimproved land value of the lease; and
- (ii) the amount payable in the previous year at the discounted percentage, increased by the relevant percentage. The relevant percentage caps the increase to protect households from large rental increases due to increases attributed to unimproved land values.

Clause 8 (2) (b) if not eligible for the discounted land rent, then the amount is the lesser of:

- (i) the standard percentage of the unimproved land value of the lease; and

- (ii) the amount payable in the previous year at the standard percentage, increased by the relevant percentage.

Clause 8 (2) (c) if the lessee was previously ineligible for the discounted land rent and becomes eligible for discounted land rent for the year, then the amount is the lesser of:

- (i) the discount percentage of the unimproved land value of the lease for the year; and
- (ii) the amount payable in the previous year without the discount increased by the relevant percentage multiplied by the discounted percentage and divided by the standard percentage.

Clause 8(3) provides definitions relevant to section 8.

Part 3 Land rent – discount

Clause 9 defines the meaning of ‘lessee’ for Part 3 of the act to include a person proposed to be a lessee. This will allow a person to apply to the commissioner prior to the grant of the lease.

Clause 10 states that an application for discounted land rent must be made to the commissioner. The application must include evidence of income for each lessee for the year before the application is made, and for the year that the application is made. Details of any real property owned by each lessee must also be provided. An application for discounted rent may be made before the grant of the lease or at any time during the term of the lease.

Clause 11 (1) provides the eligibility criteria for a discounted land rent. The criteria are:

- (a) no lessee may own any other real property, including rural, residential or commercial real property; and
- (b) the total income of all of the lessees does not exceed the total income threshold amount (set by disallowable instrument); and
- (c) if a certificate of occupancy has been issued, at least one of the lessees of the land rent lease must live on the parcel of land under the land rent lease.

Clause 12 provides that the commissioner must either grant or refuse an application for discounted land rent on receipt of an application under section 10 (Discount-application) and give written notice of that decision. If the application for discounted land rent is refused, then the written notice must state the reasons for refusal. If a discount is granted during the term of an existing lease, then the discounted land rent will commence from the start of the next year.

Clause 13 provides for applications for discounted land rent under section 10, where a lessee has requested that the discount be applied from the time of the application, rather than the start of the next year, where the continued payment of standard land rent will cause substantial financial hardship. Such applications require the lessee to provide details of the substantial financial hardship. If the commissioner approves the application, the discount must be applied from the date of application. If the commissioner refuses the application, the commissioner must give written notice of the reason for refusing the application.

Clause 14 (1) provides that this section relates only to lessees that are already paying discounted land rent in a year.

Clause 14 (2) provides that the lessee of a land rent lease must tell the commissioner if:

- (a) any lessee become the owner of other real property; or
- (b) all of the lessees stop living on the parcel of land under the lease.

Clause 14 (3) provides that the lessee must tell the commissioner within 30 days if any of the events in subsection (2) happen.

Clause 14(4) requires the lessee to notify the commissioner before 30 September in the following year total income for all lessees for that year, whether any lessee owns any other real property and whether any lessee continues to live at the property.

Clause 15 (1) provides that section 15 relates to lessees that were previously eligible for discounted land rent, but become ineligible because the income of the lessees exceeds the income threshold amount.

Clause 15 (2) provides the rent payable by a lessee for the following year is:

- (a) for the period 1 July to 30 September in the year - the discounted land rent; and
- (b) from 1 October to 30 June of the year, 75% of the lesser of:
 - (i) the standard percentage of the unimproved value of the land under the lease; or
 - (ii) the amount payable in the previous year with the discount increased by the relevant percentage multiplied by the standard percentage and divided by the discount percentage.

Clause 16 (1) provides that this section applies to lessees who were eligible for discounted rent in a year, and become ineligible because:

- (a) any lessee become the owner of other real property; or
- (b) all lessees stop living on the parcel of land under the lease.

Clause 16 (2) provides that the lessee is taken to be ineligible for the discount on the first day of the first quarter after any one of the circumstances in subsection 16 (1) occurs.

Clause 16 (3) where a lessee has become ineligible under subsection 16 (1), the amount of land rent payable is the lesser of:

- (a) the standard percentage of the unimproved land value under the lease; and
- (b) the discounted land rent payable for the year multiplied by the standard percentage divided by the discount percentage.

Part 4 Land rent – transfers

Clause 17 (1) provides that this section applies if a land rent lease is transferred.

Clause 17 (2) provides that, unless a prospective lessee has applied for discounted rent prior to the transfer of a land rent lease, the land rent payable by the new owner, once the

lease is transferred, is the standard percentage of the unimproved value of the parcel of land to which the lease relates.

Part 5 Land rent – payment and recovery of unpaid rent

Clause 18 provides a definition of parcels of land that are related to a land rent lease for the purpose of applying the proceeds of sale to unpaid amounts under Part 5.

Clause 19 provides that land rent for a land rent lease is payable to the commissioner by the lessee.

Clause 20 requires that an assessment notice must state the dates for payment of the land rent.

Clause 21 provides that where a lessee fails to pay an amount of land rent by the payment dates, interest will be charged from the date it was due up to the date it is paid. The rate of interest is determined by disallowable instrument under the Taxation Administration Act.

Clause 22 provides for the calculation of interest on unpaid overdue land rent. The interest rate for the calculation is determined by disallowable instrument. If an amount remains unpaid for part of a month, interest is payable for the whole month. An example of the calculation of interest for unpaid overdue land rent is also provided.

Clause 23 provides that any unpaid land rent and interest in relation to that unpaid land rent, is a debt owing to the Territory and is a first charge on the lessee's interest. The liability to pay any outstanding land rent and interest is joint and several on the lessees. The commissioner has the power to arrange for the payment of outstanding land rent in instalments and may also remit, refund or write off a liability to pay outstanding land rent if satisfied recovery is impracticable or unwarranted.

Clause 24 provides that a land rent liability is a charge on the lessees interest in the lease, meaning that in the event the property is sold, the proceeds from the sale will first ensure the payment of any outstanding land rent before any other charge attached to that parcel of land. If a purchaser of the land has obtained a certificate of land rent and other charges and the purchaser did not have notice of the liability, then the charge in subsection 24 (1) & (2) will not have an effect on that purchaser.

Clause 25 provides that if land rent payable for a land rent lease has been in arrears for at least 1 year, the commissioner may give written notice to a lessee that their land rent is in arrears and make a declaration in writing that the land rent is in arrears. This is a formal process for the recovery of outstanding land rent and would only occur as a last resort where land rent is in arrears for more than 1 year. Prior to the declaration the lessee will have received arrears notices as a part of the normal administrative process.

Clause 26 if section 25 has been complied with, the commissioner may apply to a court for the sale of a property and any improvements under a land rent lease. The lessee must be in arrears for land rent for a period of at least 90 days after the day of written

notification from the commissioner (under section 25), that the land rent has been in arrears for 1 year.

Clause 26 (3) provides that the commissioner may ask the court that the proceeds from the sale of the property and improvements be applied to any outstanding rates or land tax arrears for that land rent lease, and any one or more related parcels of land stated in the application.

Clause 26 (4) provides that if the court is satisfied that section 26 applies to the land rent lease in question, then the court must order the sale of the land rent lease and any improvements on that land by public auction. The proceeds of the sale must pay for the amount of land rent that is in arrears at the time the court makes the order to sell the property; and any costs associated with the sale of the lease; and any rates or land tax that is in arrears on the property and any other property owned by the lessee. The proceeds must be paid into court; and the title must be transferred to the new owner free from any encumbrances.

Clause 27 (1) to Clause 27 (5) provides the order in which the proceeds from the sale of the lease are to be applied.

Clause 27 (6) allows the abandonment of the sale of the lease if the lessee pays:

- (a) the total of the land rent that is in arrears; and
- (b) the total of any rates and land tax in arrears if the commissioner made an application under 26 (3); and
- (c) any costs and expenses incurred up to the time of payment in relation to the application to the court to sell the property; and
- (d) costs and expenses incurred as a result of the abandonment of the sale; and
- (e) the amount of any land rent, rates or land tax in arrears on related property by the lessee of the land rent lease.

Clause 28 provides that the commissioner must be paid out of court the amounts to which the commissioner is entitled under section 27 (2) without a court order. Similarly, the lessee or mortgagee must be paid out of court, without a court order, any amounts owing to them as proceeds of the sale, before the title is handed over to the court.

Part 6 Miscellaneous

Clause 29 (1) states the amount of land rent payable in a year if:

- (a) a lessee starts paying land rent because a land rent lease was transferred to them part way through the year; or
- (b) a lessee stops paying land rent because they have varied the lease, reducing the rent to nominal rent; or
- (c) a lessee stops paying land rent because they transferred their land rent lease.

Clause 29 (2) provides the formula to pro rata the amount of land rent payable to the number of days in a year, that the lessee was liable to pay land rent.

Clause 30 where a lessee starts or stops paying the discounted land rent in a year the amount payable is worked out by a formula which apportions the number of days at the discount rate and the number of days at the standard rate.

Clause 31 provides that a person may apply for a certificate of the land rent payable for a year, and an amount of land rent payable immediately. The certificate may also include other amounts such as rates and land tax on the property in relation to the lease.

Clause 32 provides that the minister may determine fees for this act by way of a disallowable instrument.

Clause 33 prescribes that decisions under section 12 and 13 of this Act are reviewable under section 100 of the TAA.

Clause 34 provides that the determinations made by the commissioner under clause 33 are reviewable by the Administrative Appeals Tribunal.

Clause 35 provides that the executive may make regulations for this Act, in particular regulations may prescribe application requirements.

Clause 36 provides for consequential amendments to legislation specified in schedule 1.

Schedule 1 – Consequential amendments.

Part 1.1 Land Tax Act 2004

[1.1] [1.2] [1.3] This part makes changes to the *Land Tax Act 2004* to allow the proceeds from the sale of a property under these sections to be applied to a land rent amount in arrears.

Part 1.2 Planning and Development Act 2007

[1.4] Section 238 (2) - is amended to include, for a land rent lease, that the lease must include a statement that it is a land rent lease.

[1.5] Section 246 (2) (ab) allows a land rent lease to be granted for payment of an amount less than its market value.

[1.6] Section 266A is inserted so that rent variations and relief from provisions of the lease under part 9.5 do not apply to a variation of land rent in accordance with the provisions of the land rent lease.

[1.7] Section 271 (4) is amended so that a variation under subsections (2) and (3) do not apply to a land rent lease.

[1.8] Section 272 (1)(b) is amended to exclude a land rent lease from this provision.

[1.9] Section 272A (1) amends the provision to include a land rent lease.

[1.10] Section 272B(2)(ab) is a new provision inserted to ensure that the planning and land authority does not vary the lease to reduce the rent payable to a nominal rent unless all amounts payable under the *Land Rent Act 2008* have been paid.

[1.11] inserts land rent lease into the Dictionary

Part 1.3 Rates Act 2004

[1.12] [1.13] [1.14] This part makes changes to the *Rates Act 2004* to allow the proceeds from the sale of a property under these section to be applied to a land rent amount in arrears.

Part 1.4 Taxation Administration Act 1999

[1.15] New section 4 (fa) Inserts the *Land Rent Act 2008* so that it is recognised as a tax law under the *Taxation Administration Act 1999*.

[1.16] New section 139 (1) (i) and (j) Inserts subsections giving the Minister: power to determine a percentage for sections 8, 15, 16 and 17 of the *Land Rent Act 2008*; and power to determine the income thresholds for the *Land Rent Act 2008*, section 11.

Dictionary

Inserts dictionary.