

2013

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

LAND RENT AMENDMENT BILL 2013

EXPLANATORY STATEMENT

Land Rent Amendment Bill 2013

Summary

The *Land Rent Amendment Bill 2013* amends the *Land Rent Act 2008*.

Overview

As part of the Government's affordable housing reform measures, and as announced in the 2013-14 Budget, amendments are being made to the *Land Rent Act 2008* to take effect from 1 October 2013. These amendments will re-target the Land Rent Scheme to assist those most in need, by restricting entrance into the Land Rent Scheme to only those applicants who are eligible for the discount land rent rate of 2 per cent.

The Land Rent Scheme allows lessees to rent land from the ACT Government instead of purchasing land outright. The scheme requires annual payment of land rent and currently has two bases for participation. For lessees who meet the required eligibility criteria, a discount rate of 2 per cent applies (based on the unimproved value of the land), and those who do not qualify for the discount rate pay a standard rate of 4 per cent.

The current eligibility criteria for the discount rate are: the annual income of lessees must not exceed the determined threshold amount; lessees cannot own any other real property, and at least one of the lessees must reside in the property once a Certificate of Occupancy is issued. Applicants who do not meet these criteria are currently able to pay the standard 4 per cent rate.

It has been observed that the standard 4 per cent rate has been used for land banking by developers and builders, therefore reducing availability of land rent blocks to low and middle income earners. By restricting entrance eligibility to the scheme, land rent will be more appropriately targeted to those potential participants who will benefit most from the scheme.

These amendments provide that from 1 October 2013, the Land Rent Scheme will only be available to new entrants who are eligible for the discount land rent rate of 2 per cent. The new provisions clearly provide that the amendments will not affect those lessees already participating in the Land Rent Scheme at either the 2 or 4 per cent rate. The amendments will only affect those lessees that enter the scheme on or after 1 October 2013.

Currently, the income threshold amount for discount rate eligibility is determined by lessee income only. From 1 October 2013, the income threshold will be increased (as determined by Disallowable Instrument) and will include the income of a lessee and their domestic partner; that is, a household approach to income assessment. This will be more reflective of applicant income and ensure the scheme is targeted to appropriate households. This amendment will provide a consistent approach to income assessment for both the Land Rent Scheme and the Home Buyer Concession Scheme.

Lessees entering the Land Rent Scheme on or after 1 October 2013 must remain eligible for the discount rate in order to remain in the scheme. Lessees who are no longer eligible for the discount rate of land rent will not be able to remain in the scheme and will be obligated to transition out of the scheme. This may occur by transferring their Land Rent Crown Lease to a nominal Crown Lease, or transferring the block to another eligible applicant. These

restrictions will only apply to those lessees entering the scheme after 1 October 2013, and current land rent participants will have continued access to both the 2 and 4 per cent rates. New applicants will be clearly informed of their ongoing eligibility obligations before entering the scheme.

Amendments to the *Land Rent Act 2008* will limit the second and any subsequent transfer of Land Rent Crown Leases. Lessees entering the scheme on or after 1 October 2013 will only be able to transfer their Land Rent Crown Lease to a purchaser who is also eligible for the discount rate. This provision will ensure that the Land Rent Scheme continues to be appropriately targeted to low and moderate income households.

New lessees that exceed the income threshold for two consecutive years, or otherwise remove themselves from discount land rent eligibility, will be provided with a two year period to transition out of the scheme. However, if lessees return to eligibility during this period, they may be able to remain in the scheme.

The definition of ‘owner’ is amended to include both a registered owner and beneficial owner. This amendment will help prohibit builders or developers (who may hold property in a company name or under a trust) from accessing the discounted rate (in their individual name), and helps to ensure that the scheme will be limited to genuine applicants looking to enter the housing market.

This legislation amends the calculation of interest on an outstanding land rent debt from a simple monthly rate to a compounding rate. This will better align Land Rent charges with general rates and land tax where interest is charged on a compounding monthly basis. This amendment will help encourage the timely payment of outstanding land rent.

Commencement Date

The amendments will be effective from 1 October 2013.

Details of the Land Rent Amendment Bill 2013

Clause 1 – Name of Act

This is a technical clause that provides the title of the Act. The name of the Act is the *Land Rent Amendment Act 2013*.

Clause 2 – Commencement

This Act commences on 1 October 2013.

Clause 3 – Legislation amended

This is a technical clause stating that the legislation being amended is the *Land Rent Act 2008* and the *Land Rent Regulation 2008*.

Clause 4 – Application of Act, Section 5 (2)

This clause aligns the definition of a ‘single dwelling house lease’ with the Territory Plan.

Clause 5 – Application to pay land rent, Section 7 (1)

This clause clarifies that an application to pay land rent must be made by an eligible applicant.

Clause 6 – Application to pay land rent sections 7 (2) and (3)

This clause provides that an applicant must now be an eligible applicant. An eligible applicant is now defined under the new section 7 (5) of the *Land Rent Act 2008*.

Clause 7 – New section 7 (5)

This section provides the definition of an ‘eligible applicant’ as a person who has been granted a discount under section 12 in relation to a proposed ballot or direct sale of a single dwelling house lease, no earlier than 6 months before the day of the ballot or direct sale.

Clause 8 – Section 8 heading

This is a technical amendment which clarifies that section 8 is in relation to land rent leases entered into prior to 1 October 2013.

Clause 9 – New section 8 (1A)

This clause clarifies that section 8 applies to land rent leases entered into prior to 1 October 2013.

Clause 10 – Sections 8 (1) and (2)

This is a technical amendment, substituting ‘a land rent lease’ for ‘the land rent lease’.

Clause 11 – New section 8AA

This section provides the method of how land rent charges will be calculated for a land rent lease granted under a contract entered into on or after 1 October 2013.

Clause 12 – New section 9A

This section provides that the Minister may determine, by disallowable instrument, how the total income of a lessee is determined.

Clause 13 – Discount – application, Section 10 (2) (a)

This is a technical amendment to clarify that a reference to income means total income.

Clause 14 – Section 10 (3) (b)

This amendment provides that an existing land rent lessee (who entered the scheme prior to 1 October 2013) can apply for discount land rent at any time during the lease.

Clause 15 – Discount – eligibility, Section 11 (1) (b)

This is a technical amendment to clarify that when there is more than one lessee, the total income is the sum of the income of all the lessees.

Clause 16 – Section 11 (1), new note (1)

This is a technical amendment to insert a note, which clarifies that the Minister may determine how a lessee's total income is worked out, via the new section 9A.

Clause 17 – Discount – decision on application, Section 12 (3), including notes

This clause determines that if an application for discount land rent is made before the grant of the lease, the discount applies from the date the lease is granted. In any other case, such as an application made by those lessees who entered the scheme prior to 1 October 2013, the discount applies from the date the discount application was received by the commissioner.

Clause 18 – Discount—review of eligibility, Section 14 (4) (a)

This is a technical amendment to clarify that a reference to income means total income.

Clause 19 – Section 15 heading

This is a technical amendment which clarifies that section 15 is in relation to land rent leases prior to 1 October 2013.

Clause 20 – Section 15 (1)

This amendment clarifies that section 15 applies to those lessees who entered the Land Rent Scheme prior to 1 October 2013, and who become ineligible for the discount rate due to an income amount which is higher than the determined threshold.

Clause 21 – Section 16 heading

This is a technical amendment which clarifies that section 16 is in relation to land rent leases prior to 1 October 2013.

Clause 22 – Section 16 (1)

This amendment clarifies that section 16 applies to those lessees who entered the Land Rent Scheme prior to 1 October 2013, and who become ineligible for the discount rate due to a change in circumstances (i.e. becoming the owner of other real property, or all lessees ceasing to reside in the property).

Clause 23 – New section 16AA

This new section relates to those land rent leases first granted under a contract entered into on or after 1 October 2013, and concerns those lessees who are no longer eligible for the discount rate of land rent if: the total income of the lessee or all the lessees is more than the income threshold for two consecutive years; if the lessee, or any of the lessees, own any other

real property; or if a Certificate of Occupancy is issued for the lease and all lessees cease to reside in the property.

The section provides that the commissioner must notify the lessee that they are no longer eligible to pay land rent, and the lessee is then required to either vary the lease to reduce the land rent payable to a nominal rent, or transfer the lease to an eligible transferee (that is, a transferee who is eligible for the discount rate of land rent).

Clause 24 – New section 16C

This section specifies that the transfer of a land rent lease entered into on or after 1 October 2013 may only be transferred to an eligible transferee; that is, a land rent lease must be transferred to another person who is eligible for the discount rate of land rent.

This clause also provides that the commissioner may determine that the block can be transferred to a non-eligible transferee, under certain circumstances. These circumstances will be detailed in guidelines determined by the Minister (in the form of a disallowable instrument).

Clause 25 – Section 17 heading

This is a technical amendment which clarifies that section 17 is in relation to land rent leases prior to 1 October 2013.

Clause 26 – Section 17 (1)

This section has been amended to clarify that it is only applicable to the transfer of a land rent lease entered into prior to 1 October 2013.

Clause 27 – Section 17 (2)

This is a technical amendment to align the reference to section 30 in this part to the new heading inserted by Clause 36.

Clause 28 – New section 26A

This section outlines the process the commissioner must adhere to following the loss of eligibility of a land rent lessee to pay land rent. If the commissioner has given the lessee a notice under the new section 16AA, and the lessee has failed to vary or transfer the land rent lease, the commissioner may apply to a court of competent jurisdiction for the sale of the land rent lease and any improvements made on the parcel.

Clause 29 – Sale of land rent lease—application of proceeds, Section 27 (1)

This is a technical amendment to include a reference to the new section 26A, regarding loss of eligibility to pay land rent.

Clause 30 – Section 27 (2) (b)

This is a technical amendment to reference the new provisions concerning land rent leases entered into on or after 1 October 2013.

Clause 31 – Section 27 (2) (d)

This is a technical amendment to reference the new provisions concerning land rent leases entered into on or after 1 October 2013.

Clause 32 – Section 27 (6) (b)

This is a technical amendment to include a reference in section 27 (6) (b) to the new section 26A, regarding loss of eligibility to pay land rent.

Clause 33 – Section 27 (6) (e)

This is a technical amendment to include a reference to the new section 26A, regarding loss of eligibility to pay land rent.

Clause 34 – Sale of land rent lease—application of proceeds without court order, Section 28 (1)

This is a technical amendment to include a reference to the new section 26A, regarding loss of eligibility to pay land rent.

Clause 35 – Land rent—part of the year, Section 29 (3), definition of *land rent otherwise payable for year*

This clause more clearly defines ‘land rent otherwise payable for year’.

Clause 36 – Section 30 heading

This is a technical amendment which clarifies that section 30 is in relation to pre-1 October 2013 land rent leases.

Clause 37 – Section 30 (1)

This is a technical amendment to ensure that Section 30 only applies to land rent leases entered into prior to 1 October 2013.

Clause 38 – Section 33

This clause provides further objection rights to potential land rent participants, should their application for discount land rent be refused. Objection rights are also provided to participating land rent lessees who, after 1 October 2013, have been notified by the commissioner that they are no longer eligible to pay land rent.

Clause 39 – New part 10

This clause inserts a new part, which identifies the transitional arrangements associated with this Act. The transitional arrangements make it clear that section 7 of the *Land Rent Act 2008*, and section 3 of the *Land Rent Regulation 2008*, continue to apply as in force immediately prior to the commencement of this Act. Potential land rent lessees who have entered a land rent contract prior to 1 October 2013, but have not yet been granted a block, will not be affected by the new provisions.

Clause 40 – Dictionary, note 2

This clause provides that the *Legislation Act 2001* defines the terms ‘domestic partner’ and ‘territory plan.’

Clause 41 – Dictionary, definition of *eligible transferee*

This new definition clarifies who an eligible transferee is for the purposes of obtaining a land rent block from another lessee. An eligible transferee must be eligible for the discount rate of land rent.

Clause 42 – Dictionary, definition of *land rent*

This clause provides that land rent includes the costs and expenses reasonably incurred by the Territory in attempting to recover land rent, and also includes interest payable in relation to land rent. This definition aligns the charging of interest for overdue land rent with general rates and land tax.

Clause 43 – Dictionary, new definition of *own*

This new definition clarifies that ownership of real property includes having a legal or a beneficial interest in that property. This ensures that the Land Rent Scheme is appropriately available to genuine applicants looking to enter the market, and is unavailable to people who may own other property, for example in a company or trust name.