

What's new in 2022? Residential tenancy amendments! by Amy O'Donnell

The new residential tenancy laws were hot news when debated in parliament and eventually passed in October 2021, but not all changes commence immediately. Those changes that do, relate to domestic and family violence (which, in effect, give permanency to the amendments introduced with Covid legislation). The remaining amendments will be implemented in phases (with the dates yet to be set) however we are expecting that some parts of the new legislation will come in during the first half of 2022. There will be further provisions in relation to minimum housing standards for new tenancies from 1st September 2023 and for all tenancies from 1st September 2024.

The changes coming in 2022 that our clients should take note of are those in relation to pets and the ending of a tenancy.

PETS - the amendments introduce a number of reforms in relation to the keeping of pets, but include only limited grounds for refusing pets. What you really need to be conscious of is that a landlord is deemed to have approved a pet if they have not responded to a request within 14 days OR their response is not in the correct form. You will need to ensure that you action any pet request promptly.

Any refusal of a pet request needs to comply with the prescribed grounds. You cannot say "no" because you don't like pets or certain animals. The days of "no pets allowed" are gone. The prescribed grounds include:

- the property is unsuitable for the proposed pet (for example lack of fencing or open space);
- keeping the pet would breach laws or by-laws;
- keeping the pet would exceed a reasonable number of animals already being kept;
- keeping the pet is likely to cause damage to the premises that could not practicably be repaired for less than the amount of the rental bond;
- keeping the pet would pose an unacceptable risk to the health and safety of a person (for example the pet is venomous);
- the tenant has not agreed to the reasonable conditions; or
- any other ground prescribed by regulation (there are none yet).

The fact that keeping a pet would be in contravention of a body corporate by-law IS a valid ground to refuse a pet, however the matter will become tricky where that by-law is not necessarily enforceable.

As, with most matters, the application of the new pet rules will come down to the facts of the case – what type of pet it is, what are the actual by-laws of the scheme, what are the characteristics of the lot and so forth.

ENDING TENANCIES – the amendments include a number of further specific grounds on which both tenants and owners may end tenancy agreements BUT remove a property owner's right to terminate a tenancy agreement without grounds. It does need to be remembered that this ground was mainly relevant for

periodic tenancies (which are ones that do not have a fixed end date).

If you have a periodic tenancy that you want to end, then there needs to be a reason. The new reasons that an owner can end a tenancy include:

- the sale or preparation for sale of the rental property which requires vacant possession;
- a planned property redevelopment, demolition, significant repair or renovation;
- change of use (e.g. move to short-stay accommodation);
- the owner or a relative needs to occupy the property; or
- serious or significant breach.

There are also new reasons for a tenant to end a tenancy such as:

- the property is not in good repair, is unfit for human habitation;
- a co-tenant has died;
- the owner has not complied with a QCAT repair order; or
- the owner provided false or misleading information about the tenancy agreement or rental property. This will require the tenant to make an application to QCAT within the first 3 months of a tenancy.

It is very important to realise that there are now offences in the event of misuse of the notice to leave provisions. For example, if a notice to leave is given because an owner intends to occupy the property themselves, they must do that. It is an offence (50 penalty units) if they offer to let the property as a residential tenancy within 6 months of the tenancy ending.

As each factual situation is different, please take our comments as general guidance and contact Mahoneys to obtain timely and practical legal advice in relation to any residential tenancy questions that you may have.

the appropriate level of detail. It is vitally important that you understand what your duties require of you and when you can rely on contractors and tradesman alike. If you do receive a breach notice, engaging a solicitor

experienced in management rights at the outset is essential. Otherwise, a failure to comply and address the breaches within time could see your agreement terminated.

Statutory remuneration review process. by Ben Seccombe

We are constantly surprised by how few people are aware that the Body Corporate and Community Management Act (BCCMA) contains a right to review either:

- (a) the duties to be carried out under a caretaking services contract; or
- (b) the salary paid to the caretaker under such a contract.

This right exists regardless of whether or not there is a similar contractual provision in the contract.

The review mechanism is aimed at (and confined to) new agreements (i.e. the first caretaker appointed by a body corporate) and must be commenced within a strict timeframe stipulated by the BCCMA.

It is often the case that caretaking services contracts are drafted by developers and have little regard to the actual needs of the scheme. This can result in a disconnect between what is really needed for the scheme and what the agreement requires. In those circumstances, a duties review can be a good option for bodies corporate and caretakers alike, in that it will align the duties in the agreement with the needs of the Scheme.

Similarly, there is often a disparity between the salary paid to a caretaker and the duties under the agreement. This is where a salary review is useful.

Mahoneys has assisted many caretakers to take advantage of this mechanism where they are significantly underpaid by reference to the duties required of them. In Drift Palm Cove Mahoneys secured a salary increase of over \$85,000.00 per annum for the caretaker – which is still the largest increase ever obtained for a caretaker under this review mechanism.

The review process is complex and there is a particular set of conditions to be satisfied before either party can request a review. If the process is not followed strictly, the right to review can be irretrievably lost.

Caretakers of newly established schemes are encouraged to consider this option, especially if their agreement does not contain a regular market review mechanism. The statutory right of review could be your only chance to procure a salary increase for the life of the agreement.



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For latest CPI figures go to

[Click here for Brisbane All Groups CPI figures](#)

You will need to click on "All groups CPI, index numbers(a)" to see the detail. For example, if your remuneration started at \$100,000 in September 2016, the correct calculation for the September 2021 increase based on Brisbane All Groups CPI would be $\$100,000 \times 120.7$ (i.e. the last index figure before the review date) / 109.75 (i.e. the last index figure before the commencement date) = \$109,977.22. Mahoneys has assisted many managers in having their remuneration increased to market level.



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