

REPUBLIC OF SOUTH AFRICA

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# RENTAL HOUSING AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill published in Government Gazette No. 34703 of 28 October 2011)  
(The English text is the official text of the Bill)*

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(MINISTER OF HUMAN SETTLEMENTS)

[B 21—2011]

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## GENERAL EXPLANATORY NOTE:

[                      ]      Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_      Words underlined with a solid line indicate insertions in existing enactments.

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# BILL

To amend the Rental Housing Act, 1999, so as to substitute certain definitions; to extend the application of Chapter 4 to all provinces; to require MEC's to establish Rental Housing Tribunals; to extend the powers of the Rental Housing Tribunals to rescind any of its rulings; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Amendment of section 1 of Act 50 of 1999

1. Section 1 of the Rental Housing Act, 1999 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion after the definition of “lease” of the following definition: 5  
    “**‘local municipality’** means a municipality as defined in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);”;
- (b) by the substitution for the definition of “Minister” of the following definition:  
    “**‘Minister’** means the Minister of [**Housing**] Human Settlements;”;  
    and 10
- (c) by the substitution for the definition of “prescribed” of the following definition:  
    “**‘prescribed’** means prescribed by regulation [**by the MEC, by notice in the Gazette**];”. 15

### Amendment of section 4 of Act 50 of 1999

2. Section 4 of the principal Act is hereby amended by the substitution in subsection (5)(d) for subparagraph (ii) of the following subparagraph:

- “(ii) repossess rental housing property having first obtained a ruling by the Tribunal or an order of court; and”.

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### Amendment of section 6 of Act 50 of 1999

3. The following section is hereby substituted for section 6 of the principal Act:

#### “Application of Chapter

6. This Chapter applies to all provinces in the Republic of South Africa.”.

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### Amendment of section 7 of Act 50 of 1999

4. The following section is hereby substituted for section 7 of the principal Act:

#### “Establishment of Rental Housing Tribunals

7. [The] Every MEC [may] must by notice in the *Gazette* establish a tribunal in the Province to be known as the Rental Housing Tribunal.”.

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### Amendment of section 9 of Act 50 of 1999

5. Section 9 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Tribunal consists of not less than three and not more than [five] six members, who are fit and proper persons appointed by the MEC, and must comprise—

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(a) a chairperson, who is suitably qualified and has the necessary expertise and exposure to rental housing matters;

(b) not less than two and not more than [four] five members, of whom—

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(i) at least one and not more than two shall be persons with expertise in property management or housing development matters; [and]

(ii) at least one and not more than two shall be persons with expertise in consumer matters pertaining to rental housing or housing development matters; and

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(iii) at least one and not more than two shall be persons with legal qualifications.”; and

(b) by the insertion after subsection (4) of the following subsection:

“(4A) A person appointed in terms of subsection (4) may not serve for more than two consecutive terms.”.

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### Amendment of section 10 of Act 50 of 1999

6. Section 10 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Tribunal [will sit] must meet on such days and during such hours and at such place as the chairperson of the Tribunal may determine.”; and

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(b) by the substitution for subsection (5) of the following subsection:

“(5) The quorum of any meeting of the Tribunal is three members, of which at least two [members] must be members appointed in terms of section 9(1)(b)[(i) and (ii), respectively].”; and

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### Amendment of section 13 of Act 50 of 1999

7. Section 13 of the principal Act is hereby amended—

(a) by the deletion of subsection (11);

(b) by the insertion after subsection (10) of the following subsection:

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“(10A) The Tribunal must refer any matter that relates to evictions to a competent court.”; and

- (c) by the insertion after subsection (12) of the following subsection:

“(12A) The Tribunal may, acting on its own accord or on application by any affected person, rescind any of its rulings if such rulings—  
 (a) were erroneously sought or granted in the absence of the person affected by it;  
 (b) contain an ambiguity or patent error or omission, but only to the extent of clarifying that ambiguity or correcting that error or omission; or  
 (c) were granted as a result of a mistake common to all parties to the proceedings.”.

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#### **Amendment of section 14 of Act 50 of 1999**

8. Section 14 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) [A] Every local [authority] municipality may establish a Rental Housing Information Office to advise tenants and landlords [in] with regard to their rights and obligations in relation to dwellings within [the area of such local authority’s] their area of jurisdiction.”; and

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- (b) by the substitution for subsection (2) of the following subsection:

“(2) [A] Every local [authority] municipality may, subject to the laws governing the appointment of local government officials, appoint or designate officials to carry out any duties pertaining to such Rental Housing Information Office.”.

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#### **Amendment of section 15 of Act 50 of 1999**

9. Section 15 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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“The Minister must, after consultation with the [standing or portfolio on housing] relevant parliamentary committees and every MEC, by notice in the *Gazette*, make regulations relating to—”.

#### **Amendment of Chapters 4 and 5 of Act 50 of 1999**

10. Chapters 4 and 5 of the principal Act are hereby amended by removing section 15 from Chapter 4 and inserting it under Chapter 5 before section 16.

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#### **Substitution of expression in Act 50 of 1999**

11. The principal Act is hereby amended by the substitution for the expression “local authority”, wherever it occurs, of the expression “local municipality”.

#### **Short title and commencement**

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12. This Act is called the Rental Housing Amendment Act, 2011, and comes into operation on a date determined by the President by Proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE RENTAL HOUSING AMENDMENT BILL, 2011**

### **1. BACKGROUND**

1.1 Since the promulgation of the Rental Housing Amendment Act, 2007 (Act No. 43 of 2007), on 13 May 2008, the Department undertook a monitoring and implementation process with regard to the Act. It was identified that there is a need for each and every province to establish Rental Housing Tribunals. All provinces are faced with similar Rental Housing challenges, whether formal or backyard.

1.2 It was evident from the monitoring and implementation process that not all provinces have established Rental Housing Tribunals. Some of the provinces have only recently established their Rental Housing Tribunals and only after intervention by the Department.

1.3 In view of the above, the Bill seeks to amend sections 7 of the Rental Housing Act, 1999 (Act No. 50 of 1999) (the principal Act), in order to render the establishment of Rental Housing Tribunals in every province mandatory.

### **2. OBJECTS OF BILL**

The objects of the Bill are therefore to—

- 2.1 substitute certain definitions;
- 2.2 extend the application of Chapter 4 to all provinces;
- 2.3 require the MEC's to establish Rental Housing Tribunals; and
- 2.4 extend the powers of the Rental Housing Tribunals to rescind any of its rulings.

### **3. PERSONS OR BODIES CONSULTED**

Representations were requested from the Head of Legal Services in the provincial departments and from the various Rental Housing Tribunals. Written and verbal presentations were received in this regard.

### **4. IMPLICATIONS FOR PROVINCES**

It will be obligatory for each province to establish a fully operational Rental Housing Tribunal.

### **5. FINANCIAL IMPLICATIONS FOR STATE**

5.1 The costs involved for the establishment and operations of the provincial Rental Housing Tribunals will be incurred by the provincial departments of Human Settlements. However, in this regard, it should be mentioned that all the provinces already have partly or fully operational Rental Housing Tribunals.

5.2 The Department will incur the costs associated with the implementation of the legislation. The Department will furthermore incur the cost for the publication of the Bill for public comments, information sessions, translations and other incidental costs in relation to the Bill. The said costs will be defrayed from the Department's budget.

### **6. PARLIAMENTARY PROCEDURE**

6.1 The State Law Advisers and the Department of Human Settlements are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it falls within a functional area listed in Schedule 4 to the said Constitution, namely "Housing".

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.