

Queensland



# **RESIDENTIAL TENANCIES ACT 1994**

**Reprinted as in force on 23 August 2002  
(includes amendments up to Act No. 19 of 2002)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 5C**

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# Queensland



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# RESIDENTIAL TENANCIES ACT 1994

[as amended by all amendments that commenced on or before 23 August 2002]

**An Act about residential tenancy agreements, and related matters**

## CHAPTER 1—PRELIMINARY

### PART 1—INTRODUCTORY PROVISIONS

#### 1 Short title

This Act may be cited as the *Residential Tenancies Act 1994*.

### PART 2—INTERPRETATION

#### *Division 1—Location of definitions*

#### 3 Definitions and dictionary

(1) The dictionary in schedule 3 defines particular words used in this Act.

(2) Division 2 of this part defines key terms used in this Act.

(3) The key terms and definitions found elsewhere in the Act are signposted in the dictionary.

*Division 2—Meaning of key terms***3A Caravan**

- (1) A “**caravan**” is a trailer—
- (a) designed principally for residential purposes; and
  - (b) designed to be attached to and towed by a self-propelled vehicle; and
  - (c) that, as originally designed, was capable of being registered under a law of the State about the use of vehicles on public roads.
- (2) Also, a “**caravan**” is something—
- (a) not fitted with wheels; and
  - (b) not designed for permanent attachment to land but designed for attachment to a motor vehicle and for use for residential purposes.
- (3) In addition, a “**caravan**” is a self-propelled vehicle—
- (a) that—
    - (i) is designed to be used both as a vehicle and for residential purposes; or
    - (ii) was designed to be used solely as a vehicle but has been modified to be suitable for use both as a vehicle and for residential purposes; and
  - (b) that, as originally designed, was capable of being registered under a law of the State about the use of vehicles on public roads.

**3B Conciliator**

- (1) A “**conciliator**” is a person who—
- (a) is, or has been, accredited under the *Dispute Resolution Centres Act 1990*, section 19<sup>1</sup> as a mediator for a dispute resolution centre; and
  - (b) has satisfactorily finished training approved by the authority relating to conciliation processes.

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<sup>1</sup> *Dispute Resolution Centres Act 1990*, section 19 (Mediators)

(2) Also, a **“conciliator”** is a person who—

- (a) has satisfactorily finished training approved by the authority relating to dispute resolution; and
- (b) is employed by the authority as a dispute resolution officer.

#### **4 Lessor**

(1) A **“lessor”**<sup>2</sup> is the person who gives the right to occupy residential premises under a residential tenancy agreement.

(2) A **“lessor”** also includes—

- (a) the person who is to give the right to occupy residential premises under a proposed residential tenancy agreement; and
- (b) a tenant who has given, or is to give, the right to occupy residential premises to a subtenant.

#### **5 Premises**

(1) **“Premises”** include a part of premises and land occupied with premises.

(2) **“Premises”** also include—

- (a) a caravan or its site, or both the caravan and site; and
- (b) a mobile home in, or intended to be situated in, a moveable dwelling park or its site, or both the mobile home and site; and
- (c) a houseboat.

#### **6 Residential premises**

**“Residential premises”** are premises used, or intended to be used, as a place of residence or mainly as a place of residence.

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2 Under the *Acts Interpretation Act 1954*, section 35A (References to person with interest in land includes personal representatives etc.), a reference in an Act to a person as lessor includes a reference to the person’s personal representatives, successors and assigns.

## 7 Residential tenancy

A “**residential tenancy**” is the right to occupy residential premises under a residential tenancy agreement.

## 8 Residential tenancy agreement

(1) A “**residential tenancy agreement**” is an agreement under which a person gives to someone else a right to occupy residential premises as a residence.

(2) Subsection (1) applies whether or not the right is a right of exclusive occupation.

(3) Subsection (1) also applies whether the agreement is—

- (a) wholly in writing, wholly oral or wholly implied; or
- (b) partly in a form mentioned in paragraph (a) and partly in 1 or both of the other forms.

## 9 Tenant

(1) A “**tenant**”<sup>3</sup> is the person to whom the right to occupy residential premises under a residential tenancy agreement is given.

(2) A “**tenant**” also includes—

- (a) the person to whom the right to occupy residential premises is to be given under a proposed residential tenancy agreement; and
- (b) the subtenant of a tenant.

---

3 Under the *Acts Interpretation Act 1954*, section 35A (References to person with interest in land includes personal representatives etc.), a reference in an Act to a person as lessee includes a reference to the person’s personal representatives, successors and assigns. Under section 36 (Meaning of commonly used words and expressions) of that Act, a lessee includes a tenant.

## PART 3—OPERATION OF ACT

### 10 Act applies only to certain residential tenancy agreements etc.

(1) This Act applies only to residential tenancy agreements and to—

- (a) lessors, tenants and their respective rights and obligations under residential tenancy agreements; and
- (b) premises under residential tenancy agreements; and
- (c) a tenancy under a residential tenancy agreement.

(2) However, this Act does not apply to all residential tenancy agreements.

(3) For example, under part 4, this Act, or some of its provisions, do not apply to certain residential tenancy agreements.<sup>4</sup>

*Examples of residential tenancy agreements to which the Act does not apply—*

1. Under section 16, this Act does not apply to a lease given by the State under certain other Acts.

2. A regulation under section 20 may declare that this Act does not apply to an agreement.

3. Under section 21, this Act does not apply to an agreement giving a right of occupancy for holiday purposes.

4. Under section 22, this Act generally does not apply to an agreement if the tenant is a boarder or lodger.

5. Under section 23, this Act generally does not apply to an agreement for premises that are part of an educational institution, hospital, nursing home or retirement village.

6. Under section 24, this Act does not apply to certain agreements under which the tenant is being supplied with temporary refuge accommodation.

7. Under section 25, this Act does not apply to agreements under the *Mobile Homes Act 1989*.

### 11 References to agreements

In this Act (other than part 2, division 2<sup>5</sup>), a reference to an agreement is a reference to a residential tenancy agreement to which this Act applies.

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4 Part 4 deals with the application of this Act.

5 Part 2, division 2 deals with the meaning of key terms.

**12 Reference to lessors and tenants**

In this Act (other than in part 2, division 2), a reference to a lessor or tenant is a reference to a lessor or tenant under a residential tenancy agreement to which this Act applies.

**13 References to premises**

In this Act (other than part 2, division 2), a reference to premises is a reference to a residential premises under a residential tenancy agreement to which this Act applies.

**14 References to tenancies**

In this Act (other than in part 2, division 2), a reference to a tenancy is a reference to a residential tenancy under a residential tenancy agreement to which this Act applies.

**PART 4—APPLICATION OF ACT*****Division 1—General*****15 Act binds all persons**

(1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) However, some provisions of this Act do not apply to the State.

*Examples of provisions not applying to State—*

1. Section 53 (Rent increases)
2. Section 53A (Tenant's application to tribunal about rent increase)
3. Section 89 (Outgoings other than service charges).



## **16 State as lessor**

(1) This Act does not apply to a lease, even if the lease is for, or for purposes that include, residential purposes, if—

- (a) the lease is granted under the authority of an authorising law; and
- (b) the State is the lessor.

(2) However, if the lessee sublets the land or a part of the land, under the authorising law, this Act applies to the sublease to the extent to which this Act is not inconsistent with the authorising law.

(3) In subsection (1)—

**“authorising law”** means an Act other than this Act or the *State Housing Act 1945*.

## **17 Application of Property Law Act to agreements**

(1) The *Property Law Act 1974* does not apply to residential tenancy agreements.

(2) However, a regulation may declare that the *Property Law Act 1974*, or a provision of that Act, applies, or applies with prescribed changes, to residential tenancy agreements or a particular type of residential tenancy agreement.

(3) Nothing in subsection (1) affects the application of the *Property Law Act 1974* to an agreement about a tenancy if the agreement is not a residential tenancy agreement.

## **18 Rights and remedies of persons**

(1) A right or remedy given to a person under this Act is in addition to, and not in substitution for, a right or remedy the person would have apart from this Act.

(2) Without limiting subsection (1), this Act does not operate to reduce the effect of a right or remedy a person would have apart from this Act.

(3) In subsections (1) and (2), a reference to a right or remedy a person would have apart from this Act is a reference to a right or remedy that is not inconsistent with this Act.

## **19 Minors**

(1) A minor has the capacity to enter into a residential tenancy agreement.

(2) A residential tenancy agreement entered into by a minor is enforceable in the same way as if the agreement had been entered into by an adult.

## **20 Changes to Act's application**

A regulation may declare that this Act, or a provision of this Act, does not apply to, or applies with prescribed changes to, any of the following—

- (a) residential tenancy agreements;
- (b) residential premises;
- (c) entities.

### *Division 2—Agreements to which this Act applies and does not apply*

## **20A Contracts of sale and mortgages**

To remove any doubt, it is declared that this Act does not apply to an agreement for a tenancy if the tenancy is created or arises—

- (a) between the parties to a contract of sale of residential premises under a term of the contract; or
- (b) between the parties to a mortgage of residential premises under a term of the mortgage.

## **21 Premises used for holidays**

(1) This Act does not apply to a residential tenancy agreement if the right of occupancy of the premises is given for holiday purposes.

(2) For subsection (1), a right to occupy premises given for 6 weeks or longer is taken not to be given for holiday purposes unless the contrary is proved.

**22 Residential service agreements, boarders and lodgers**

(1) This Act does not apply to a residential tenancy agreement if—

- (a) the agreement is a residential service agreement; or
- (b) the tenant is a boarder or lodger.

(2) However, if a rental bond is paid for a residential tenancy agreement, other than a residential service agreement, under which the tenant is a boarder or lodger, the provisions of this Act about rental bonds apply to the agreement.

**23 Educational institutions, hospitals, nursing homes and retirement villages**

(1) This Act does not apply to a residential tenancy agreement for premises that are part of an educational institution, hospital, nursing home or retirement village.

(2) However, this Act applies to a residential tenancy agreement for premises mentioned in subsection (1) if the premises are used as a person's place of residence under the person's employment at the institution, hospital, nursing home or retirement village.

(3) Despite subsection (1), this Act applies to a residential tenancy agreement for premises that are part of a retirement village if the agreement is declared under the regulations to be a residential tenancy agreement to which this Act applies.

**23A Rental purchase plan agreements**

This Act does not apply to residential tenancy agreements that are rental purchase plan agreements.

**24 Temporary refuge accommodation**

This Act does not apply to a residential tenancy agreement if the tenant is being supplied with temporary refuge accommodation at the premises and the accommodation is not approved supported accommodation.

## **25 Agreements under Mobile Homes Act**

(1) This Act does not apply to a residential tenancy agreement if the agreement is a mobile home agreement.

(2) However, subsection (1) does not prevent this Act from applying to a subsequent agreement.

(3) A regulation may declare that this Act, or a provision of this Act, does not apply to a subsequent agreement or applies with prescribed changes to a subsequent agreement.

(4) In this section—

**“subsequent agreement”** means an agreement under which a mobile home occupier becomes a lessor under this Act.

## **25A Headleases for employee housing**

(1) This Act does not apply to an agreement relating to the letting of premises (the **“headlease”**) entered into by the Commonwealth, the State, a local government or a corporation as tenant for the purpose of subletting the premises to an employee of the tenant.

(2) Subsection (1) does not prevent this Act from applying to a residential tenancy agreement under which the tenant under the headlease lets the premises to an employee of the tenant.

(3) This section applies only to a headlease entered into after the commencement of this section.

## **25B Headleases for affordable housing agreements**

(1) This Act does not apply to an agreement relating to the letting of premises (the **“headlease”**) entered into by the Commonwealth, the State, a local government or a nonprofit corporation as tenant for the purpose of subletting the premises to a person under an affordable housing scheme.

(2) Subsection (1) does not prevent this Act from applying to a residential tenancy agreement under which the tenant under the headlease lets the premises to a person whose right of occupancy arises under an affordable housing scheme.

(3) This section applies only to a headlease entered into after the commencement of this section.

## **26 Hotels and motels**

This Act applies to a residential tenancy agreement even if the premises are part of a hotel or motel.

## **27 Approved supported accommodation**

(1) This Act applies to a residential tenancy agreement even if the tenant's right of occupancy of the premises arises out of approved supported accommodation.

(2) Despite subsection (1), this Act does not apply to an agreement under which the tenant's right of occupancy arises out of approved supported accommodation if the tenant is a person declared under the regulations<sup>6</sup> to be a person to whom this Act does not apply.

### *Division 3—Moveable dwelling premises*

## **28 Application of division**

This division applies only to agreements for moveable dwelling premises.

## **29 Purpose of division**

(1) This division provides for the classifying of tenancies of moveable dwelling premises as either short or long tenancies.

(2) For some matters, the way this Act applies to a residential tenancy of moveable dwelling premises depends on whether the tenancy is a short or long tenancy.

*Examples—*

1. Section 39 (which requires written agreements) applies to a long tenancy (moveable dwelling), but does not apply to a short tenancy (moveable dwelling).

2. Section 44 requires a copy of park rules to be given to the tenant at different times depending on whether the tenancy is a long tenancy (moveable dwelling) or short tenancy (moveable dwelling).

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<sup>6</sup> See *Residential Tenancies Regulation 1995*, section 15 (Approved supported accommodation agreements—Act, s 27).

### **30 Short tenancy statements**

(1) If the lessor and tenant intend that the tenant's occupation of the premises is not to continue for more than 42 days (the "**base period**"), they may make a written statement to that effect (the "**short tenancy statement**").

(2) The short tenancy statement must be made before, or when, the tenancy starts.

### **31 Extending short tenancy statements**

(1) If the parties make a short tenancy statement, they may make another written statement (the "**short tenancy (extension) statement**") agreeing that this Act should continue to apply to the tenancy for another period stated in the statement (the "**extended period**") in the same way it applies during the base period.

(2) A short tenancy (extension) statement may only be made in the base period.

(3) Only 1 short tenancy (extension) statement may be made about the tenancy.

(4) The extended period may not be more than 42 days.

### **32 Setting aside short tenancy (extension) statements**

(1) If the parties made a short tenancy (extension) statement, the tenant may apply to a tribunal for an order setting aside the statement because the lessor exerted undue influence on the tenant to make the statement.

(2) The tribunal may make the order if it is satisfied the tenant has established the ground of the application.

### **33 Short tenancies**

For any period for which a short tenancy statement or short tenancy (extension) statement applies to the tenancy, the tenancy is a "**short tenancy (moveable dwelling)**".

### **34 Long tenancies**

If the tenancy is not a short tenancy (moveable dwelling), it is a “**long tenancy (moveable dwelling)**”.

## **CHAPTER 2—RESIDENTIAL TENANCY AGREEMENTS**

### **PART 1—AGREEMENTS**

#### *Division 1—General*

### **35 Terms of agreements include duties under Act etc.**

(1) If, under this Act, a duty is imposed on, or an entitlement is given to, a lessor or tenant, the duty or entitlement is taken to be included as a term of the residential tenancy agreement.

(2) If the premises are moveable dwelling premises in a moveable dwelling park, any park rules for the time being in force also are taken to be included as terms of the agreement.<sup>7</sup>

(3) If there is a conciliation agreement<sup>8</sup> in force about the residential tenancy agreement, the terms of the conciliation agreement also are taken to be included as terms of the residential tenancy agreement.

(4) This section applies even if the duty, entitlement or rule is not included as a term of a written agreement.

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7 See chapter 3 (Rights and obligations of lessors and tenants), part 6 (Additional provisions for moveable dwelling premises), division 3 (Park rules) for provisions about park rules.

8 A conciliation agreement is an agreement mentioned in section 241 (Conciliation agreements).

### **36 Contracting out prohibited**

(1) An agreement or arrangement is void to the extent to which it purports to exclude, change or restrict the application or operation of a provision of this Act about the terms of a residential tenancy agreement.

(2) A person must not enter into an agreement or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.

Maximum penalty—50 penalty units.

(3) In this section—

“**agreement**” includes an agreement that is not a residential tenancy agreement.

### **37 Inconsistency**

(1) If a provision of this Act is inconsistent with a term of a residential tenancy agreement, the provision prevails and the term is void to the extent of the inconsistency.

(2) If a standard term of a residential tenancy agreement is inconsistent with a special term of the agreement, the standard term prevails and the special term is void to the extent of the inconsistency.

### **38 Standard terms**

(1) A regulation may prescribe terms for inclusion in a residential tenancy agreement.

(2) The terms prescribed for this section are the “**standard terms**” for a residential tenancy agreement.

### **38A Lessor to give proposed agreement to tenant**

(1) Before entering into a residential tenancy agreement, the lessor must give the tenant a written copy of—

- (a) the proposed standard terms; and
- (b) any proposed special terms.

(2) This section does not apply to an agreement for a short tenancy (moveable dwelling).



**39 Written agreements required**

(1) The lessor must ensure the agreement is in writing to the extent, and in the way, required by this section.

Maximum penalty—20 penalty units.

(2) The written agreement must—

- (a) include the standard terms for the agreement; and
- (b) include any special terms of the agreement.

(3) If, for a standard term to be effective, the term requires stated information to be included in it, (including, for example, the names of the parties and a description of the premises) the agreement is taken to include the standard term only if the information is properly included.

(5) The agreement must be written in a clear and precise way.

(6) The costs of preparing the agreement are payable by the lessor.

(7) Nothing in this section—

- (a) requires the tenant to prepare the written agreement; or
- (b) affects the enforceability of an agreement that is not in writing.

(8) This section does not apply to—

- (a) an agreement for a short tenancy (moveable dwelling); or
- (b) a periodic tenancy mentioned in section 46(3).<sup>9</sup>

**40 Giving and signing written agreement**

(1) The lessor must give the document prepared for section 39 to the tenant for signing.

(2) Within 5 days after the tenant receives the document, the tenant must sign the document and return it to the lessor.

(3) Within 14 days after the lessor receives the document signed by the tenant, the lessor must sign the document and return a copy signed by both parties to the tenant.

Maximum penalty—10 penalty units.

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<sup>9</sup> Section 46 (Continuation of fixed term agreements)

(4) This section does not apply to an agreement for a short tenancy (moveable dwelling).

#### **41 Orders of tribunal about giving and signing written agreement**

(1) If the tenant reasonably believes the lessor has contravened section 38A, the tenant may apply to a tribunal for an order that the lessor give a copy of the proposed written agreement to the tenant by a stated day.

(2) If the tenant reasonably believes the lessor has contravened section 40(1), the tenant may apply to a tribunal for an order that the lessor give the relevant document to the tenant for signing by a stated day.

(3) If the tenant reasonably believes the lessor has contravened section 40(3), the tenant may apply to a tribunal for an order that the lessor sign the relevant document and return a copy of it to the tenant by a stated day.

(4) If the lessor reasonably believes the tenant has contravened section 40(2), the lessor may apply to a tribunal for an order that the tenant sign the relevant document and return it to the lessor by a stated day.

(5) If, on an application made to a tribunal by the tenant, the lessor fails to satisfy the tribunal that the lessor acted reasonably in failing to comply with the provision the subject of the application, the tribunal may make the order sought.

(6) If, on an application made to a tribunal by the lessor, the tenant fails to satisfy the tribunal that the tenant acted reasonably in failing to comply with section 40(2), the tribunal may order the tenant to sign and return the relevant document to the lessor by a stated day.

### *Division 2—Associated documents*

#### **42 Condition report at start of tenancy**

(1) This section applies to a lessor only if at least some of the terms of the agreement are required to be in writing.

(2) The lessor must—

- (a) prepare, in the approved form, a condition report for the premises and any inclusions; and
- (b) sign the report; and

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- (c) give 2 copies of the report to the tenant as required by this section.

Maximum penalty—20 penalty units.

**(3)** The lessor must give the copies to the tenant—

- (a) if paragraph (b) does not apply—when the written agreement is given to the tenant for signing; or
- (b) if the tenant is not entitled to occupy the premises under the agreement until a day (the “**occupation day**”) that is later than the day the lessor gives the written agreement to the tenant for signing (the “**delivery day**”)—at a time in the period starting at the start of the delivery day and ending at the end of the occupation day.

**(3A)** Despite subsection (3), if a written agreement is not given to the tenant for signing before the day (also the “**occupation day**”) the tenant becomes entitled to occupy the premises under the agreement, the lessor must give the copies to the tenant on the occupation day.

**(4)** The tenant must, within the required period—

- (a) sign the copies; and
- (b) if the tenant does not agree with the report—show the parts of the report the tenant disagrees with by marking the copies in an appropriate way; and
- (c) return a copy to the lessor or lessor’s agent.

Maximum penalty—20 penalty units.

**(5)** For subsection (4), the required period is—

- (a) if the copies of the report are given to the tenant under subsection (3)(a)—the period ending 3 days after receiving the copies; or
- (b) if the copies of the report are given to the tenant under subsection (3)(b) or (3A)—the period ending 3 days after the occupation day.

**(6)** The lessor must keep, at least until 6 months after the agreement ends—

- (a) the signed copy of the report returned to the lessor or lessor’s agent by the tenant; or

- (b) if the tenant does not return a signed copy—another copy of the report.

Maximum penalty—20 penalty units.

(7) If the lessor is the State, this section does not apply until a date prescribed under a regulation.

#### **42A Condition report at end of tenancy**

(1) The tenant must—

- (a) prepare, in the approved form, a condition report for the premises and any inclusions; and
- (b) sign the report; and
- (c) as soon as practicable after the agreement ends, give 2 copies of the report to the lessor or lessor's agent.

(2) The lessor must, within 3 business days after receiving the copies of the report—

- (a) sign the copies; and
- (b) if the lessor does not agree with the report—show the parts of the report the lessor disagrees with by marking the copies in an appropriate way; and
- (c) either—
  - (i) if the tenant has given a forwarding address to the lessor or lessor's agent—return a copy to the tenant at the address; or
  - (ii) if subparagraph (i) does not apply—keep the copies.

(3) The lessor must keep a copy of the condition report signed by both parties for at least 6 months after the agreement ends.

(4) If the lessor is the State, this section does not apply until a date prescribed under a regulation.

#### **43 Information statement**

(1) The lessor must give to the tenant, as required by this section, a statement in the approved form containing information for the benefit of the tenant.

Maximum penalty—10 penalty units.

(2) Without limiting subsection (1), the information may be about—

- (a) the duties and entitlements of the lessor and tenant; and
- (b) the procedures for resolving disputes under the agreement (including mediation processes); and
- (c) entities to which issues about the agreement may be referred.

(3) For an agreement that is not an agreement for a short tenancy (moveable dwelling), the statement must be given to the tenant on the earlier of the following—

- (a) when the written agreement is given to the tenant for signing;
- (b) the day the tenant becomes entitled to occupy the premises under the agreement.

(4) For an agreement that is an agreement for a short tenancy (moveable dwelling), the statement must be given to the tenant when the tenancy commences.

#### **44 Park rules**

(1) This section applies only to moveable dwelling premises in a moveable dwelling park.

(2) The lessor must give to the tenant, as required by this section—

- (a) a copy of the park rules; and
- (b) if a park rule is changed—a copy of the rule as changed.

Maximum penalty—20 penalty units.

(3) The copy of the park rules must be given to the tenant—

- (a) if the tenancy is a long tenancy (moveable dwelling)—when the agreement is given to the tenant for signing; or
- (b) if the tenancy is a short tenancy (moveable dwelling)—at the start of the agreement.

(4) The copy of a park rule as changed must be given to the tenant as soon as practicable after the change takes effect.

#### **45 By-laws**

If by-laws under the *Building Units and Group Titles Act 1980* or *Body Corporate and Community Management Act 1997* are to apply to the

occupation of premises by a tenant, the lessor must inform the tenant of the application of the by-laws, when giving the written agreement to the tenant for signing.

Maximum penalty—20 penalty units.

### *Division 3—Fixed term agreements*

#### **46 Continuation of fixed term agreements**

(1) This section applies to an agreement if—

- (a) it creates a residential tenancy for a fixed term; and
- (b) it does not provide for its continuance after the day the term ends (the “**end day**”); and
- (c) none of the following notices is given by lessor or tenant to the other party before the end day—
  - notice to leave
  - notice of intention to leave
  - abandonment termination notice.

(2) However, this section does not apply to an agreement if the tenancy is a short tenancy (moveable dwelling).

(3) If the tenant continues to occupy the premises after the end day, the agreement continues to apply—

- (a) on the same terms on which it applied immediately before the end day (other than any term about the agreement’s term); and
- (b) on the basis the tenant is holding over under a periodic tenancy.

(4) This section does not stop the lessor and tenant under an agreement that creates a residential tenancy for a fixed term from entering into another agreement with each other for a tenancy of the premises starting at the end of the fixed term.

## PART 2—RENT

### 47 How rent to be paid

(1) The tenant must pay the rent in an approved way.

(2) If an approved way for payment of rent is stated in the agreement, the tenant must pay the rent in the way stated.

(3) However, if, after signing the agreement—

- (a) the lessor or tenant gives to the other party a written notice stating an approved way, or a different approved way, as the way in which rent is required, or is proposed, to be paid; and
- (b) the other party agrees in writing (the “**rent agreement**”) to payments of rent being made in the way stated;

the tenant must pay the rent in the way stated while the rent agreement remains in force.

(4) Rent is paid in an “**approved**” way if it is paid by—

- (a) cash; or
- (b) cheque; or
- (c) deposit to a financial institution account nominated by the lessor; or
- (d) credit card; or
- (e) an EFTPOS system; or
- (f) deduction from pay, or a pension or other benefit, payable to the tenant; or
- (g) another way agreed on by the lessor and tenant.

### 48 Where rent to be paid

(1) If the place for payment of rent is stated in an agreement, the tenant must pay the rent at the place stated.

(2) However, if, after signing the agreement, the lessor gives the tenant a written notice stating a place, or a different place, as the place at which rent is required to be paid and the place is reasonable, the tenant must pay the rent at the place stated in the notice while the notice is in force.

(3) If the place for payment of rent is not stated, the tenant must pay the rent at an appropriate place.

#### **49 Rent in advance**

(1) A lessor must not require, as payment of rent in advance under an agreement, more than—

- (a) for a periodic agreement or an agreement for moveable dwelling premises—2 weeks rent; or
- (b) for another agreement—1 month rent.

Maximum penalty—20 penalty units.

(2) A lessor must not require a payment of rent under an agreement in a period for which rent has already been paid.

Maximum penalty for subsection (2)—10 penalty units.

#### **50 Receipts and other records**

(1) If rent under an agreement is paid in cash, the person receiving the payment must give a receipt as required by this section.

Maximum penalty—10 penalty units.

(2) If rent under an agreement is paid by cheque, the person receiving the payment must give a receipt, as required by this section, if the person making the payment asks for a receipt when making the payment.

Maximum penalty—10 penalty units.

(3) A receipt must be signed by the person receiving the payment.

(4) A receipt must be given to the person making the payment—

- (a) if the payment is made by the person personally and in cash—when the payment is made; or
- (b) if the payment is made by the person in cash but not personally—before the end of the next business day after the day the payment is received; or
- (c) if the payment is made by cheque—within 3 business days after the day the payment is received.

(5) The lessor must, for a payment of rent under an agreement—



- (a) make a written record of the payment (the “**rent payment record**”) as required by this section; and
- (b) give a copy of the record to the tenant as required by this section, if the tenant asks for it.

Maximum penalty—10 penalty units.

(6) Subsection (5) does not apply if the rent payment—

- (a) is made in cash; or
- (b) is made by cheque and a receipt is given for the payment.

(7) A copy of a rent payment record asked for by a tenant must be given within 7 days after the request is made.

(8) A receipt or rent payment record must state—

- (a) the tenant’s name; and
- (b) the address of the premises; and
- (c) the date the payment is received; and
- (d) the period for which the payment is made; and
- (e) the amount of the payment; and
- (f) that the payment is a payment of rent.

## 51 Keeping of records

(1) The lessor must keep, for at least the required period, for each payment of rent under the agreement—

- (a) if a receipt was required to be given for the payment—a copy of the receipt, or another appropriate written record of the payment; or
- (b) if a receipt was not required to be given for the payment—the rent payment record for the payment.

Maximum penalty—15 penalty units.

(2) The lessor is taken to comply with subsection (1) if the relevant document is kept by the lessor’s agent.

(3) For subsection (1), the “**required period**” is—

- (a) the period fixed under the regulations and ending more than 1 year after the agreement ends; or

- (b) if a period is not fixed under the regulations—the period ending 1 year after the agreement ends.

## **52 False, misleading or incomplete rent records**

(1) In this section—

**“rent record”** means a receipt, rent payment record or another record of a rent payment.

(2) A person must not—

- (a) in a rent record, make an entry the person knows is false or misleading in a material particular; or
- (b) fail to enter a material particular in a rent record, unless the person does not know, and cannot reasonably obtain, the necessary information.

Maximum penalty—20 penalty units.

## **53 Rent increases**

(1) If the lessor proposes to increase the rent, the lessor must give written notice of the proposal to the tenant.

(2) The notice must state—

- (a) the amount of the increased rent; and
- (b) the day from when the increased rent is payable.

(3) The day stated must not be earlier than—

- (a) for a periodic agreement—2 months after the notice is given; or
- (b) for a fixed term agreement—1 month after the notice is given.

(4) Subject to an order of a tribunal under section 53A, the increased rent is payable from the day stated in the notice, and the agreement is taken to be amended accordingly.

(5) However, if the agreement is a fixed term agreement, the rent may be increased before the term ends only if the agreement—

- (a) provides for a rent increase; and
- (b) states the amount of the increase or how the amount of the increase is to be worked out.

(6) A rent increase is payable by the tenant only if the rent is increased under this section.

(7) This section does not apply if the lessor is the State.

### **53A Tenant's application to tribunal about rent increase**

(1) If the lessor gives the tenant notice of a proposed rent increase under section 53 and the tenant considers the increase is excessive, the tenant may apply to a tribunal for an order under this section.

(2) The application must be made—

- (a) within 30 days after the tenant receives the notice; and
- (b) if the agreement is a fixed term agreement—before the term of the agreement ends.

(3) The tribunal may make either of the following orders on an application under this section—

- (a) an order reducing the amount of the proposed increase of rent by a stated amount;
- (b) an order setting aside the amount of the proposed increase of rent.

(4) In deciding the application, the tribunal must have regard to the following—

- (a) the range of market rents usually charged for comparable premises;
- (b) the proposed increased rent compared to the current rent;
- (c) the state of repair of the premises;
- (d) the term of the tenancy;
- (e) the period since the last rent increase (if any);
- (f) anything else the tribunal considers relevant.

(5) Without limiting the tribunal's powers, the tribunal may make an interim order about payment of the rent increase pending its final decision on the application.

(6) This section does not apply if the lessor is the State.

**54 Rent decreases**

(1) This section applies if the premises—

- (a) are destroyed, or made completely or partly unfit to live in, in a way that does not result from a breach of the agreement; or
- (b) no longer may be used lawfully as a residence; or
- (c) are appropriated or acquired compulsorily by an authority.

(1A) This section also applies if—

- (a) services, facilities or goods to be provided to the tenant under the agreement are no longer available or are withdrawn other than because the tenant failed to meet the tenant's obligations under the agreement; or
- (b) the amenity or standard of the premises decreases substantially other than because of malicious damage caused by the tenant.

(2) The rent payable under the agreement decreases accordingly or, if an order for a decrease in the rent is made by a tribunal, to the extent stated in the order.

(3) A tribunal may make an order for a rent decrease only if—

- (a) the tenant applies to the tribunal for the order; and
- (b) if this section applies because of subsection (1)—the premises are partly unfit to live in.

**55 Seizure of tenant's goods for rent etc.**

(1) A person must not seize or dispose of any of the goods of a tenant as security for, or in payment of any of the following—

- (a) rent payable under an agreement;
- (b) an amount payable to the lessor, or at the lessor's direction, by way of reimbursement for an amount payable by the tenant under the agreement but paid by the lessor for the tenant;
- (c) a claim for loss or damage caused by the tenant's breach of the agreement.

Maximum penalty—40 penalty units.

(2) However, subsection (1) does not apply to the seizure or disposal of goods under section 230A<sup>10</sup> or an enforcement warrant.

## **56 Apportionment**

(1) The rent payable under an agreement accumulates from day to day.

(2) On termination of the agreement—

- (a) the rent is to be appropriately apportioned; and
- (b) the appropriate amount is payable by or to the tenant.

(3) If there is a dispute between the lessor and tenant about the amount payable, either party may apply to a tribunal and the tribunal may make any order it considers appropriate about the payment of an amount by or to the tenant.

## **PART 3—RENTAL BONDS**

### *Division 1—Payments to authority*

## **57 Meaning of “rental bond”**

(1) A “**rental bond**” for an agreement is an amount—

- (a) paid by or for the tenant under the agreement; and
- (b) intended to be available for the financial protection of the lessor against the tenant breaching the agreement.

(1A) However, a “**rental bond**” does not include rent paid in advance.

(2) In deciding whether an amount is a rental bond, it does not matter—

- (a) when the amount is paid; or
- (b) if the amount is paid directly to the authority; or
- (c) to or by whom the amount is paid; or

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10 Section 230A (Goods left on premises)

- (d) how the amount is described in the agreement or arrangement about the payment of the amount.

(3) A “**rental bond**” includes a part of a rental bond.

### **58 Meaning of “rental bond contributor”**

(1) A person is a “**rental bond contributor**” for a rental bond if the rental bond notice for the agreement indicates that—

- (a) the person is the tenant and there are no cotenants; and
- (b) the person paid the rental bond.

(2) Also, a cotenant is a “**rental bond contributor**” if—

- (a) the rental bond notice for the agreement indicates that the cotenant paid, or contributed to the payment of, the rental bond; or
- (b) for a replacement cotenant—written notice about the change of cotenants is given to the authority by the replacement cotenant and former cotenant; or
- (c) the authority is otherwise satisfied the cotenant paid, or contributed to the payment of, the rental bond.

### **59 Duty to pay rental bond**

(1) A person receiving a rental bond must, within 10 days of receiving it—

- (a) pay it to the authority; and
- (b) give the authority a notice, in the approved form, about the rental bond.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to a person to whom section 59A applies.

### **59A Duty to pay rental bond instalments**

(1) This section applies to a lessor who—

- (a) receives financial or other assistance from the State to supply rented accommodation to persons; and

- (b) enters into a residential tenancy agreement using the assistance; and
- (c) receives from the tenant a number of rental bonds for the agreement (the “**rental bond instalments**”).

(2) If the lessor has received all the rental bond instalments, the lessor must, within 10 days after receiving the last instalment—

- (a) pay the instalments to the authority; and
- (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty—40 penalty units.

(3) If the agreement is terminated before the lessor receives all the rental bond instalments, the lessor must, within 10 days after the termination of the agreement—

- (a) pay the instalments received by the lessor to the authority; and
- (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty for subsection (3)—40 penalty units.

## **60 Duty to pay rental bond if financial protection given**

(1) This section applies to a lessor under an agreement if—

- (a) financial protection against a breach of the agreement by the tenant is given to the lessor (whether by a guarantee or undertaking given by a financial institution or in another way); and
- (b) the financial protection is not given in the form of a rental bond; and
- (c) the maximum rental bond for the agreement is not paid.

(2) Within 10 days after the financial protection is given, the lessor must pay to the authority an amount equal to—

- (a) the maximum rental bond for the agreement; or

- (b) if a rental bond less than the maximum rental bond has been paid—the difference between the maximum rental bond and the amount of rental bond actually paid.

Maximum penalty—40 penalty units.

(3) An amount paid, or required to be paid, by the lessor under subsection (2) is taken to be a rental bond.

### **60A Acknowledging receipt of rental bond**

As soon as practicable after receiving a rental bond, the authority must give separate written acknowledgments of the receipt to the lessor and tenant.

### **61 No entitlement to interest**

No one other than the authority has legal or beneficial entitlement to an amount earned on the investment of a rental bond held by the authority.

### **62 Continuance of rental bond**

(1) This section applies if—

- (a) the authority holds a rental bond for an agreement; and
- (b) the agreement ends; and
- (c) the tenant continues occupying the premises under another agreement (the “**new agreement**”) with the lessor; and
- (d) the authority does not receive an application for payment of the rental bond.

(2) The rental bond is taken to be a rental bond for the new agreement.

## *Division 2—Payments by authority*

### **63 Purpose of division**

This division deals with the payment by the authority of rental bonds held by it.



**64 Making payment**

The authority may pay a rental bond only under this division.

**65 Application for payment**

An application to the authority for payment of a rental bond must be made in the approved form.

**66 Payment to party on joint application or other party's direction**

The authority must pay a rental bond in the way directed by an application—

- (a) if the application is made jointly by the lessor and tenant; or
- (b) if the application is made by the tenant and directs that payment be made to the lessor only; or
- (c) if—
  - (i) there is only 1 rental bond contributor; and
  - (ii) the application is made by the lessor and directs that payment be made to the contributor only.

**66A Payment to cotenants on lessor's direction**

(1) This section applies if—

- (a) an application for the payment of a rental bond is made to the authority by the lessor; and
- (b) there is more than 1 rental bond contributor; and
- (c) the application directs that payment be made to the contributors only.

(2) The authority must pay the rental bond to the rental bond contributors in the way directed if the direction states the rental bond is to be paid to the contributors—

- (a) in the proportions in which the contributors are shown on the rental bond notice to have contributed; or
- (b) in equal proportions.

(3) If subsection (2) does not apply, the authority—

- (a) must give each rental bond contributor written notice (the **“authority’s notice”**) of the application; and
  - (b) may pay the rental bond to the contributors in the way directed.
- (4) However, the authority may make a payment under subsection (3) only if—
- (a) a rental bond contributor does not, within the allowed period<sup>11</sup>—
    - (i) apply to a tribunal for an order about the payment;<sup>12</sup> and
    - (ii) give the authority a written notice (the **“contributor’s notice”**) informing it of the application; or
  - (b) after the application is made, and the contributor’s notice is given, under paragraph (a)—the application is withdrawn.

## **67 Payment to lessor on lessor’s own direction**

(1) This section applies if—

- (a) an application for the payment of a rental bond is made to the authority by the lessor only; and
- (b) the application directs that a payment be made to the lessor.

(2) The authority—

- (a) must—
  - (i) give the tenant written notice (the **“authority’s notice”**) of the application; and
  - (ii) if the application also directs that a payment be made to the tenant—make the payment to the tenant; and
- (b) may make the payment to the lessor.

(3) However, the authority may make the payment to the lessor only if—

- (a) the tenant does not, within the allowed period<sup>13</sup>—

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11 See section 69 (Allowed period for notices).

12 Under section 234, a reference to making an application to a tribunal includes a reference to making a dispute resolution request.

13 See section 69 (Allowed period for notices).

- (i) apply to a tribunal for an order about the payment;<sup>14</sup> and
  - (ii) give the authority a written notice (the “**tenant’s notice**”) informing it of the application; or
- (b) after the application is made, and the tenant’s notice is given, under paragraph (a)—the application is withdrawn.

## **68 Payment to tenant on tenant’s own direction**

(1) This section applies if—

- (a) an application for the payment of a rental bond is made to the authority by the tenant only; and
- (b) the application directs that a payment be made to the tenant.

(2) The authority—

- (a) must—
  - (i) give the lessor written notice (the “**authority’s notice**”) of the application; and
  - (ii) if the application also directs that a payment be made to the lessor—make the payment to the lessor; and
- (b) may make the payment to the tenant.

(3) However, the authority may make the payment to the tenant only if—

- (a) the lessor does not, within the allowed period<sup>15</sup>—
  - (i) apply to a tribunal for an order about the payment;<sup>16</sup> and
  - (ii) give the authority a written notice (“**lessor’s notice**”) informing it of the application; or
- (b) after the application is made, and the lessor’s notice is given, under paragraph (a)—the application is withdrawn.

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14 Under section 234, a reference to making an application to a tribunal includes a reference to making a dispute resolution request.

15 See section 69 (Allowed period for notices).

16 Under section 234, a reference to making an application to a tribunal includes a reference to making a dispute resolution request.

**68A Payment on cotenant's direction**

(1) This section applies if—

- (a) a rental bond notice for an agreement states there are 2 or more cotenants under the agreement; and
- (b) an application for the payment of the rental bond is made to the authority by—
  - (i) 1, or some only, of the cotenants; or
  - (ii) jointly by the lessor and 1, or some only, of the cotenants; and
- (c) the application directs that a payment be made to 1 or more of the applicants.

(2) The authority must give written notice (the **“authority’s notice”**) of the application to—

- (a) any cotenant who is not an applicant (an **“associated person”**); and
- (b) if the lessor is not an applicant—the lessor (also an **“associated person”**).

(3) If there is only 1 associated person and the application directs that a payment be made to the associated person, the authority must make the payment to the person.

(4) The authority may make the payment or payments to the applicant or applicants in the way directed by the application.

(5) However, the authority may make a payment under subsection (4) only if—

- (a) an associated person does not, within the allowed period<sup>17</sup>—
  - (i) apply to a tribunal for an order about the payment;<sup>18</sup> and
  - (ii) give the authority a written notice (the **“associated person’s notice”**) informing it of the application; or
- (b) after the application is made, and the associated person’s notice is given, under paragraph (a)—the application is withdrawn.

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17 See section 69 (Allowed period for notices).

18 Under section 234 a reference to making an application to a tribunal includes a reference to making a dispute resolution request.

**69 Allowed period for notices**

For sections 66A, 67, 68 and 68A,<sup>19</sup> the “**allowed period**” is—

- (a) 14 days after the giving of the authority’s notice; or
- (b) if a longer period is prescribed under the regulations<sup>20</sup>—the longer period.

**70 Payment under tribunal order**

(1) This section applies if—

- (a) a tribunal makes an order about payment of a rental bond; and
- (b) the authority is given a copy of the order.

(2) The authority must pay the rental bond in accordance with the order.

**72 Payment to rental bond supplier**

(1) This section applies if—

- (a) the rental bond is payable to the tenant; but
- (b) the authority is satisfied a person paid the rental bond direct to it as assistance to the tenant.

(2) The authority must pay the rental bond to the person (the “**rental bond supplier**”) and not the tenant.

**73 Limitation affecting payment**

(1) The authority must not pay a rental bond if it knows—

- (a) the lessor or tenant has given a notice to leave, or notice of intention to leave, the premises; and
- (b) the handover day for the notice has not arrived.

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19 Sections 66A (Payment to cotenants on lessor’s direction), 67 (Payment to lessor on lessor’s own direction), 68 (Payment to tenant on tenant’s own direction) and 68A (Payment on cotenant’s direction)

20 See *Residential Tenancies Regulation 1995*, section 17 (‘Allowed period’ for applying to tribunal about rental bond dispute—Act, s 69).

(2) However, subsection (1) does not prevent the authority making a payment it may make without giving notice to the lessor or tenant.

#### **74 Discontinuance of application for payment**

(1) The authority must stop dealing with an application for the payment of a rental bond if—

- (a) the application is made by the lessor or tenant, but not both; and
- (b) the application is withdrawn before the authority makes a payment as directed in the application.

(2) If an application for the payment of a rental bond is made jointly by the lessor and tenant and 1 of the parties withdraws from the application, the authority must deal with the application as an application made by the other party.

#### **75 Payment under person's direction**

(1) If the authority is required to pay a rental bond to a person, the authority may make the payment in accordance with the person's directions.

(2) However, if the payment is required to be made to the tenant, the authority may make the payment to a person other than the tenant only if, under the regulations,<sup>21</sup> the person is taken to have contributed to the rental bond.

(3) Subsection (2) is subject to section 72.<sup>22</sup>

(4) Also, if the payment is required to be made to the lessor, the authority may make the payment only to the lessor or the lessor's agent.

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21 See *Residential Tenancies Regulation 1995*, section 18 (Payment under person's direction—Act, s 75(2)).

22 Section 72 deals with payment to a rental bond supplier.

***Division 3—Enforcement provisions*****76 Receipt**

(1) A lessor or lessor's agent receiving a rental bond must give a receipt for the rental bond as required by this section.

Maximum penalty—10 penalty units.

(2) The receipt must—

- (a) be given to the person paying the rental bond when the rental bond is received; and
- (b) be signed by the person receiving the rental bond.

(3) The receipt must state the following—

- (a) the name of the person receiving the rental bond;
- (b) the tenant's name and, if the person receiving the bond is not the lessor, the lessor's name;
- (c) the address of the premises for which the bond is paid;
- (d) the date the bond is received;
- (e) the amount of the bond;
- (f) if there are cotenants and the cotenants tell the person receiving the bond the proportions in which the bond is paid—the amount paid by each cotenant.

(4) The person giving the receipt must keep a copy of it for at least 1 year after the agreement ends.

Maximum penalty for subsection (4)—10 penalty units.

**77 Payments above maximum amount**

(1) A person must not require payment of, or accept, a rental bond more than, or amounts as rental bond totalling more than—

- (a) if paragraph (b) does not apply—the maximum rental bond for the agreement; or
- (b) if the lessor is the tenant's employer and gives the tenant a rental subsidy—the amount fixed under subsection (2).

Maximum penalty—20 penalty units.

(2) For subsection (1)(b), the amount is the greater of the following amounts—

- (a) \$400;
- (b) the maximum rental bond for the agreement.

(3) Subsection (1) does not apply if the weekly rent under the agreement is more than—

- (a) the amount prescribed under a regulation; or
- (b) if an amount is not prescribed—\$300.

## **78 Order for payment if guilty of offence**

(1) If a person is found guilty of an offence against section 59, 59A or 60,<sup>23</sup> the court making the finding may order the person to pay to the authority, within a stated time, an amount equal to the rental bond.

(2) The court may make the order as well as imposing a penalty for the offence.

(3) An amount ordered to be paid by a person may be recovered by the authority as a debt owing to it by the person.

(4) Subsection (1) does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

## ***Division 4—Accounts and investments***

### **79 Accounts**

(1) The authority must keep—

- (a) a rental bond account; and
- (b) a rental bond interest account.

(2) The accounts are in addition to other accounts the authority is required or permitted to keep under this or another Act.

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23 Section 59 (Duty to pay rental bond), 59A (Duty to pay rental bond instalments) or 60 (Duty to pay rental bond if financial protection given)



**80 Rental bond account**

(1) The authority must pay into the rental bond account all rental bonds it receives under this Act or the accommodation Act.

(2) The authority may pay only the following amounts out of the rental bond account—

- (a) amounts payable under division 2;<sup>24</sup>
- (b) amounts payable under part 5, division 2 of the accommodation Act;<sup>25</sup>
- (c) amounts invested under the *Statutory Bodies Financial Arrangements Act 1982*.

**81 Rental bond interest account**

(1) The authority must pay into the rental bond interest account all amounts earned on investments or loans made by it.

(2) The authority may pay only the following amounts out of the rental bond interest account—

- (a) amounts to meet the cost of performing its functions under this Act or the accommodation Act;
- (b) amounts invested under the *Statutory Bodies Financial Arrangements Act 1982*;
- (c) amounts paid out under another provision of this Act.

**82 Other payments from rental bond interest account**

(1) The authority may make payments from its rental bond interest account (whether by way of grant or loan) for—

- (a) establishing or administering rental advisory services; or
- (b) establishing schemes for supplying residential accommodation;  
or

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24 Division 2 (Payments by authority)

25 Part 5 (Rental bonds), division 2 (Payments by authority) of the accommodation Act

- (c) researching, or setting up projects about improving, relationships between lessors and tenants or relationships between service providers and residents; or
- (d) facilitating the resolution of disputes about residential tenancy agreements or residential service agreements by tribunals.

(2) However, the authority may make a payment under subsection (1) only with the Minister's agreement.

### *Division 5—Miscellaneous*

#### **83 Increase in rental bond**

The tenant must increase a rental bond if—

- (a) the rent payable under the agreement increases; and
- (b) the lessor gives written notice to the tenant to increase the rental bond; and
- (c) the notice is given at least 11 months after—
  - (i) the agreement started; or
  - (ii) if the rental bond has been increased previously following the giving of a notice under this section—the day stated in the notice, or the last notice, for making the increase; and
- (d) the notice states the day by which the increase must be made; and
- (e) the day stated is at least 1 month after the tenant is given the notice about the increase.

#### **84 Rental bond resulting from rent decrease**

(1) This section applies if, in the first 6 months of the term of an agreement, the rent payable under the agreement decreases or is decreased.

(2) The amount paid as rent in the 6 month period above the amount that would have been payable if the lower, or lowest, amount of rent payable in the period had applied for the full period is, subject to an order of a tribunal, taken to be a payment of a rental bond.

(3) If the lessor disputes the amount being treated as a rental bond, the lessor may, within 7 days after the end of the 6 month period, apply to a

tribunal and the tribunal may make an order declaring the amount, or a part of the amount, is, or is not, a rental bond.

(4) If, because of subsection (2), a rental bond above the maximum rental bond is paid, the authority must pay the amount to the tenant on payment of the excess amount to it.

## **PART 4—KEY AND HOLDING DEPOSITS**

### *Division 1—Key deposits*

#### **84A Payment of key deposits**

A person may require a prospective tenant to pay an amount as a deposit for a key (a “**key deposit**”) to enable the prospective tenant to enter and inspect the premises to which the proposed tenancy relates.

#### **84B Receipts for key deposits**

(1) A person receiving a key deposit must give a receipt for the deposit as required by this section.

Maximum penalty—10 penalty units.

(2) The receipt must—

- (a) be given to the person paying the deposit when the deposit is received; and
- (b) be signed by the person receiving the deposit.

(3) The receipt must state the following—

- (a) the name of the person receiving the deposit;
- (b) the name of the person paying the deposit;
- (c) the address of the premises for which the key is given;
- (d) the date the deposit is received;
- (e) the amount of the deposit;

- (f) that the amount is a key deposit;
- (g) when the key is to be returned.

### **84C Refunding key deposit**

A person who receives a key deposit from a prospective tenant must refund the deposit in full when the key is returned to the person, whether or not the prospective tenant enters into a residential tenancy agreement for the relevant premises.

Maximum penalty—10 penalty units.

## *Division 2—Holding deposits*

### **85 Payment of holding deposits**

A person may require a prospective tenant to pay, or accept from a prospective tenant, a holding deposit for a tenancy of premises.

### **86 Receipts for holding deposits**

(1) A person receiving a holding deposit must give a receipt for the deposit as required by this section.

Maximum penalty—10 penalty units.

(2) The receipt must—

- (a) be given to the person paying the deposit when the deposit is received; and
- (b) be signed by the person receiving the deposit.

(3) The receipt must state the following—

- (a) the name of the person receiving the deposit;
- (b) the tenant's name and, if the person receiving the deposit is not the lessor, the lessor's name;
- (c) the address of the premises for which the deposit is paid;
- (d) the date the deposit is received;
- (e) the amount of the deposit;

- (f) that the payment is a holding deposit;
- (g) when the option to enter into an agreement may be exercised.

### **87 Rights and obligations about holding deposits**

(1) A holding deposit paid to or for a prospective lessor of residential premises is forfeited to the prospective lessor if—

- (a) the prospective tenant does not, within the option period—
  - (i) exercise the option to enter into an agreement for the premises; or
  - (ii) notify the prospective lessor of the intention not to exercise the option; or
- (b) having exercised the option, the prospective tenant fails to take all necessary and reasonable steps to enter into the agreement.

(2) If the holding deposit is not forfeited but the agreement is not entered into, the prospective lessor must refund the deposit to the prospective tenant within 3 days after the prospective tenant notifies the prospective lessor of the intention not to exercise the option.

(3) If the holding deposit is not refunded, it may be recovered by the prospective tenant as a debt owing by the prospective lessor to the tenant.

(4) If the prospective tenant exercises the option, the prospective lessor must take all necessary and reasonable steps to enter into the agreement.

Maximum penalty—20 penalty units.

(5) If the agreement is entered into—

- (a) the holding deposit must be applied in full or part payment of the rental bond for the agreement; and
- (b) if an amount remains from the deposit after payment of the rental bond—the amount must be applied in payment of rent.

### **88 Orders of tribunal**

If an application is made to a tribunal by a person by or to whom a holding deposit is paid, the tribunal may make any order it considers appropriate about the forfeiture, refunding or application of the deposit.

## **PART 5—OUTGOINGS OF LESSOR**

### *Division 1—Outgoings other than service charges*

#### **89 Outgoings other than service charges**

(1) The lessor must pay all charges, levies, premiums, rates or taxes payable for the premises.

(2) This section does not apply if—

- (a) the lessor is the State; and
- (b) rent is not payable under the agreement; and
- (c) the tenant is an entity receiving financial or other assistance from the State to supply rented accommodation to persons.

### *Division 2—Service charges*

#### **90 Meaning of “service charge”**

(1) For premises that are not moveable dwelling premises in a moveable dwelling park, a “**service charge**” is a charge payable by a person as owner or occupier of premises for—

- (a) electricity, gas or water supplied to the premises; or
- (b) another service or facility, prescribed under the regulations, supplied to, or used at, the premises.

(1A) For premises that are not moveable dwelling premises in a moveable dwelling park, a “**service charge**” also includes an amount payable by a person for water fit for human consumption supplied to the premises by delivery by means of a vehicle.

(2) For premises that are moveable dwelling premises in a moveable dwelling park, a “**service charge**” is a charge payable by a person as owner or occupier of premises for—

- (a) electricity, gas or water, or a sewerage service, supplied to, or used at, the premises or park; or
- (b) another service or facility, prescribed under the regulations, supplied to, or used at, the premises or park.

**91 General service charges for premises other than moveable dwelling premises**

(1) This section applies to premises that are not moveable dwelling premises if the tenant is required to pay an amount for the lessor's outgoings for a general service charge for the premises because the tenant is enjoying or sharing the benefit of the relevant service or facility.

(2) If the premises are not individually metered for the service or facility, the tenant may be required to pay an amount for the outgoings only if the agreement states—

- (a) the service or facility for which the outgoings are payable; and
- (b) how the apportionment of the outgoings to the tenant will be worked out; and
- (c) how the outgoings may be recovered by the lessor from the tenant.

(3) The tenant may not be required to pay an amount for the outgoings that is more than—

- (a) if the premises are not individually metered—the amount worked out under the agreement; or
- (b) if the premises are individually metered and—
  - (i) a way for working out the amount payable by the tenant is prescribed under the regulations—the amount worked out in the way prescribed; or
  - (ii) a way is not prescribed—the amount charged by the relevant supply authority for the quantity of the thing, or the service or facility, supplied to, or used at, the premises.

**91A Water service charge for premises other than moveable dwelling premises**

(1) This section applies to premises that are not moveable dwelling premises if the tenant is required to pay an amount for the lessor's outgoings for water service charges for the premises.

(2) Also, this section applies despite anything in the agreement.

(3) The tenant does not have to pay an amount for the outgoings for a quantity of water for which the lessor should reasonably be liable.

(4) The tenant has to pay an amount for the outgoings only if—

- (a) the premises are individually metered for the water supply; or
- (b) water is supplied to the premises by delivery by vehicle.

(5) The tenant does not have to pay an amount for the outgoings that is more than the amount charged by the relevant supply authority for the quantity of water supplied to the premises.

## **92 Service charges for moveable dwelling premises individually metered**

(1) This section applies to moveable dwelling premises if the tenant is required to pay an amount for the lessor's outgoings for a service charge for the premises because the tenant is enjoying or sharing the benefit of the relevant service or facility.

(2) The tenant may be required to pay an amount for the outgoings only if the premises are individually metered for the service or facility.

(3) The tenant must not be required to pay an amount for the outgoings that is more than—

- (a) if a way for working out the amount payable by the tenant is prescribed under the regulations—the amount worked out in the way prescribed; or
- (b) if a way is not prescribed—the amount charged by the relevant supply authority for the quantity of the thing, or the service or facility, supplied to, or used at, premises.

## **93 Service charges absorbed in rent for moveable dwelling premises**

(1) This section applies to moveable dwelling premises if the tenant is not required to pay an amount for the lessor's outgoings for a service charge for the premises, even though the tenant is enjoying or sharing the benefit of the relevant service or facility.

(2) If—

- (a) a service or facility becomes unavailable for use by the tenant because of action taken by the lessor; and
- (b) it is a service or facility for which an amount of rent is attributable;



reduced rent is payable under the agreement from the day the service or facility ceases to be available, and the agreement is taken to be amended accordingly.

(3) The reduced rent is the amount of rent payable under the agreement immediately before the service or facility became unavailable, reduced by—

- (a) the amount agreed on by the lessor and tenant as reflecting the amount of rent attributable to the service or facility; or
- (b) if they do not agree on an amount—the amount decided by a tribunal as reflecting the amount of rent attributable to the service or facility.

(4) If the tenant asks the lessor for details of the amount of the rent attributable to service charges for the premises, the lessor must give the tenant a written statement showing—

- (a) each service or facility for which an amount of rent is attributable; and
- (b) the amount attributed to the service or facility.

## **94 Orders of tribunal**

(1) This section applies if the lessor and tenant do not agree about—

- (a) the amount of the lessor's outgoings for a service charge payable by the tenant; or
- (b) the amount of the reduced rent payable under the agreement because a service or facility ceases to be available for use by the tenant.

(2) Either party may apply to a tribunal for a decision about the amount payable.

(3) For an application about outgoings, the tribunal may, in addition to deciding the amount of the outgoings payable by the tenant, make an order requiring payment of the amount by the tenant.

(3A) In deciding an amount payable by a tenant for outgoings for a water service charge, the tribunal must have regard to the following—

- (a) relevant available information about water usage and charges for premises in the local government area in which the relevant premises are situated;

- (b) the area of the relevant land;
- (c) any terms of the agreement affecting the amount of water used;
- (d) the presence or absence of water saving devices in the premises;
- (e) the number of persons occupying the premises;
- (f) the quantity of water for which the lessor should reasonably be liable;
- (g) anything else the tribunal considers relevant.

(4) For an application about reduced rent, the tribunal may, as well as deciding the amount of the reduced rent payable under the agreement, make any order it considers appropriate about rent paid, or payable, under the agreement.

## **PART 6—PENALTIES AND PREMIUMS**

### **95 Collateral contracts prohibited**

A person (the “**proposer**”) must not require another person (the “**prospective tenant**”) to agree to buy goods or services from the proposer or someone else as a condition of the prospective tenant being accepted as the tenant under an agreement.

Maximum penalty—20 penalty units.

### **95A Incentive amounts prohibited**

The lessor must not ask for or receive from the tenant or anyone else an amount for entering into, extending or continuing the agreement, other than an amount for rent, a rental bond, or a fee or other amount required or permitted to be paid under this Act.

Maximum penalty—40 penalty units.

### **96 Certain terms about penalties and other payments void**

(1) A term of an agreement is void to the extent it provides that, if the tenant breaches the agreement or this or another Act, the tenant is liable to pay—

- (a) all or a part of the rent remaining payable under the agreement; or
- (b) increased rent; or
- (c) an amount as a penalty; or
- (d) an amount as liquidated damages.

**(1A)** Despite subsection (1), a term of a fixed term agreement is not void to the extent it provides that, if the tenant terminates the agreement other than in a way permitted under this Act, the tenant is liable to pay the reasonable costs incurred by the lessor in reletting the premises.

**(1B)** Subsection (1A) applies to a term only if the only reference in the term to the amount payable by the tenant is a reference to the reasonable costs incurred by the lessor in reletting the premises.

**(2)** A lessor must not require a tenant to enter into an agreement containing a term that is void under subsection (1).

Maximum penalty—20 penalty units.

## **97 Terms about rent reductions etc.**

**(1)** This section applies to a term of an agreement providing that, if the tenant does not breach the agreement or this or another Act—

- (a) the rent will, or may be, reduced; or
- (b) the tenant will, or may be, given or paid a rebate or refund of rent or other benefit.

**(2)** However, this section does not apply to a term of a residential tenancy agreement providing only that, if the tenant pays the rent before or when it is payable—

- (a) the rent will, or may be, reduced; or
- (b) the tenant will, or may be, given or paid a rebate or refund of rent or other benefit.

**(3)** A term to which this section applies is taken to be varied so that the tenant is entitled immediately to the reduction, rebate, refund or other benefit.

**(4)** A variation is taken to be made on the commencement of the agreement, or the application of this section to the agreement, whichever happens later.

(5) In this section—  
“**term**” includes part of a term.

### **98 Premiums for letting moveable dwelling premises**

(1) This section applies only to moveable dwelling premises in a moveable dwelling park.

(2) A person must not require someone else to pay, or accept from someone else an amount—

- (a) for accepting the other person as a tenant under a long tenancy (moveable dwelling); and
- (b) for which the other person does not receive a benefit as tenant.

Maximum penalty—20 penalty units.

## **CHAPTER 3—RIGHTS AND OBLIGATIONS OF LESSORS AND TENANTS**

### **PART 1—OCCUPATION AND USE OF THE PREMISES**

#### **99 Legal impediments to occupation as residence**

(1) The lessor must ensure there is no legal impediment to occupation of the premises by the tenant as a residence for the term of the tenancy.

(2) Subsection (1) applies only to legal impediments the lessor knew about, or ought reasonably to have known about, when entering into the agreement.

#### **100 Vacant possession**

(1) The lessor must ensure the tenant has vacant possession of the premises on the day the tenant is entitled to occupy the premises under the agreement.

(2) Subsection (1) does not apply to any part of the premises to which the tenant does not have a right of exclusive occupation.

**101 Quiet enjoyment**

(1) The lessor must take reasonable steps to ensure the tenant has quiet enjoyment of the premises.

(2) The lessor or lessor's agent must not interfere with the reasonable peace, comfort or privacy of the tenant in using the premises.

Maximum penalty for subsection (2)—20 penalty units.

**102 Tenant's use of premises**

The tenant must not—

- (a) use the premises for an illegal purpose; or
- (b) cause a nuisance by the use of the premises; or
- (c) interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant.

**PART 2—GENERAL STANDARD OF THE PREMISES****103 Lessor's obligations generally**

(1) This section does not apply to an agreement if—

- (a) the premises are moveable dwelling premises consisting only of the site for the dwelling; and
- (b) the tenancy is a long tenancy (moveable dwelling).

(2) At the start of the tenancy, the lessor must ensure—

- (a) the premises and inclusions are clean; and
- (b) the premises are fit for the tenant to live in; and
- (c) the premises and inclusions are in good repair; and
- (d) the lessor is not in breach of a law dealing with issues about the health or safety of persons using or entering the premises.

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(3) While the tenancy continues, the lessor<sup>26</sup>—

- (a) must maintain the premises in a way that the premises remain fit for the tenant to live in; and
- (b) must maintain the premises and inclusions in good repair; and
- (c) must ensure any law dealing with issues about the health or safety of persons using or entering the premises is complied with; and
- (d) if the premises include a common area—must keep the area clean.

(4) However, the lessor is not required to comply with subsection (2)(c) or (3)(a) for fixtures attached to premises, and inclusions supplied with premises, (the “**non-standard items**”) if—

- (a) the lessor is the State; and
- (b) the non-standard items are specified in the agreement and the agreement states the lessor is not responsible for their maintenance; and
- (c) the non-standard items are not necessary and reasonable to make the premises a fit place in which to live; and
- (d) the non-standard items are not a risk to health or safety; and
- (e) for fixtures—the fixtures were not attached to the premises by the lessor.

(5) In this section—

“**premises**” include any common area available for use by the tenant with the premises.

### **104 Lessor’s obligations for facilities in moveable dwelling parks**

(1) This section applies only to an agreement for moveable dwelling premises in a moveable dwelling park.

(2) However, this section does not apply if the lessor is a mobile home occupier for the premises.

(3) At the start of the tenancy, the lessor must ensure—

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26 See section 125 (Notice of damage) for the tenant’s obligations to notify the lessor about the need for repairs because of damage to the premises.

- (a) the facilities in the park are clean; and
  - (b) the facilities are fit for the tenant to use; and
  - (c) the facilities are in good repair; and
  - (d) the lessor is not in breach of a law dealing with issues about the health and safety of persons using or entering the facilities.
- (4) While the tenancy continues, the lessor—
- (a) must keep the facilities clean; and
  - (b) must maintain the facilities in a way that the facilities remain fit for the tenant to use; and
  - (c) must maintain the facilities in good repair; and
  - (d) must ensure any law dealing with issues about the health or safety of persons using the facilities is complied with.

### **105 Lessor's obligations for moveable dwelling site**

- (1) This section applies to an agreement only if—
- (a) the premises are moveable dwelling premises consisting only of the site for the dwelling; and
  - (b) the tenancy is a long tenancy (moveable dwelling).
- (2) At the start of the tenancy, the lessor must ensure the premises are clean and are a fit site for a moveable dwelling.
- (3) While the tenancy continues, the lessor—
- (a) must ensure the premises remain a fit site for a moveable dwelling; and
  - (b) may make any improvements to the premises the lessor considers appropriate.

### **106 Tenant's obligations generally**

- (1) This section does not apply to an agreement if—
- (a) the premises are moveable dwelling premises consisting only of the site for the dwelling; and
  - (b) the tenancy is a long tenancy (moveable dwelling).

(1A) The tenant must keep the premises and inclusions clean, having regard to their condition at the start of the tenancy.

(2) The tenant must not maliciously damage, or allow someone else to maliciously damage, the premises or inclusions.

Maximum penalty—40 penalty units.

(3) At the end of the tenancy, the tenant must leave the premises and inclusions, as far as possible, in the same condition they were in at the start of the tenancy, fair wear and tear excepted.<sup>27</sup>

### **107 Tenant's obligations for facilities in moveable dwelling parks**

(1) This section applies only to an agreement for moveable dwelling premises in a moveable dwelling park.

(2) The tenant must not—

- (a) do anything to a facility in the park that makes the facility unfit for use or detracts from its appearance; or
- (b) intentionally or negligently damage a facility in the park.

### **108 Tenant's obligation for moveable dwelling site**

(1) This section applies—

- (a) to an agreement for moveable dwelling premises consisting only of the site for the dwelling; and
- (b) if the tenancy is a long tenancy (moveable dwelling).

(2) The tenant must keep the premises in a way that does not detract from the general standards of the moveable dwelling park, or other general area, where the premises are situated.

(3) The tenant's obligation applies having regard to the condition of the premises at the start of the tenancy and any improvements made later by the lessor.

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<sup>27</sup> See section 125 (Notice of damage) for the tenant's obligations to notify the lessor about the need for repairs because of damage to the premises.



**108A Orders of tribunal**

(1) This section applies if, on an application made to a tribunal by the tenant for an order under this section, the tribunal is satisfied—

- (a) the lessor has failed to comply with the lessor's maintenance obligation under section 103(3) or 104(4); and
- (b) the failure results in the health or safety of persons being endangered; and
- (c) the failure is reasonably capable of being remedied.

(2) The tribunal may order the lessor to remedy the failure within the time decided by the tribunal.

**PART 3—LESSOR'S RIGHT OF ENTRY****109 Grounds for entry**

The lessor or lessor's agent may enter the premises only—

- (a) to inspect the premises; or
- (b) to make routine repairs to, or carry out maintenance of, the premises; or
- (c) to show the premises to a prospective purchaser or tenant; or
- (d) to allow a valuation of the premises to be carried out; or
- (e) if the lessor or agent believes, on reasonable grounds, the premises have been abandoned; or
- (f) if the tenant agrees; or
- (g) in an emergency; or
- (h) if the lessor or agent believes on reasonable grounds that the entry is necessary to protect the premises or inclusions from imminent or further damage.

*Example of entry in an emergency—*

To make emergency repairs to the roof of the premises.

**110 Notice of entry**

(1) The lessor or agent may enter the premises under section 109(a) to (e) only if—

- (a) the lessor or agent has given notice of the proposed entry (the “**entry notice**”) to the tenant; and
- (b) the entry notice is in the approved form; and
- (c) the entry notice is given—
  - (i) for an entry under section 109(a) if the tenancy is not a short tenancy (moveable dwelling)—at least 7 days before entering the premises; or
  - (ii) for another entry—at least 24 hours before entering the premises.

(2) An entry under section 109(g) or (h) may be made without giving the tenant notice of the proposed entry.

(3) Despite subsection (1), the lessor or agent may enter the premises under section 109(b) without giving the entry notice if it is not practicable to give the notice because of—

- (a) the remoteness of the premises; and
- (b) the shortage in the general area of the premises of a suitably qualified tradesperson or other person needed to make the repairs or carry out the maintenance.

(4) Also, despite subsection (1), for premises that are a site only, or a site and a caravan, or a site and a mobile home, in a moveable dwelling park, the lessor or agent may enter the site under section 109(b) to carry out maintenance of the site without giving the entry notice if—

- (a) the agreement states—
  - (i) the frequency with which the entry is required for carrying out the maintenance; and
  - (ii) the conditions under which the entry may be made; and
- (b) the entry is made under the agreement.

**111 General qualifications about entry**

(1) A secondary agent of the lessor may enter the premises under section 109(a) to (e) only if—

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- (a) the tenant agrees; or
- (b) the agent produces for the tenant's inspection written evidence of the agent's appointment; or
- (c) for an entry under section 109(e) the tenant does not respond to the entry notice within a reasonable time.

(2) An entry under section 109(a) to (e) must be made at a reasonable time.

(2A) Unless the tenant otherwise agrees, an entry under section 109(a) may not be made less than 3 months after a previous entry by the lessor, or the renting or a secondary agent, under the paragraph.

(3) The lessor or agent may enter the premises under section 109(c) only if—

- (a) a condition mentioned in subsection (3A) is satisfied; and
- (b) a reasonable time has elapsed since a previous entry by the lessor, or the renting or a secondary agent, under the paragraph; and
- (c) for a secondary agent of the lessor—the secondary agent has given a copy of the entry notice to the renting agent.

(3A) For subsection (3), the conditions are that—

- (a) 1 of the following notices is given to the tenant before, or when, the entry notice is given to the tenant—
  - (i) a notice in the approved form of the lessor's intention to sell the premises; or
  - (ii) a notice to leave the premises; or
- (b) a notice of intention to leave the premises has been given to the lessor by the tenant.

(4) The lessor or agent may enter the premises under section 109(f) only at a time agreed with the tenant.

(5) The lessor or agent may enter the premises with someone else if it is necessary to achieve the purpose of the entry.

(6) Without limiting subsection (5), the lessor or agent may enter premises under section 109(h) with a police officer.

(7) In this section—

**“renting agent”**, for a lessor, means the agent to whom the tenant normally pays the rent.

**“secondary agent”**, for a lessor, means an agent of the lessor who is not the renting agent.

## **112 Rules of entry**

The rights and obligations under sections 109, 110 and 111<sup>28</sup> about the entry of premises are called the **“rules of entry”**.

## **113 Entry under order of tribunal**

**(1)** This section applies if, on an application made to a tribunal by the lessor or tenant, the tribunal is satisfied—

- (a) the tenant has not allowed the lessor or lessor’s agent to enter the premises under the rules of entry; or
- (b) the lessor or lessor’s agent has entered the premises in contravention of the rules of entry.

**(2)** The tribunal may change the rules of entry in the way it considers appropriate.

**(3)** If the tribunal changes the rules on the ground mentioned in subsection (1)(a), the lessor or lessor’s agent may enter the premises under the rules of entry or the rules of entry as changed.

**(4)** If the tribunal makes an order on the ground mentioned in subsection (1)(b), the lessor or lessor’s agent may enter the premises only under the rules as changed.

## **114 Unlawful entry of premises**

The lessor or lessor’s agent, must not enter the premises in contravention of—

- (a) the rules of entry; or

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28 Sections 109 (Grounds for entry), 110 (Notice of entry) and 111 (General qualifications about entry)

- (b) if the rules have been changed by a tribunal—the rules of entry as changed.

Maximum penalty—20 penalty units.

## **PART 4—PERSONAL DETAILS OF THE PARTIES AND AGENTS**

### **115 Tenant’s name and other details**

(1) If the lessor or the lessor’s agent asks the tenant the tenant’s name or place of employment, the tenant must not give a false name or place of employment.

Maximum penalty—20 penalty units.

(2) When handing over possession of the premises, the tenant must tell the lessor or lessor’s agent the tenant’s new residential or postal address, unless the tenant has a reasonable excuse for not telling the lessor or agent the new address.

Maximum penalty—20 penalty units.

(3) Subsection (2) applies only if the lessor or lessor’s agent asks the tenant in writing to state the new address.

### **116 Lessor’s or agent’s name and other details**

(1) On or before the day the tenant starts occupying the premises, the lessor must give a written notice to the tenant stating—

- (a) the lessor’s name and address for service; or
- (b) if the lessor has an agent who is authorised to stand in the lessor’s place in a proceeding prescribed under the regulations<sup>29</sup> (the “**prescribed proceeding**”)—the agent’s name and address for service.

Maximum penalty—20 penalty units.

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29 See *Residential Tenancies Regulation 1995*, section 19 (Proceedings in which lessor’s agent may stand in lessor’s place—Act, s 116(1)(b)).

(2) If a detail mentioned in the notice changes, the lessor must give written notice of the change to the tenant within 14 days after the change.

Maximum penalty—20 penalty units.

(3) If details of the lessor's agent are given to the tenant under this section, the agent stands in the lessor's place for a prescribed proceeding and, for example—

- (a) the proceeding may be taken against the agent as if the agent were the lessor; and
- (b) a tribunal may make an order against the agent as if the agent were the lessor; and
- (c) settlement may be made with the agent as if the agent were the lessor.

## **PART 5—THE DWELLING**

### *Division 1—Fixtures and structural changes*

#### **117 Attaching fixtures and making structural changes**

The tenant may attach a fixture, or make a structural change, to the premises only if the lessor agrees to the fixture's attachment or structural change.

#### **118 Agreement about fixtures and structural changes**

(1) The lessor's agreement to the attaching of a fixture, or making of a structural change, must—

- (a) be in writing; and
- (b) describe the nature of the fixture or change; and
- (c) include any terms of the agreement.

(2) For an agreement about attaching a fixture to premises, the terms may include terms about—

- (a) whether the tenant may remove the fixture; and

- (b) if removal by the tenant is allowed—
  - (i) when and how the removal may be performed; and
  - (ii) the obligation of the tenant to repair any damage caused to the premises in the removal or compensate the lessor for the lessor's reasonable costs of repairing the damage; and
- (c) if removal by the tenant is not allowed—the obligation of the lessor to compensate the tenant for any improvement the fixture makes to the premises.

(3) The lessor must not act unreasonably in failing to agree to the attaching of a fixture, or the making of a structural change, to the premises.

(4) If the lessor agrees to a fixture being attached, or a structural change being made, to the premises by the tenant, the tenant must not contravene a term of the agreement.

### **119 Attaching fixture or making structural change without lessor's agreement**

(1) If the tenant attaches a fixture, or makes a structural change, to the premises without the lessor's agreement, the lessor may—

- (a) waive the breach; and
- (b) treat the fixture or change as an improvement to the premises for the lessor's benefit.

(2) The lessor may take the action under subsection (1) instead of taking action for a breach of a term of the residential tenancy agreement by the tenant.

### *Division 2—Locks and keys*

### **120 Supply of locks and keys**

The lessor must—

- (a) supply and maintain the locks that are necessary to ensure the premises are reasonably secure; and
- (b) give a key for each lock to the tenant.

**121 Changing locks**

(1) If the lessor or tenant changes a lock, the party must give to the other party a key for the changed lock, unless—

- (a) the other party agrees to not being given a key; or
- (b) a tribunal orders that a key not be given.

(2) However, the lessor or tenant may change a lock only if—

- (a) the party has a reasonable excuse for making the change; or
- (b) the other party agrees to the change.

(3) Without limiting subsection (2)(a), it is a reasonable excuse for the lessor or tenant to change a lock if it is changed in an emergency or under an order of a tribunal.

**122 Agreement about changing locks**

(1) The lessor or tenant must not act unreasonably in failing to agree to the change of a lock.

(2) The changing of a lock by the lessor or tenant without the other party's agreement is evidence the party did not have a reasonable excuse for making the change.

**123 Orders of tribunal**

(1) If an application is made to a tribunal by the lessor or tenant about a lock or key for the premises, the tribunal may make any of the following orders about locks or keys for the premises—

- (a) an order requiring the lessor to supply a lock, or a lock of a particular kind;
- (aa) an order requiring the lessor to carry out stated maintenance of a lock;
- (ab) an order authorising the lessor or tenant to change a lock;
- (b) an order that the lessor or tenant is not required to give to the other party a key to a lock;
- (c) an order requiring the lessor or tenant to give to the other party a key to a lock.



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(2) In making an order mentioned in subsection (1)(a) or (ab), the tribunal may have regard to the following—

- (a) the likelihood of risk to the tenant’s personal safety;
- (b) the requirements of insurance companies for allowing the tenant to obtain insurance for property of the tenant kept at the premises;
- (c) the likelihood of break-ins or other unlawful entry to the premises or nearby premises;
- (d) local community standards about adequate security for premises;
- (e) the physical characteristics of the premises and adjoining areas;
- (f) anything else the tribunal considers relevant.

*Division 3—Damage and repairs***123A Meaning of “emergency repairs”**

“**Emergency repairs**” are works needed to repair any of the following—

- (a) a burst water service;
- (b) a blocked or broken lavatory system;
- (c) a serious roof leak;
- (d) a gas leak;
- (e) a dangerous electrical fault;
- (f) flooding or serious flood damage;
- (g) serious storm, fire or impact damage;
- (h) a failure or breakdown of the gas, electricity or water supply to premises;
- (i) a failure or breakdown of an essential service or appliance on premises for hot water, cooking or heating;
- (j) a fault or damage that makes premises unsafe or insecure;
- (k) a fault or damage likely to injure a person, damage property or unduly inconvenience a resident of premises;

- (1) a serious fault in a staircase, lift or other common area of premises that unduly inconveniences a resident in gaining access to, or using, the premises.

### **123B Meaning of “routine repairs”**

“**Routine repairs**” are repairs that are not emergency repairs.

### **124 Nominated repairer for emergency repairs**

(1) The lessor may nominate a person (the “**nominated repairer**”)—

- (a) to act for the lessor in arranging for emergency repairs, or emergency repairs of a particular type, to be made of the premises or inclusions; or
- (b) to make emergency repairs, or emergency repairs of a particular type, of the premises or inclusions for the lessor.

(2) The nominated repairer may be stated in the agreement or a written notice given by the lessor to the tenant.

(3) The agreement or notice must state whether or not the nominated repairer is the tenant’s first point of contact for notifying the need for emergency repairs.

(4) The lessor must give written notice to the tenant of any change of the lessor’s nominated repairer.

### **125 Notice of damage**

(1) If the tenant knows the premises or inclusions have been damaged, the tenant must give notice as soon as practicable of the damage.

(2) If the premises or inclusions need routine repairs, the notice must be given to the lessor.

(3) If the premises or inclusions need emergency repairs, the notice must be given to the lessor if—

- (a) there is no nominated repairer for the repairs; or
- (b) a nominated repairer for the repairs is not the tenant’s first point of contact; or

- (c) a nominated repairer for the repairs is the tenant's first point of contact but the tenant has been unable to contact the repairer after making reasonable efforts.

(4) If the premises or inclusions need emergency repairs and there is a nominated repairer of the lessor for the repairs, the notice must be given to the repairer if—

- (a) the repairer is the tenant's first point of contact; or
- (b) the repairer is not the tenant's first point of contact but the tenant has been unable to contact the lessor after making reasonable efforts.

### **126 Tenant may arrange for emergency repairs to be made**

(1) This section applies—

- (a) if—
  - (i) the tenant has been unable to notify the lessor or nominated repairer of the need for emergency repairs of the premises or inclusions; or
  - (ii) the repairs are not made within a reasonable time after notice is given; and
- (b) if the residential tenancy is not a short tenancy (moveable dwelling).

(2) The tenant may arrange for a suitably qualified person to make the repairs.

### **127 Costs of emergency repairs arranged by tenant**

(1) The maximum amount that may be incurred for emergency repairs arranged to be made by the tenant is an amount equal to the amount payable under the agreement for 2 weeks rent.

(2) The tenant may require the lessor—

- (a) to reimburse the tenant for any amount properly incurred by the tenant for the repairs; or
- (b) to pay the amount properly incurred for the repairs direct to the actual repairer.

(3) The requirement must—

- (a) be made by written notice given to the lessor; and
- (b) be supported by appropriate documents about the incurring of the amount; and
- (c) state that, if the lessor does not comply with the requirement within 7 days after receiving the notice, the tenant may apply to a tribunal for an order about the reimbursement or payment of the amount.

*Examples of appropriate documents for subsection (3)(b)—*

Invoices, accounts and receipts.

### **128 Orders of tribunal about emergency repairs**

(1) This section applies if the tenant makes a requirement of the lessor for the reimbursement or payment of an amount for emergency repairs.

(2) If the lessor objects to the requirement, the lessor may, within 7 days after the requirement is made, apply to a tribunal for an order about the reimbursement or payment.

(3) If, within the 7 day period, the lessor does not comply with the requirement or make the application, the tenant may apply to a tribunal for an order about the reimbursement or payment.

(4) An application under subsection (2) must be decided by a tribunal, but an application under subsection (3) may be decided by a tribunal or registrar.

(5) However, a registrar may decide an application only if—

- (a) the registrar is satisfied the tenant has given to the lessor appropriate documents to support the incurring of the amount for which reimbursement or payment is sought; and
- (b) the lessor has not made an application under subsection (2); and
- (c) the registrar is satisfied a tribunal has not been notified of a dispute between the parties about the amount.

*Examples of appropriate documents for subsection (5)(a)—*

Invoices, accounts and receipts.

(6) If an application is made under subsection (2) or (3), a tribunal or registrar may make any order or give any directions about the reimbursement or payment the tribunal or registrar considers appropriate in all the circumstances of the case.

(7) In deciding an application under subsection (2) or (3), the tribunal or registrar may have regard to—

- (a) whether the tenant obtained a number of quotations for the repairs; and
- (b) whether the repairs were necessary because of a breach of a term of the agreement by the tenant.

(8) Subsection (7) does not limit the issues to which the tribunal or register may have regard.

## **PART 6—ADDITIONAL PROVISIONS FOR MOVEABLE DWELLING PREMISES**

### *Division 1—Application of part*

#### **129 Application of part**

This part applies only if premises under an agreement are moveable dwelling premises in a moveable dwelling park.

### *Division 2—Relocation*

#### **130 Notice to relocate**

(1) The lessor may give a notice (“**notice to relocate**”) to the tenant requiring the tenant to relocate to another site in the moveable dwelling park within a stated period.

(2) The notice to relocate may be given only if the relocation is necessary—

- (a) to allow the carrying out of necessary or desirable work in the park; or
- (b) because of an emergency; or
- (c) for health or safety reasons; or

- (d) if the lessor is a mobile home occupier—because the lessor has an obligation under a mobile home agreement to reposition the moveable dwelling.

*Examples of work to which subsection (2)(a) could apply—*

Maintenance, repairs, upgrading and restoration.

(3) The notice to relocate to another site may be given only if the other site is, as far as practicable, reasonably comparable to the site currently occupied by the tenant.

(4) The period stated in the notice must be reasonable but, in any event, for a notice given under subsection (2)(a) or (d), must be not less than 1 month after the notice is given to the tenant.

(5) The notice to relocate must—

- (a) be in writing; and
- (b) identify the site to which the tenant is to relocate; and
- (c) state the period within which the tenant is to relocate; and
- (d) state the reasons for the relocation.<sup>30</sup>

### **130A Restriction against enforcing relocation**

The lessor must not take any action to enforce the tenant's relocation under a notice to relocate unless—

- (a) the tenant agrees; or
- (b) a tribunal orders the tenant to relocate to the site mentioned in the notice.

Maximum penalty—20 penalty units.

### **131 Effect of relocation**

If the tenant complies with the notice to relocate given to the tenant, the tenant's site for the agreement is the site to which the tenant relocates, and the agreement is taken to be amended accordingly.

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<sup>30</sup> See section 157 (Notice to leave for non-compliance (moveable dwelling relocation)) in relation to a failure of the tenant to comply with the notice to relocate.

**132 Costs of relocation**

(1) The reasonable costs and expenses incurred by the tenant in complying with the notice to relocate are payable to the tenant by the lessor.

(2) If application is made to a tribunal under this section by the tenant, the tribunal may make an order requiring the lessor to pay to the tenant the amount it considers the tenant is entitled to receive under subsection (1).

**132A Application to tribunal**

(1) This section applies if—

- (a) a notice to relocate is given to the tenant; and
- (b) the tenant—
  - (i) has not complied with the notice; or
  - (ii) is proposing not to comply with the notice (whether or not the tenant has told the lessor).

(2) Either party may apply to a tribunal for an order about the relocation.

(3) In deciding the application, the tribunal may make either of the following orders—

- (a) an order requiring the tenant to relocate, by a stated date, to the site mentioned in the relocation notice;
- (b) an order setting aside the relocation notice.

***Division 3—Park rules*****133 Park rules**

(1) The owner of the moveable dwelling park may make rules about the use, enjoyment, control and management of the park.

(2) However, rules may be made only about—

- (a) the use and operation of communal facilities; and
- (b) the making and abatement of noise; and
- (c) the carrying on of sporting and other recreational activities; and
- (d) speed limits for motor vehicles; and

- (e) parking of motor vehicles; and
- (f) the disposal of refuse; and
- (g) the keeping of pets; and
- (h) other things prescribed under the regulations.

### **134 Notice of proposed change of park rule**

(1) If the owner of a moveable dwelling park proposes to change a park rule, the owner must—

- (a) fix a day (the **“objection closing day”**) by which residents of the park may object to the proposed change (the **“proposal”**); and
- (b) give notice of the proposal to each resident and any person who becomes a resident before the objection closing day.

(2) A notice must be given—

- (a) for a resident—at least 1 month before the objection closing day; or
- (b) for someone else—when the person becomes a resident.

(3) The notice must—

- (a) be in writing; and
- (b) inform the resident that the resident may object to the proposal before the objection closing day; and
- (c) inform the resident how the objection may be made.

### **135 Objection to proposal**

(1) A resident of the park may object to the proposal because it is unreasonable.

(2) The objection must be made by written notice given to the park owner before the objection closing day.

(3) The notice must give particulars of why the proposal is considered to be unreasonable.



**136 Park liaison committee**

(1) This section applies only if objections to the proposal are made before the objection day by—

- (a) at least 5 park residents from 5 different sites in the park; or
- (b) if the park has less than 10 sites—a majority of the park residents.

(2) As soon as practicable after the objection closing day, the persons who have objected (the “**objectors**”) and the park owner must set up a committee (the “**park liaison committee**”) to consider the objections.

(3) The committee is to consist of the following members—

- (a) a person chosen by the objectors;
- (b) the park owner or the park owner’s nominee;
- (c) someone else agreed on by the other members.

(4) The member mentioned in subsection (3)(a) may be an objector.

(5) The member mentioned in subsection (3)(c) may be a mediator.

(6) The committee may consider the objections only if the 3 members are present.

(7) If the members mentioned in subsection (3)(a) and (b) fail, within 7 days after the objection closing day, to agree on the other person who is to be a member, the park owner must give written notice of the failure to each of the objectors (“**non-resolution notice**”).

**137 Consideration of objections by committee**

(1) If a park liaison committee is set up, it must consider all objections properly made about the proposal and—

- (a) declare the proposal to be either reasonable or unreasonable; or
- (b) if it considers the proposal is unreasonable—change the proposal in a way it considers appropriate to make it reasonable.

(2) The committee must give written notice of its decision to—

- (a) the objectors; and
- (b) if the park owner is not a member of the committee—the park owner.

**138 Application to tribunal about proposal**

(1) This section applies if—

- (a) non-resolution notices are given to the objectors; or
- (b) the park owner or an objector is dissatisfied with a decision of the park liaison committee.

(2) The park owner or objector may apply to a tribunal for an order declaring the proposal to be reasonable or unreasonable.

(3) The application must—

- (a) be made within 7 days after receiving the non-resolution notice or the decision being made; and
- (b) give particulars of why the proposal is considered to be reasonable or unreasonable.

(4) A single application may be made by objectors if it is made by—

- (a) at least 5 park residents from 5 different sites in the park; or
- (b) if the park has less than 10 sites—a majority of the park residents.

(5) In subsection (2), a reference to the proposal about which an order may be sought includes a change of a park rule proposed by the park owner as changed by the park liaison committee.

**139 Decision of tribunal about proposal**

(1) If an application is made to a tribunal about the reasonableness of the proposal to change a park rule, the tribunal may—

- (a) declare the proposal to be reasonable or unreasonable; or
- (b) change the proposal in a way it considers appropriate to make it reasonable; or
- (c) make any other order it considers appropriate.

(2) In deciding the application, the issues to which the tribunal may have regard include the following—

- (a) the park's location;
- (b) the park's internal layout;

- (c) the amenities, improvements, facilities and other physical features of the park;
- (d) the number of residents and their needs;
- (e) the levels of rent and other charges paid by residents.

(3) Subsection (2) does not limit the issues to which the tribunal may have regard.

#### **140 When proposal takes effect**

(1) This section sets out the way of working out when a proposal to change a park rule takes effect.

(2) This section applies (as “**case 1**”) if—

- (a) no objections are made to the proposal; or
- (b) the number of objections made to the proposal are not sufficient to require the setting up of a park liaison committee.

(3) This section applies (as “**case 2**”) if—

- (a) non-resolution notices about the proposal are given to the objectors; and
- (b) no application is made to a tribunal within the required time.

(4) This section applies (as “**case 3**”) if—

- (a) a decision is made by a park liaison committee—
  - (i) declaring the proposal to be reasonable; or
  - (ii) changing the proposal in a way it considers appropriate to make the proposal reasonable; and
- (b) no application is made to a tribunal within the required time.

(5) This section applies (as “**case 4**”) if a decision is made by a tribunal—

- (a) declaring the proposal to be reasonable; or
- (b) changing the proposal in a way it considers appropriate to make the proposal reasonable.

(6) If case 1 applies, the proposal takes effect—

- (a) at the end of the objection closing day; or
- (b) if a later day is stated by the park owner—on the later day.

(7) If case 2 applies, the proposal takes effect—

- (a) at the end of the last day on which an application may be made to a tribunal; or
- (b) if a later day is stated by the park owner—on the later day.

(8) If case 3 applies, the proposal takes effect on the day decided by the park liaison committee.

(9) If case 4 applies, the proposal takes effect on the day decided by the tribunal.

#### **141 When changes of park rules have no effect**

(1) A change of a park rule has no effect if—

- (a) it is made otherwise than under this division; or
- (b) a park liaison committee or tribunal, in considering a proposal about the change, decides that the proposal is unreasonable.

(2) However, subsection (1)(b) does not apply to a decision of the park liaison committee if a later decision of a tribunal—

- (a) decided the proposal was reasonable; or
- (b) changes the proposal in a way it considered appropriate to make the proposal reasonable.

### *Division 4—Goods and services*

#### **142 Supply of goods and services**

(1) The lessor must not require the tenant to buy goods or services from the lessor or a person nominated by the lessor (the “**nominated supplier**”).

Maximum penalty—20 penalty units.

(2) Subsection (1) does not apply to a requirement made by the lessor about reticulated gas if, on application made to a tribunal by the lessor, the tribunal authorises the lessor or nominated supplier to supply the gas to the tenant.

## **PART 7—CHANGE OF LESSOR OR TENANT**

### *Division 1—Transfer or subletting by tenant*

#### **143 Tenant’s action subject to lessor’s unqualified discretion**

(1) This section applies to an agreement if—

- (a) the lessor is the State; or
- (b) the lessor is an entity receiving financial or other assistance from the State to supply rented accommodation to persons; or
- (c) the tenant’s right to occupy the premises is given under the tenant’s terms of employment; or
- (d) the tenancy is a short tenancy (moveable dwelling).

(2) The tenant may transfer the whole or a part of the tenant’s interest under the agreement, or sublet the premises, only if the lessor agrees in writing to the transfer or subletting.

#### **144 Tenant’s action subject to lessor’s qualified discretion**

(1) This section applies to an agreement only if section 143 does not apply to the agreement.

(2) The tenant may transfer all or a part of the tenant’s interest under the agreement, or sublet the premises, only if—

- (a) the lessor agrees in writing to the transfer or subletting; or
- (b) the transfer or subletting is made under an order of a tribunal.

(3) The lessor must act reasonably in failing to agree to the transfer or subletting.

(4) The lessor is taken to act unreasonably in failing to agree to the transfer or subletting if the lessor acts in a capricious or retaliatory way.

#### **145 Order of tribunal about transfer or subletting**

(1) If the tenant believes the lessor has acted unreasonably in failing to agree to a transfer or subletting under section 144, the tenant may apply to a tribunal for an order under this section.

(2) If, on an application made to a tribunal by the tenant, the lessor fails to satisfy the tribunal that the lessor acted reasonably in failing to agree to the transfer or subletting, the tribunal may make an order authorising the tenant to make the transfer or subletting without the lessor's agreement.

(3) In deciding whether the lessor acted reasonably in failing to agree to the transfer or subletting, the tribunal may have regard to the following issues—

- (a) the likelihood of the proposed transferee fulfilling the tenant's obligations under the agreement;
- (b) the risk of damage to the premises or inclusions.

*Example of risk for subsection (3)(b)—*

A risk that may arise because of a hobby or business the proposed transferee intends carrying on at the premises.

(4) Subsection (2) does not limit the issues to which the tribunal may have regard.

### **146 Lessor's expenses for transfer or subletting**

The lessor must not require the tenant to pay, or accept from the tenant, an amount for the lessor's agreement to a transfer or subletting by the tenant, other than an amount for the reasonable expenses incurred by the lessor in agreeing to the transfer or subletting.

Maximum penalty—20 penalty units.

### **147 Lessor's fee for sale of caravan**

(1) This section applies—

- (a) only to an agreement for moveable dwelling premises consisting only of the site for a caravan; and
- (b) if the residential tenancy is a long tenancy (moveable dwelling).

(2) The lessor may require the tenant to pay, or accept from the tenant, a fee (not more than an amount prescribed under the regulations<sup>31</sup>) for the sale or attempted sale of a caravan on the premises only if—

- (a) the lessor supplies a service in the sale or attempted sale; and

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31 See *Residential Tenancies Regulation 1995*, schedule 4 (Fees) for the amount prescribed.

- (b) when the service is supplied, there is a written agreement in force between the parties for the payment of the fee by the tenant to the lessor for the service.

(3) The lessor must not require the tenant to pay, or accept from the tenant, a fee for the sale or attempted sale of a caravan on the premises in contravention of subsection (2).

Maximum penalty for subsection (3)—20 penalty units.

(4) Subsections (2) and (3) do not prevent the lessor charging, in addition to the prescribed fee under subsection (2), an amount for GST payable for the supply of the service in the sale or attempted sale.

### *Division 2—Transfer by lessor*

#### **148 Transfer by lessor**

(1) The lessor must—

- (a) if the lessor proposes to transfer the lessor's interest in the premises to another person (the **“purchaser”**)—give written notice of the tenancy to the purchaser; and
- (b) if the lessor transfers the interest subject to the tenancy—give written notice of the transfer (the **“attornment notice”**) to the tenant.

(2) The attornment notice operates as an attornment<sup>32</sup> as tenant to the purchaser by the tenant at the rent, and on the other terms of the agreement applying when the notice is given, but only if the notice—

- (a) states the purchaser's name and address; and
- (b) directs the tenant to make all future payments of rent to the purchaser.

(3) However, if an amount for rent is unpaid when the attornment notice is given, the amount may be recovered by the former lessor as a debt owing to the former lessor by the tenant.

(4) Subsection (1)(a) applies whether the transfer is proposed to be made with vacant possession or subject to the tenancy.

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32 An attornment is an acknowledgment of the tenancy relationship between the tenant and new lessor.

***Division 3—Replacement of tenant*****149 End of tenant's occupation**

(1) This section applies if—

- (a) a person who is not the tenant under an agreement is occupying the premises; and
- (b) the tenant dies or otherwise ceases to occupy the premises; and
- (c) the lessor is not the State.

(2) The person may apply to a tribunal for the following orders—

- (a) an order to be recognised as the tenant under the agreement;
- (b) an order to be joined as a party to a proceeding before the tribunal about the premises.

(3) The application may be made—

- (a) when making another application to, or in a proceeding before, the tribunal; or
- (b) independently of another application or proceeding.

(4) In deciding the application, the tribunal may make the following orders—

- (a) an order recognising the person as the tenant under the agreement;
- (b) an order joining the person as a party to a proceeding before the tribunal.

(5) If the tribunal makes an order under subsection (4)(a), it may make any other order it considers appropriate.

*Examples of orders under subsection (5)—*

An order about the application of the terms of the agreement, or other terms, to the person as tenant.

(6) A person in whose favour an order is made under subsection (4)(a) is taken to be the tenant under the agreement on the terms the tribunal orders.

(7) The tribunal may not make an order under this section without giving the lessor an opportunity to be heard on the application.



**149A Death of a cotenant**

(1) This section applies if—

- (a) there are cotenants under an agreement; and
- (b) the cotenants are not stated under the agreement to be joint tenants; and
- (c) 1 of the cotenants dies.

(2) On the deceased's death—

- (a) the deceased's interest in the tenancy ends; and
- (b) the agreement continues in force with the parties to the agreement being the lessor and the other cotenant or cotenants.

(3) Subsection (2) does not affect, as between the deceased and the other cotenant or cotenants, any right (including, in particular, a right relating to a rental bond) or liability of the deceased existing immediately before the deceased's death.

**150 Injury to spouse**

(1) This section applies to—

- (a) the spouse of the tenant occupying the premises with the tenant; and
- (b) a cotenant whose spouse is the other, or another, cotenant.

(2) The person may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement instead of the person's spouse because the person's spouse has committed an act of domestic violence against the person.

(3) The tribunal may make the order if it is satisfied the person has established the ground of the application.

(4) In deciding the application, the tribunal must have regard to the following issues (the “**domestic violence issues**”)—

- (a) whether the person has applied for a protection order against the person's spouse;
- (b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;

- (c) if a domestic violence order has been made—whether a condition was imposed prohibiting the person’s spouse from entering, or remaining, on the premises.

(5) Subsection (4) does not limit the issues to which the tribunal may have regard.

(6) If the tribunal makes the order, it may make any other order it considers appropriate.

*Examples of orders tribunal may make—*

1. An order about the application of the terms of the agreement, or other terms, to the person as tenant, or as a cotenant.

2. An order about any rental bond paid by the person’s spouse.

(7) A person in whose favour an order is made under subsection (3) is taken to be the tenant, or a cotenant, under the agreement on the terms the tribunal orders.

(8) The tribunal may not make an order under subsection (3) without giving the lessor an opportunity to be heard on the application.

### **150A Injury or damage affecting occupants**

(1) This section applies to a person (the “**occupant**”) who is an occupant of premises and who is not the tenant or a cotenant.

(2) The occupant may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement instead of the tenant, or a cotenant, because the tenant or cotenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—

(a) serious damage to the premises; or

(b) injury to—

(i) the occupant; or

(ii) someone else occupying, or allowed on, the premises.

(3) The tribunal may make the order if it is satisfied the occupant has established the ground of the application.

(4) If the tribunal makes the order, it may make any other order it considers appropriate.

*Examples of orders tribunal may make—*

1. An order about the application of the terms of the agreement, or other terms, to the occupant as tenant, or as a cotenant.

2. An order about any rental bond paid for the agreement.

(5) A person in whose favour an order is made under subsection (3) is taken to be the tenant, or a cotenant, under the agreement on the terms the tribunal orders.

(6) The tribunal may not make an order under subsection (3) without giving the lessor an opportunity to be heard on the application.

## **CHAPTER 4—TERMINATION OF AGREEMENTS**

### **PART 1—GENERAL**

#### **151 Termination of agreements**

(1) A residential tenancy agreement terminates only in a way mentioned in this section.

(2) A residential tenancy agreement terminates by written agreement of the lessor and tenant.

(3) A residential tenancy agreement terminates if—

- (a) the lessor gives a notice to leave<sup>33</sup> the premises to the tenant; and
- (b) the tenant hands over vacant possession of the premises on or after the handover day.<sup>34</sup>

(4) A residential tenancy agreement terminates if the tenant—

- (a) gives a notice of intention to leave<sup>35</sup> the premises to the lessor; and

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33 See section 193 (Notice to leave) for requirements for the notice.

34 See sections 197 (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198 (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day.

35 See section 194 (Notice of intention to leave) for requirements for the notice.

(b) hands over vacant possession of the premises on or after the handover day.<sup>36</sup>

(5) A residential tenancy agreement terminates if—

(a) a tribunal makes an order terminating the agreement (whether or not a notice to leave has been given);<sup>37</sup> or

(b) the tenant abandons the premises.<sup>38</sup>

### **152 Acceptance of rent does not operate as waiver of tenant's breach**

(1) If the lessor makes a demand for, takes a proceeding for the recovery of, or accepts, rent payable under the agreement, the lessor's action—

(a) does not operate as a waiver of—

(i) a breach of the agreement by the tenant; or

(ii) a notice to leave given to the tenant by the lessor for an unremedied breach; and

(b) is not evidence of the creation of a new tenancy.

(2) Despite subsection (1), if the lessor gives the tenant a notice to remedy breach under section 153 for a breach of the agreement relating to a failure to pay rent, acceptance by the lessor of the total amount of rent required under the notice to be paid to remedy the breach operates as a waiver of the breach.

(3) Subsection (2) applies only if the amount mentioned in the subsection is tendered by the tenant to the lessor within the allowed remedy period.

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36 See sections 199 (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200 (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day.

37 See chapter 4 (Termination of agreements), part 6 (Orders of tribunal) for the making of termination orders by the tribunal.

38 See chapter 4 (Termination of agreements), part 8 (Abandonment) for alternative procedures the lessor needs to follow in the case of abandonment of the premises.

**152A Offer or payment of rent does not operate as waiver of lessor's breach**

If the tenant pays or offers to pay to the lessor rent payable under the agreement, the payment or offer does not operate as a waiver of—

- (a) a breach of the agreement by the lessor; or
- (b) a notice of intention to leave for an unremedied breach given to the lessor by the tenant.

**PART 2—ACTION BY LESSOR***Division 1—Notices to remedy breach***153 Notice to remedy tenant's breach**

(1) This section applies if the lessor believes on reasonable grounds that—

- (a) the rent payable under the agreement has remained unpaid in breach of the agreement for at least 7 days; or
- (b) the tenant has breached another term of the agreement and the breach has not been remedied.

(2) The lessor may give a notice<sup>39</sup> to the tenant requiring the tenant to remedy the breach within the allowed remedy period.<sup>40</sup>

(3) This section does not apply to an agreement for a short tenancy (moveable dwelling).

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39 See section 192 (Notice to remedy breach) for requirements for the notice.

40 See section 196 (Allowed remedy period) and schedule 3 (Dictionary), definition “**allowed remedy period**”.

*Division 2—Notices to leave premises***155 Notice to leave for unremedied breach**

(1) The lessor may give a notice to leave the premises<sup>41</sup> to the tenant because the tenant has failed to comply, within the allowed remedy period,<sup>42</sup> with a notice to remedy breach given to the tenant by the lessor.

(3) A notice to leave under this section is called a notice to leave for an **“unremedied breach”**.

**156 Notice to leave for tenant’s non-compliance with tribunal order**

(1) The lessor may give a notice to leave the premises<sup>43</sup> to the tenant because the tenant has failed to comply with an order of a tribunal.

(2) A notice to leave under this section is called a notice to leave for **“non-compliance (tribunal order)”**.

**157 Notice to leave for non-compliance (moveable dwelling relocation)**

(1) This section applies only to moveable dwelling premises in a moveable dwelling park.

(2) The lessor may give a notice to leave the premises<sup>44</sup> to the tenant because the tenant has failed to comply, within the required period, with a notice to relocate<sup>45</sup> given to the tenant by the lessor.

(3) A notice to leave under this section is called a notice to leave for **“non-compliance (moveable dwelling relocation)”**.<sup>46</sup>

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41 See section 193 (Notice to leave) for requirements for the notice.

42 See section 196 (Allowed remedy period) and schedule 3 (Dictionary), definition **“allowed remedy period”**.

43 See section 193 (Notice to leave) for requirements for the notice.

44 See section 193 (Notice to leave) for requirements for the notice.

45 See section 130 (Notice to relocate) for requirements for the notice to relocate.

46 See section 198(2)(c) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of non-compliance (moveable dwelling relocation).

**158 Notice to leave if agreement frustrated**

(1) The lessor may give a notice to leave the premises<sup>47</sup> to the tenant because the premises—

- (a) have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the agreement; or
- (b) no longer may be used lawfully as a residence; or
- (c) have been appropriated or acquired compulsorily by an authority.

(2) A notice to leave under this section must be given within 1 month after the happening of the event mentioned in subsection (1).

(3) A notice to leave under subsection (1)(a) or (b) is called a notice to leave for “**non-livability**”.<sup>48</sup>

(4) A notice to leave under subsection (1)(c) is called a notice to leave for “**compulsory acquisition**”.<sup>49</sup>

**159 Notice to leave if agreement frustrated (moveable dwelling premises)**

(1) This section applies only to moveable dwelling premises in a moveable dwelling park.

(2) The lessor may give a notice to leave the premises<sup>50</sup> to the tenant because the park has become an unfit place in which to live in a moveable dwelling.

(3) A notice to leave may be given under this section only if a facility in the park generally available for use by occupants of moveable dwellings in the park has been destroyed, or become completely or partially unavailable for use, other than because of a breach of the agreement.

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47 See section 193 (Notice to leave) for requirements for the notice.

48 See sections 197(2)(c) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(d) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of non-livability.

49 See sections 197(2)(d) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(e) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of compulsory acquisition.

50 See section 193 (Notice to leave) for requirements for the notice.

(4) A notice to leave under this section must be given within 1 month after the park becoming an unfit place in which to live.

(5) A notice to leave under this section is called a notice to leave for “**non-livability**”.<sup>51</sup>

### **160 Notice to leave if premises being sold**

(1) The lessor under a periodic agreement may give a notice to leave the premises<sup>52</sup> to the tenant because the lessor has entered into a contract to sell the premises with vacant possession.

(2) A notice to leave under this section is called a notice to leave for “**sale contract**”.<sup>53</sup>

### **161 Notice to leave if closure of moveable dwelling park involved**

(1) This section applies only to moveable dwelling premises in a moveable dwelling park.

(2) The lessor may give a notice to leave the premises<sup>54</sup> to the tenant because—

- (a) the use of the premises where the park is situated (the “**park premises**”) is to be, or is proposed to be, changed to a use other than as a moveable dwelling park; or
- (b) the park is to be closed.

(3) If the authority under which a person is allowed to use the park premises as a moveable dwelling park ends, the lessor must give a notice to leave the premises<sup>55</sup> to the tenant within 24 hours of the authority ending.

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51 See section 198(2)(d) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of non-livability.

52 See section 193 (Notice to leave) for requirements for the notice.

53 See sections 197(2)(e) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(f) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of a sale contract.

54 See section 193 (Notice to leave) for requirements for the notice.

55 See section 193 (Notice to leave) for requirements for the notice.



(4) A notice to leave under subsection (2) is called a notice to leave for “**voluntary park closure**”.<sup>56</sup>

(5) A notice to leave under subsection (3) is called a notice to leave for “**compulsory park closure**”.<sup>57</sup>

## **162 Notice to leave if tenant’s employment ends**

(1) If—

- (a) the tenant occupies the premises under the tenant’s terms of employment; and
- (b) the tenant’s employment ends;

the lessor may give a notice to leave the premises<sup>58</sup> to the tenant.

(2) A notice to leave under this section is called a notice to leave for “**employment termination**”.<sup>59</sup>

(3) This section applies subject to an industrial award or agreement or contract of employment.

## **163 Notice to leave if tenant’s entitlement to supported accommodation ends**

(1) This section applies if—

- (a) the tenant’s right of occupancy of the premises arises out of approved supported accommodation; and
- (b) the tenant ceases to be eligible—

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56 See section 198(2)(g) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of a voluntary park closure.

57 See section 198(2)(h) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of a compulsory park closure.

58 See section 193 (Notice to leave) for requirements for the notice.

59 See sections 197(2)(f) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(i) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of employment termination.

- (i) to be provided with approved supported accommodation; or
- (ii) to continue to occupy the particular premises.

(2) The lessor may give a notice to leave the premises<sup>60</sup> to the tenant.

(3) A notice to leave under this section is called a notice to leave for **“ending of accommodation assistance”**.<sup>61</sup>

### **163A Notice to leave if tenant’s entitlement under affordable housing scheme**

(1) This section applies if—

- (a) the tenant occupies the premises under an affordable housing scheme; and
- (b) the tenant ceases to be eligible under the scheme—
  - (i) to receive assistance; or
  - (ii) to continue to occupy the particular premises.

(2) The lessor may give a notice to leave the premises to the tenant.

(3) A notice to leave under this section is called a notice to leave for **“ending of housing assistance”**.<sup>62</sup>

### **165 Notice to leave without ground**

(1) The lessor may give a notice to leave the premises<sup>63</sup> to the tenant without stating a ground for the notice.

(1A) However, the lessor must not give a notice to leave under this section because—

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60 See section 193 (Notice to leave) for requirements for the notice.

61 See sections 197(2)(g) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(j) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of ending of accommodation assistance.

62 See sections 197(2)(ga) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(k) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of ending of housing assistance.

63 See section 193 (Notice to leave) for requirements for the notice.

- (a) the tenant has applied, or is proposing to apply, to a tribunal for an order under this Act; or
- (b) the tenant—
  - (i) has complained to a government entity about an act or omission of the lessor adversely affecting the tenant; or
  - (ii) has taken some other action to enforce the tenant’s rights; or
- (c) an order of a tribunal is in force in relation to the lessor and tenant.

**(1B)** Also, the lessor may not give a notice to leave under this section if the giving of the notice constitutes taking retaliatory action against the tenant.

**(2)** A notice to leave under this section is called a notice to leave “**without ground**”.<sup>64</sup>

### **165A Application to tribunal about notice to leave without ground**

- (1)** This section applies if—
  - (a) the tenant is given a notice to leave without ground; and
  - (b) the tenant reasonably believes the notice was given in contravention of section 165.
- (2)** The tenant may apply to a tribunal for an order to set aside the notice.
- (3)** The application must be made within 4 weeks after the notice was given.
- (4)** On an application under this section, the tribunal may make the order sought if it is satisfied the notice was given in contravention of section 165.

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<sup>64</sup> See sections 197(2)(h) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(l) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given without ground for a periodic agreement.

***Division 3—Applications for termination*****166 Application for termination for failure to leave**

(1) The lessor may apply to a tribunal for a termination order because—

- (a) the lessor gave a notice to leave the premises to the tenant; and
- (b) the tenant failed to hand over vacant possession of the premises to the lessor on the handover day.

(2) An application under this section must be made within 2 weeks after the handover day.

(4) An application made under this section is called an application made because of a **“failure to leave”**.

**167 Application for termination for failure to leave as intended**

(1) The lessor may apply to a tribunal for a termination order<sup>65</sup> because the tenant—

- (a) gave a notice of intention to leave the premises to the lessor; and
- (b) did not withdraw the notice before the handover day; and
- (c) failed to hand over vacant possession of the premises to the lessor on the handover day.

(2) An application under this section must be made within 2 weeks after the handover day.

(3) An application under this section is called an application made because of a **“failure to leave as intended”**.

**168 Application for termination for excessive hardship**

(1) The lessor may apply to a tribunal for a termination order<sup>66</sup> because the lessor would suffer excessive hardship if the agreement were not terminated.

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65 See sections 202(1) (Applications for termination orders) and 209 (Failure to leave as intended) for other provisions about the application.

66 See sections 202(1) (Applications for termination orders) and 210 (Excessive hardship) for other provisions about the application.

(2) An application under this section is called an application made because of **“excessive hardship”**.

### **169 Application for termination for damage or injury**

(1) The lessor may apply to a tribunal for a termination order<sup>67</sup> because the tenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—

- (a) serious damage to the premises; or
- (b) injury to—
  - (i) the lessor, the lessor’s agent or someone else allowed on the premises; or
  - (ii) a person occupying, or allowed on, premises nearby.

(2) However, the lessor may not make an application about injury to a person if the person is—

- (a) the spouse of the tenant occupying the premises with the tenant; or
- (b) a cotenant whose spouse is the other, or another, cotenant.

(3) An application under this section about damage to premises is called an application made because of **“damage”**.

(4) An application under this section about injury to a person is called an application made because of **“injury”**.

### **170 Application for termination for tenant’s objectionable behaviour**

(1) The lessor may apply to a tribunal for a termination order<sup>68</sup> because the tenant—

- (a) has harassed, intimidated or verbally abused—
  - (i) the lessor or lessor’s agent; or
  - (ii) a person occupying, or allowed on, premises nearby; or

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67 See sections 202(1) (Applications for termination orders) and 211 (Damage or injury) for other provisions about the application.

68 See sections 202(1) (Applications for termination orders) and 212 (Objectionable behaviour) for other provisions about the application.

(b) is causing, or has caused, a serious nuisance to persons occupying premises nearby.

(2) An application under this section is called an application made because of “**objectionable behaviour**”.

### **171 Application for termination for incompatibility**

(1) This section applies only to a residential tenancy that is a short tenancy (moveable dwelling).

(2) The lessor may apply to a tribunal for a termination order<sup>69</sup> because the lessor and tenant are incompatible in a way that makes it desirable, in the interests of both parties, for the agreement to end.

(3) An application under this section is called an application made because of “**incompatibility**”.

### **171A Application for termination for repeated breaches**

(1) This section applies if—

- (a) the lessor gives 2 notices to remedy breach to the tenant for breaches of a particular provision in relation to the agreement; and
- (b) each notice relates to a separate breach of the particular provision; and
- (c) the tenant remedies each breach within the relevant allowed remedy period; and
- (d) the tenant commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
- (e) all breaches happen within the period prescribed under a regulation<sup>70</sup> for this section.

(2) The lessor may apply to a tribunal for a termination order.<sup>71</sup>

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69 See sections 202(1) (Applications for termination orders) and 213 (Incompatibility) for other provisions about the application.

70 See *Residential Tenancies Regulation 1995*, section 20 (Prescribed period for repeated breaches—Act, ss 171A and 186A).

71 See sections 202(1) (Applications for termination orders) and 213A (Repeated breaches) for other provisions about the application.

(3) An application under this section is called an application made because of “**repeated breaches**”.

(4) In this section—

“**provision**” means—

- (a) section 102, 106, 107 or 108;<sup>72</sup> or
- (b) a provision of a section mentioned in paragraph (a); or
- (c) a provision of an agreement providing for the payment of rent.

## **172 Application for interim order about damage or injury**

(1) This section applies if—

- (a) the lessor makes an application to a tribunal for a termination order because of damage or injury; and
- (b) the lessor believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought.

(2) The lessor may apply to a tribunal for an order<sup>73</sup> to restrain the tenant from causing the further damage or injury.

## **PART 3—ACTION BY TENANT**

### *Division 1—Notices to remedy breach*

## **173 Notice to remedy lessor’s breach**

(1) If the tenant believes on reasonable grounds that the lessor has breached a term of the agreement and the breach has not been remedied,

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72 Section 102 (Tenant’s use of premises), 106 (Tenant’s obligations generally), 107 (Tenant’s obligations for facilities in moveable dwelling parks) or 108 (Tenant’s obligation for moveable dwelling site)

73 See section 214 (Interim order about damage or injury) for provisions about making the order.

the tenant may give a notice<sup>74</sup> to the lessor requiring the lessor to remedy the breach within the allowed remedy period.<sup>75</sup>

(2) This section does not apply to an agreement for a short tenancy (moveable dwelling).

### *Division 2—Notices of intention to leave premises*

#### **175 Notice of intention to leave for unremedied breach**

(1) The tenant may give a notice of intention to leave the premises<sup>76</sup> to the lessor because the lessor has failed to comply, within the allowed remedy period, with a notice to remedy breach given to the lessor by the tenant.

(2) A notice of intention to leave under this section is called a notice of intention to leave for an **“unremedied breach”**.<sup>77</sup>

#### **176 Waiver of breach**

If—

- (a) a notice of intention to leave is given to the lessor for an unremedied breach; and
- (b) the lessor remedies the breach before the handover day;

the tenant may, instead of handing over vacant possession of the premises to the lessor on the handover day, waive the breach by written notice given to the lessor before the handover day.

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74 See section 192 (Notice to remedy breach) for requirements for the notice.

75 See section 196 (Allowed remedy period) and schedule 3 (Dictionary), definition **“allowed remedy period”**.

76 See section 194 (Notice of intention to leave) for requirements for the notice.

77 See sections 199(2)(a) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(a) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of an unremedied breach.



### **177 Notice of intention to leave for lessor's non-compliance with tribunal order**

(1) The tenant may give a notice of intention to leave the premises<sup>78</sup> to the lessor because the lessor has failed to comply with an order of a tribunal.

(2) A notice of intention to leave under this section is called a notice of intention to leave for **“non-compliance (tribunal order)”**.<sup>79</sup>

### **178 Notice of intention to leave if agreement frustrated**

(1) The tenant may give a notice of intention to leave the premises<sup>80</sup> to the lessor because the premises—

- (a) have been destroyed, or made completely or partially unfit to live in, other than because of a breach of the agreement; or
- (b) no longer may be used lawfully as a residence; or
- (c) have been appropriated or acquired compulsorily by an authority.

(2) A notice of intention to leave under this section must be given within 1 month after the happening of the event mentioned in subsection (1).

(3) A notice of intention to leave under subsection (1)(a) or (b) is called a notice of intention to leave for **“non-livability”**.<sup>81</sup>

(4) A notice of intention to leave under subsection (1)(c) is called a notice of intention to leave for **“compulsory acquisition”**.<sup>82</sup>

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78 See section 194 (Notice of intention to leave) for requirements for the notice.

79 See sections 199(2)(b) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(b) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of non-compliance (tribunal order).

80 See section 194 (Notice of intention to leave) for requirements for the notice.

81 See sections 199(2)(c) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(c) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of non-livability.

82 See sections 199(2)(d) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(d) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of compulsory acquisition.

### **179 Notice of intention to leave if agreement frustrated (moveable dwelling premises)**

(1) This section applies only to moveable dwelling premises in a moveable dwelling park.

(2) The tenant may give a notice of intention to leave the premises<sup>83</sup> to the lessor because the park has become an unfit place in which to live in a moveable dwelling.

(3) A notice of intention to leave may be given under this section only if a facility in the park generally available for use by occupants of moveable dwellings in the park has been destroyed, or become completely or partially unavailable for use, other than because of a breach of the agreement.

(4) A notice of intention to leave under this section must be given within 1 month after the park becoming an unfit place in which to live.

(5) A notice of intention to leave under this section is called a notice of intention to leave for “**non-livability**”.<sup>84</sup>

### **181 Notice of intention to leave without ground**

(1) The tenant may give a notice of intention to leave the premises<sup>85</sup> to the lessor without stating a ground for the notice.

(2) A notice of intention to leave under this section is called a notice of intention to leave “**without ground**”.<sup>86</sup>

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83 See section 194 (Notice of intention to leave) for requirements for the notice.

84 See section 200(2)(c) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of non-livability.

85 See section 194 (Notice of intention to leave) for requirements for the notice.

86 See sections 199(2)(e) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(e) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given without ground for a periodic agreement.

### ***Division 3—Applications for termination***

#### **182 Application for termination for excessive hardship**

(1) The tenant may apply to a tribunal for a termination order<sup>87</sup> because the tenant would suffer excessive hardship if the agreement were not terminated.

(2) An application under this section is called an application made because of “**excessive hardship**”.

#### **183 Application for termination for damage or injury**

(1) The tenant may apply to a tribunal for a termination order<sup>88</sup> because the lessor has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—

- (a) serious damage to the tenant’s goods; or
- (b) injury to—
  - (i) the tenant; or
  - (ii) someone else occupying, or allowed on, the premises.

(2) An application under this section about damage to goods is called an application made because of “**damage**”.

(3) An application under this section about injury to a person is called an application made because of “**injury**”.

#### **184 Application by cotenant for termination for damage or injury**

(1) A cotenant may apply to a tribunal for a termination order<sup>89</sup> because the other cotenant, or another cotenant, has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—

- (a) serious damage to the premises; or

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87 See sections 202(2) (Applications for termination orders) and 210 (Excessive hardship) for other provisions about the application.

88 See sections 202(2) (Applications for termination orders) and 211 (Damage or injury) for other provisions about the application.

89 See sections 202(2) (Applications for termination orders) and 211 (Damage or injury) for other provisions about the application.

(b) injury to—

- (i) the applicant; or
- (ii) someone else occupying, or allowed on, the premises.

(2) An application under this section about damage to premises is called an application made because of **“damage”**.

(3) An application under this section about injury to a person is called an application made because of **“injury”**.

### **185 Application for termination for lessor’s objectionable behaviour**

(1) The tenant may apply to a tribunal for a termination order<sup>90</sup> because the lessor has harassed, intimidated or verbally abused—

- (a) the tenant; or
- (b) another person occupying, or allowed on, the premises.

(2) An application made under this section is called an application made because of **“objectionable behaviour”**.

### **186 Application for termination for incompatibility**

(1) This section applies only to a residential tenancy that is a short tenancy (moveable dwelling).

(2) The tenant may apply to a tribunal for a termination order<sup>91</sup> because the tenant and lessor are incompatible in a way that makes it desirable, in the interests of both parties, for the agreement to end.

(3) An application under this section is called an application made because of **“incompatibility”**.

### **186A Application for termination for repeated breaches**

(1) This section applies if—

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90 See sections 202(2) (Applications for termination orders) and 212 (Objectionable behaviour) for other provisions about the application.

91 See sections 202(2) (Applications for termination orders) and 213 (Incompatibility) for other provisions about the application.

- (a) the tenant gives 2 notices to remedy breach to the lessor for breaches of a particular provision in relation to the agreement;<sup>92</sup> and
- (b) each notice relates to a separate breach of the particular provision; and
- (c) the lessor remedies each breach within the relevant allowed remedy period; and
- (d) the lessor commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
- (e) all breaches happen within the period prescribed under a regulation<sup>93</sup> for this section.

(2) The tenant may apply to a tribunal for a termination order.<sup>94</sup>

(3) An application under this section is called an application made because of **“repeated breaches”**.

(4) In this section—

**“provision”** means—

- (a) section 101, 103, 104, 105 or 114; or
- (b) a provision of a section mentioned in paragraph (a); or
- (c) a provision of an agreement providing for the payment of rent.

## **187 Application for interim order about damage or injury**

(1) This section applies if—

- (a) the tenant makes an application to a tribunal for a termination order because of damage or injury; and
- (b) the tenant believes on reasonable grounds the lessor is likely to cause further damage or injury for which a termination order could be sought.

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92 Sections 101 (Quiet enjoyment), 103 (Lessor’s obligations generally), 104 (Lessor’s obligations for facilities in moveable dwelling parks), 105 (Lessor’s obligations for moveable dwelling site) and 114 (Unlawful entry of premises)

93 See *Residential Tenancies Regulation 1995*, section 20 (Prescribed period for repeated breaches—Act, ss 171A and 186A).

94 See sections 202(2) (Applications for termination orders) and 213A (Repeated breaches) for other provisions about the application.

(2) The tenant may apply to a tribunal for an order to restrain the lessor from causing the further damage or injury.

## **PART 4—ACTION BY OTHER PERSONS**

### *Division 1—Mortgagees*

#### **187A Notice about proposed action of mortgagee**

(1) This section applies if—

- (a) residential premises are subject to a mortgage; and
- (b) after the premises become subject to the mortgage, a residential tenancy agreement is entered into for the premises; and
- (c) the mortgagee under the mortgage does not consent to the tenancy; and
- (d) the mortgagee, or another person appointed under the mortgage (the **“appointed person”**), has become entitled to obtain possession of the premises.

(2) The mortgagee must not obtain possession of the premises unless, at least 4 weeks before obtaining possession, the mortgagee or the appointed person gives the tenant written notice informing the tenant that possession is to be obtained.

Maximum penalty—50 penalty units.

(3) The appointed person must not obtain possession of the premises unless, at least 4 weeks before obtaining possession, the appointed person or mortgagee gives the tenant written notice informing the tenant that possession is to be obtained.

Maximum penalty—50 penalty units.

(4) In this section—

**“obtain”** includes take.

**187B Acceptance of rent does not operate as consent**

(1) This section applies if—

- (a) residential premises are subject to a mortgage; and
- (b) after the premises becomes subject to the mortgage, a residential tenancy agreement is entered into for the premises; and
- (c) the mortgagee under the mortgage does not consent to the tenancy.

(2) If the mortgagee, or another person appointed under the mortgage, makes a demand for, takes a proceeding for the recovery of, or accepts, rent payable under the residential tenancy agreement, the mortgagee's or person's action does not operate as a consent to the tenancy.

***Division 2—Other persons*****188 Application by tenant's spouse for termination for damage or injury**

The spouse of the tenant occupying the premises with the tenant may apply to a tribunal for a termination order because the tenant—

- (a) has intentionally or recklessly caused, or is likely to intentionally or recklessly cause, serious damage to the premises; or
- (b) has committed an act of domestic violence against the spouse.

**189 Application by occupant for termination for damage or injury**

An occupant of premises under an agreement who is not the tenant may apply to a tribunal for a termination order because the tenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—

- (a) serious damage to the premises; or
- (b) injury to—
  - (i) the applicant; or
  - (ii) someone else occupying, or allowed on, the premises.

**190 Application for interim order about damage or injury**

(1) This section applies if—

- (a) the spouse of the tenant, or an occupant of the premises, makes an application to a tribunal for a termination order for damage or injury; and
- (b) the applicant believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought.

(2) The applicant may apply to a tribunal for an order to restrain the tenant from causing the further damage or injury.

**191 References to applications**

(1) An application under this part about damage to premises is called an application made because of “**damage**”.

(2) An application under this part about injury to a person is called an application made because of “**injury**”.

**PART 5—PROCEDURAL REQUIREMENTS FOR  
ACTION TAKEN BY LESSOR OR TENANT****192 Notice to remedy breach**

(1) A notice to remedy breach must be in the approved form.

(2) The approved form must provide for the notice—

- (a) to be signed by or for the party giving the notice; and
- (b) to include particulars of the breach; and
- (c) to state the day by which the party to whom the notice is directed is required to remedy the breach.



**193 Notice to leave**

(1) A notice to leave premises must<sup>95</sup>—

- (a) be in the approved form; and
- (b) be signed by or for the lessor; and
- (c) identify the premises; and
- (d) require the tenant to hand over vacant possession of the premises to the lessor on the day stated in the notice; and
- (e) state—
  - (i) the ground on which the notice is given; or
  - (ii) that the notice is given without ground; and
- (f) unless the notice is given without ground—give particulars of the ground on which the notice is given.

(2) The notice also must—

- (a) state that information about the tenant's rights and obligations is contained in the agreement; and
- (b) inform the tenant that—
  - (i) if the tenant does not comply with the notice on the handover day the lessor may apply to a tribunal for a termination order without giving the tenant any further notice; and
  - (ii) if the tribunal makes the order, it also must make an order for possession of the premises in favour of the lessor.

(3) A notice to leave given for a fixed term agreement is not ineffective because the handover day is earlier than the day the term ends.

(4) A notice to leave given for a periodic agreement is not ineffective merely because the handover day is not—

- (a) the last day of a period of the tenancy; or
- (b) another day when the tenancy would have ended if this Act had not been enacted.

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95 See also section 215(1) (Defects in notices).

**194 Notice of intention to leave**

- (1) A notice of intention to leave premises must<sup>96</sup>—
- (a) be in the approved form; and
  - (b) be signed by or for the tenant; and
  - (c) identify the premises; and
  - (d) state the tenant intends handing over vacant possession of the premises to the lessor on the day stated in the notice; and
  - (e) state—
    - (i) the ground on which the notice is given; or
    - (ii) that the notice is given without ground; and
  - (f) unless the notice is given without ground—give particulars of the ground on which the notice is given.

(2) A notice of intention to leave given for a fixed term agreement is not ineffective merely because the handover day is earlier than the day the term ends.

(3) A notice of intention to leave given for a periodic agreement is not ineffective because the handover day is not—

- (a) the last day of a period of the tenancy; or
- (b) another day the tenancy would have ended if this Act had not been enacted.

**196 Allowed remedy period**

(1) The allowed remedy period for a notice to remedy breach must not end earlier than 7 days after the notice is given.

(2) However, if the notice is given about a breach of the term of the agreement for payment of rent and the agreement is an agreement for a long tenancy (moveable dwelling), the allowed remedy period for the notice must not end earlier than 5 days after the notice is given.

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96 See also section 215(1) (Defects in notices).

**197 Handover day for notice to leave for premises that are not moveable dwelling premises**

(1) This section applies only to notices to leave given for premises that are not moveable dwelling premises.

(2) The handover day for a notice to leave given by the lessor must not be earlier than—

- (a) if the notice is given because of an unremedied breach and the breach is a failure to pay rent—7 days after the notice is given; or
- (aa) if the notice is given because of an unremedied breach and the notice is not a notice to which paragraph (a) applies—14 days after the notice is given; or
- (b) if the notice is given because of non-compliance (tribunal order)—7 days after the notice is given; or
- (c) if the notice is given because of non-livability—the day the notice is given; or
- (d) if the notice is given because of compulsory acquisition—2 months after the notice is given; or
- (e) if the notice is given because of a sale contract—4 weeks after the notice is given; or
- (f) if the notice is given because of employment termination—4 weeks after the notice is given; or
- (g) if the notice is given because of ending of accommodation assistance—4 weeks after the notice is given; or
- (ga) if the notice is given because of ending of housing assistance—2 months after the notice is given; or
- (h) if the notice is given without ground for a periodic agreement—2 months after the notice is given; or
- (i) if the notice is given without ground for a fixed term agreement—the later of—
  - (i) 14 days after the notice is given; or
  - (ii) the day the term of the agreement ends.

**198 Handover day for notice to leave for moveable dwelling premises**

(1) This section applies only to notices to leave given for moveable dwelling premises.

(2) If the tenancy is not a short tenancy (moveable dwelling), the handover day for a notice to leave given by the lessor must not be earlier than—

- (a) if the notice is given because of an unremedied breach—2 days after the notice is given; or
- (b) if the notice is given because of non-compliance (tribunal order)—7 days after the notice is given; or
- (c) if the notice is given because of non-compliance (moveable dwelling relocation)—2 days after the notice is given; or
- (d) if the notice is given because of non-livability—the day the notice is given; or
- (e) if the notice is given because of compulsory acquisition—2 months after the notice is given; or
- (f) if the notice is given because of a sale contract—4 weeks after the notice is given; or
- (g) if the notice is given because of a voluntary park closure—2 months after the notice is given; or
- (h) if the notice is given because of a compulsory park closure—the day the notice is given; or
- (i) if the notice is given because of employment termination—4 weeks after the notice is given; or
- (j) if the notice is given because of ending of accommodation assistance—4 weeks after the notice is given; or
- (k) if the notice is given because of ending of housing assistance—2 months after the notice is given; or
- (l) if the notice is given without ground for a periodic agreement—2 months after the notice is given; or
- (m) if the notice is given without ground for a fixed term agreement—the later of—
  - (i) 14 days after the notice is given; or
  - (ii) the day the term of the agreement ends.

(3) If the tenancy is a short tenancy (moveable dwelling), the handover day for a notice to leave given by the lessor must not be earlier than—

- (a) if neither paragraph (b) nor paragraph (c) applies—2 days after the notice is given; or
- (b) if the notice is given because of non-livability—the day the notice is given; or
- (c) if the notice is given because of compulsory park closure—the day the notice is given.

### **199 Handover day for notice of intention to leave for premises that are not moveable dwelling premises**

(1) This section applies only to notices of intention to leave given for premises that are not moveable dwelling premises.

(2) The handover day for a notice of intention to leave given by the tenant must not be earlier than—

- (a) if the notice is given because of an unremedied breach—7 days after the notice is given; or
- (b) if the notice is given because of non-compliance (tribunal order)—7 days after the notice is given; or
- (c) if the notice is given because of non-livability—the day the notice is given; or
- (d) if the notice is given because of compulsory acquisition—2 weeks after the notice is given; or
- (e) if the notice is given without ground for a periodic agreement—2 weeks after the notice is given; or
- (f) if the notice is given without ground for a fixed term agreement—the later of—
  - (i) 14 days after the notice is given; or
  - (ii) the day the term of the agreement ends.

### **200 Handover day for notice of intention to leave for moveable dwelling premises**

(1) This section applies only to notices of intention to leave given for moveable dwelling premises.

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(2) If the tenancy is not a short tenancy (moveable dwelling) the handover day for a notice of intention to leave must not be earlier than—

- (a) if the notice is given because of an unremedied breach—2 days after the notice is given; or
- (b) if the notice is given because of non-compliance (tribunal order)—7 days after the notice is given; or
- (c) if the notice is given because of non-livability—the day the notice is given; or
- (d) if the notice is given because of compulsory acquisition—2 weeks after the notice is given; or
- (e) if the notice is given without ground for a periodic agreement—2 weeks after the notice is given; or
- (f) if the notice is given without ground for a fixed term agreement—the later of—
  - (i) 14 days after the notice is given; or
  - (ii) the day the term of the agreement ends.

(3) If the tenancy is a short tenancy (moveable dwelling), the handover day for a notice of intention to leave must not be earlier than—

- (a) if paragraph (b) does not apply—1 day after the notice is given; or
- (b) if the notice is given because of non-livability—the day the notice is given.

**200A Withdrawing notice to leave for unremedied breach**

(1) The lessor may withdraw a notice to leave for an unremedied breach given by the lessor if the tenant remedies the breach.

(2) The withdrawal—

- (a) must be made before the handover day; and
- (b) must be made by written notice given to the tenant; and
- (c) may be made only with the tenant's written agreement.

(3) On the withdrawal of a notice to leave under this section, the tenancy continues as if the notice to leave had not been given.

**201 Withdrawing notice of intention to leave**

(1) The tenant may withdraw a notice of intention to leave the premises given by the tenant to the lessor.

(2) However, the withdrawal—

- (a) must be made before the handover day; and
- (b) may be made only with the lessor's written agreement.

**202 Applications for termination orders**

(1) An application may be made to a tribunal for a termination order by the lessor without giving a notice to leave the premises to the tenant if the application is made because of any of the following—

- failure to leave as intended
- excessive hardship
- damage
- injury
- objectionable behaviour
- incompatibility
- repeated breaches.

(2) An application may be made to a tribunal for a termination order by the tenant without giving a notice of intention to leave the premises to the lessor if the application is made because of any of the following—

- excessive hardship
- injury
- damage
- objectionable behaviour
- incompatibility
- repeated breaches.

**203 Applications to tribunal**

A tribunal may consider an application made to it under part 2 or 3 only if it is satisfied the applicant is entitled to make the application.

## **PART 6—ORDERS OF TRIBUNAL**

### **204 Failure to leave for unremedied breach**

(1) This section applies if—

- (a) an application is made to a tribunal for a termination order because of a failure to leave; and
- (b) the notice to leave was given because of an unremedied breach.

(2) The tribunal may make the order if it is satisfied—

- (a) the lessor has established the ground of the application and notice to leave; and
- (b) the tenant committed the breach of the agreement stated in the notice to remedy breach about which the notice to leave was given; and
- (c) the breach justifies terminating the agreement.

(3) In deciding if the breach justifies terminating the agreement, the tribunal may have regard to—

- (a) the seriousness of the breach; and
- (b) any steps taken by the tenant to remedy the breach; and
- (c) whether the breach was recurrent and, if it was recurrent, the frequency of the recurrences; and
- (d) the detriment caused, or likely to be caused, to the lessor by the breach; and
- (e) whether the lessor has acted reasonably about the breach; and
- (f) any other issues it considers appropriate.

(4) Subsection (3) does not limit the issues to which the tribunal may have regard.

### **205 Failure to leave for non-compliance (tribunal order)**

(1) This section applies if—

- (a) an application is made to a tribunal for a termination order because of a failure to leave; and



- (b) the notice to leave was given because of non-compliance (tribunal order).

(2) The tribunal may make the order if it is satisfied—

- (a) the lessor has established the ground of the application and notice to leave; and
- (b) it is appropriate to make the order.

### **206 Failure to leave for non-compliance (moveable dwelling relocation)**

(1) This section applies if—

- (a) an application is made to a tribunal for a termination order because of a failure to leave; and
- (b) the notice to leave was given because of non-compliance (moveable dwelling relocation).

(2) The tribunal may make the order if it—

- (a) is satisfied the lessor has established the ground of the application, notice to leave and notice to relocate; and
- (b) considers it is appropriate to make the order.

### **207 Failure to leave for other grounds**

(1) This section applies if—

- (a) an application is made to a tribunal for a termination order because of a failure to leave; and
- (b) the notice to leave was given because any of the following—
- non-livability
  - compulsory acquisition
  - sale contract
  - voluntary park closure
  - compulsory park closure
  - employment termination
  - ending of accommodation assistance.

(2) The tribunal may make the order if it is satisfied the lessor has established the ground of the application and notice to leave.

### **208 Failure to leave without ground**

(1) This section applies if—

- (a) an application is made to a tribunal for a termination order because of a failure to leave; and
- (b) the notice to leave was given without ground.

(2) The tribunal may make the order if it is satisfied it is appropriate to make the order.

### **209 Failure to leave as intended**

If an application is made to a tribunal for a termination order because of a failure to leave as intended, the tribunal may make the order if it is satisfied the lessor has established the ground of the application.

### **210 Excessive hardship**

If an application is made to a tribunal for a termination order because of excessive hardship, the tribunal may make the order if it is satisfied the applicant has established the ground of the application.

### **211 Damage or injury**

(1) If an application is made to a tribunal for a termination order because of damage or injury, the tribunal may make the order if it is satisfied the applicant has established the ground of the application.

(2) If the application is made because of injury by the spouse of the tenant or a cotenant whose spouse is the other, or another, cotenant, in deciding the application the tribunal must have regard to the following issues (the “**domestic violence issues**”)—

- (a) whether the applicant has applied for a domestic violence order against the applicant’s spouse;
- (b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;

- (c) if a domestic violence order is in force—whether a condition was imposed prohibiting the applicant’s spouse from entering, or remaining in, the premises.

(3) Subsection (2) does not limit the issues to which the tribunal may have regard.

## **212 Objectionable behaviour**

(1) If an application is made to a tribunal for a termination order because of objectionable behaviour, the tribunal may make the order if it is satisfied—

- (a) the applicant has established the ground of the application; and
- (b) the behaviour justifies terminating the agreement.

(2) In deciding if the behaviour justifies terminating the agreement, the tribunal may have regard to—

- (a) whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences; and
- (b) for behaviour in the form of harassment, intimidation or verbal abuse—its seriousness.

(3) Subsection (2) does not limit the issues to which the tribunal may have regard.

## **213 Incompatibility**

If an application is made to a tribunal for a termination order because of incompatibility, the tribunal may make the order if it is satisfied the applicant has established the ground of the application.

## **213A Repeated breaches**

(1) If an application is made to a tribunal for a termination order because of repeated breaches, the tribunal may make the order if it is satisfied—

- (a) the applicant has established the ground of the application; and
- (b) the person in relation to whom the order is sought committed each breach stated in the 2 notices to remedy breach on which the application is based.

(2) In deciding the application, the tribunal must have regard to the following—

- (a) the seriousness of each breach associated with the application, having regard to the extent of any inconvenience or financial or other disadvantage suffered by the applicant;
- (b) the period for which the tenancy has been in existence;
- (c) the period in which the breaches were committed;
- (d) for a fixed term agreement—the remaining period of the tenancy;
- (e) anything else the tribunal considers relevant.

### **214 Interim order about damage or injury**

If an application is made to a tribunal for an order to restrain a party from causing damage or injury, the tribunal—

- (a) may make the order if it is satisfied it is appropriate to make the order; and
- (b) for supporting the order, may make an order restraining the party from entering premises.

### **215 Defects in notices**

(1) If an application is made to a tribunal by a lessor for a termination order because of a failure to leave, the tribunal may make the order if it is satisfied it is appropriate to make the order in all the circumstances of the case, even though the notice to leave<sup>97</sup> contains a defect.

(2) If an application is made to a tribunal about a notice of intention to leave, the tribunal may make any order it is satisfied it is appropriate to make in all the circumstances of the case, even though the notice<sup>98</sup> contains a defect.

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97 See section 193 (Notice to leave) for requirements for the notice.

98 See section 194 (Notice of intention to leave) for requirements for the notice.

## **PART 7—RECOVERY OF POSSESSION OF PREMISES**

### **216 Issue of warrant of possession**

(1) If a tribunal makes a termination order on an application made other than by a tenant, it also must issue a warrant of possession.

(2) If the termination order is made on an application made because of excessive hardship, as well as issuing the warrant of possession, the tribunal may make any other order it considers appropriate including, for example, an order that the applicant pay compensation to the other party to the agreement for the other party's loss of the tenancy.

### **217 Warrant of possession**

(1) A warrant of possession must—

- (a) authorise a police officer, or a stated authorised person, to enter the premises and give possession of the premises to the person in whose favour the termination order was made; and
- (b) authorise the person to whom the warrant is directed to exercise the powers under the warrant with necessary and reasonable help and force; and
- (c) state the hours of the day when entry may be made; and
- (d) state the day the warrant ends.

(2) The registrar must give written notice of the issue of a warrant of possession to the former tenant as soon as practicable after the warrant is issued.

(2A) If the registrar can not comply with subsection (2) after reasonable efforts (whether before or after the warrant is executed), the validity of the warrant is not affected merely because of the noncompliance.

(3) A warrant of possession takes effect on the day stated in the warrant for it to take effect and ends—

- (a) if paragraph (b) does not apply—14 days after it takes effect; or
- (b) if the tribunal is satisfied that, because of special circumstances, the warrant should continue until a later day stated in the warrant—on the later day.

*Examples of special circumstances under subsection (3)(b)—*

1. Natural disasters, including floods, affecting the area in which the premises are located.
2. The remoteness of the premises.

(4) However, the day on which the warrant takes effect must not be later than 3 business days after it is issued.

(5) If a warrant of possession (the “**original warrant**”) is lost or destroyed before it ends, the registrar may issue a copy of the warrant.

(6) A copy of a warrant issued under subsection (5)—

- (a) has effect as if it were the original warrant; and
- (b) is taken to have been issued when the original warrant was issued; and
- (c) ends when the original warrant ends.

## **218 Execution of warrant of possession**

The person to whom a warrant of possession is directed may exercise the powers under the warrant in the way stated in the warrant.

## **219 Way of recovering possession of premises**

(1) This section applies to premises in the possession of a person—

- (a) as the tenant under an agreement; or
- (b) as the former tenant under an agreement holding over after termination of the agreement.

(2) A person must not enter the premises to recover possession of the premises, unless the entry is authorised under this Act.

Maximum penalty—50 penalty units.

## **220 Obstruction of person executing warrant of possession**

A person must not obstruct a person in the exercise of a power under a warrant of possession, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

## **PART 8—ABANDONMENT**

### **221 Termination of agreement by lessor if premises abandoned**

(1) If the lessor believes on reasonable grounds that the tenant has abandoned the premises, the lessor may give a notice (“**abandonment termination notice**”) to the tenant terminating the agreement.

(2) The notice must be in the approved form.

(3) The approved form must provide for the notice—

- (a) to be signed by or for the lessor; and
- (b) to identify the premises; and
- (c) to state the lessor is terminating the agreement because the tenant has abandoned the premises.

(4) If the tenant does not take action under section 221A about the notice within 7 days after receiving the notice, the tenant is taken to have abandoned the premises.

(5) For subsection (1), reasonable grounds include the following—

- (a) a failure of the tenant to pay rent under the agreement;
- (b) the presence at the premises of uncollected mail, newspapers or other material;
- (c) reports from neighbours of the tenant or from other persons indicating the tenant has abandoned the premises;
- (d) the absence of household goods at the premises;
- (e) the disconnection of services (including gas, electricity and telephone) to the premises;
- (f) a failure of the tenant to respond to an entry notice.

### **221A Dispute about abandonment termination notice**

(1) If the tenant disputes an abandonment termination notice, the tenant may apply to a tribunal for an order—

- (a) setting aside the notice; or
- (b) for compensation.

(2) The application must be made within 28 days after the notice is given.

(3) On an application under this section, the tribunal may—

- (a) if the application was made within 7 days after the notice was given—make an order setting aside the notice; or
- (b) if paragraph (a) does not apply—make any of the following orders—
  - (i) an order terminating the agreement;
  - (ii) an order requiring the lessor to pay to the tenant the amount stated by the tribunal as compensation for loss or expense incurred by the tenant because of the termination of the agreement;
  - (iii) any other order it considers appropriate.

## **222 Order about abandonment**

(1) If the lessor believes on reasonable grounds that the tenant has abandoned the premises, the lessor may apply to a tribunal for an order under this section.

(2) The application may be decided by a tribunal or registrar.

(3) The lessor may make the application instead of giving an abandonment termination notice to the tenant.

(4) If an application is made, a tribunal or registrar may make an order declaring that the premises were abandoned by the tenant on the day stated in the order.

(5) If the tribunal or registrar makes an order under subsection (4), the tenant is taken to have abandoned the premises on the day stated in the order.<sup>99</sup>

(6) In deciding whether to make the order, the tribunal or registrar may have regard to the following—

- (a) a failure of the tenant to pay rent under the agreement;

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<sup>99</sup> Under section 228 (Review of abandonment order) a former tenant may apply to a tribunal for a review of a decision of a registrar or tribunal declaring the person abandoned premises on a stated day.



- (b) any presence at the premises of uncollected mail, newspapers or other material;
- (c) any reports from neighbours of the tenant or from other persons indicating the tenant has abandoned the premises;
- (d) any disconnection of services (including gas, electricity and telephone) to the premises;
- (e) any absence from the premises of household goods;
- (f) a failure of the tenant to respond to an entry notice for the premises;
- (g) anything else the tribunal or registrar considers relevant.

## **PART 9—COMPENSATION**

### **225 Tenant remaining in possession**

(1) If a tenant fails to hand over vacant possession of premises after a termination order is made by a tribunal, the lessor is entitled to receive from the tenant—

- (a) compensation for any loss or expense incurred by the lessor by the failure; and
- (b) an occupation fee equal to the amount of rent that would have been payable by the tenant for the premises for the period the tenant remains in possession after termination of the agreement.

(2) If an application is made to a tribunal under this section by the lessor, the tribunal may make an order requiring the tenant to pay to the lessor the following amounts—

- (a) the amount it considers the lessor is entitled to receive for compensation;
- (b) the amount it considers the lessor is entitled to receive for the occupation fee.

**226 Compensation on abandonment termination notice**

(1) If an agreement is terminated by the giving of an abandonment termination notice to the tenant, the lessor may apply to a tribunal for an order for compensation.

(2) If an application is made by the lessor, a tribunal may make an order requiring the tenant to pay to the lessor an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the lessor by the abandonment.

**227 Compensation on termination by tribunal**

If a tribunal or registrar makes an order declaring that premises were abandoned by the tenant under an agreement, the tribunal may make an order requiring the tenant to pay to the lessor an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the lessor by the abandonment.

**228 Review of abandonment order**

(1) The former tenant under an agreement who is dissatisfied with a decision of a tribunal or registrar declaring that the person abandoned the premises on a stated day may apply to a tribunal for a review of the decision.

(2) The application must be made within 28 days after the decision is made.

(3) The review is to be by way of a rehearing.

(4) The tribunal may make an order under this section if it is satisfied the applicant did not abandon the premises or only abandoned the premises on a day after the day stated.

(5) The order the tribunal may make is an order requiring the former lessor under the agreement to pay to the applicant an amount the tribunal considers appropriate as compensation for any loss or expense incurred by the applicant by the termination of the agreement.

**230 Duty to mitigate loss or expense**

(1) This section applies to the lessor if the lessor incurs loss or expense because of—

- (a) the tenant's failure to hand over vacant possession of the premises after a termination order is made by a tribunal; or
  - (b) the tenant's abandonment of the premises; or
  - (c) another act or omission of the tenant.
- (2) This section applies to the tenant if the tenant—
- (a) incurs loss or expense because of an order made by a tribunal or registrar declaring that the tenant abandoned the premises on a stated day; and
  - (b) contends that the premises were not abandoned or were only abandoned on a day after the day stated.
- (3) The lessor or tenant—
- (a) must take all reasonable steps to mitigate the loss or expense; and
  - (b) is not entitled to receive compensation for any loss or expense that could have been avoided by taking the steps.

## **PART 10—GOODS AND DOCUMENTS LEFT BEHIND ON PREMISES**

### **230A Goods left on premises**

- (1) This section applies if—
- (a) an agreement is terminated; and
  - (b) goods that are not personal documents or money are left on the premises.
- (2) The person who was the lessor (the **“former lessor”**) may sell the goods, or dispose of them in another way, if the former lessor believes on reasonable grounds that—
- (a) the value of the goods is less than the amount prescribed under a regulation;<sup>100</sup> or

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100 See *Residential Tenancies Regulation 1995*, section 21 (Prescribed value for goods left on premises—Act s 230A(2)(a)) for the prescribed amount.

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- (b) storage of the goods—
  - (i) would be unhealthy or unsafe; or
  - (ii) would cause the market value of the goods to be completely or substantially depreciated; or
- (c) the cost of removing, storing and selling the goods would be more than the proceeds of sale of the goods.

(3) If subsection (2) does not apply, the former lessor must store the goods safely for the period prescribed under a regulation<sup>101</sup> (the “**storage period**”).

(4) If, at the end of the storage period, the goods have not been reclaimed, the former lessor may—

- (a) sell the goods by auction; or
- (b) if, on an application made to a tribunal by the former lessor, the tribunal makes an order authorising the sale or disposal of the goods—sell or dispose of the goods under the order.

(5) For subsection (4)(a), if procedures for selling goods by auction are prescribed under a regulation,<sup>102</sup> the former lessor must sell the goods under the procedures.

(6) The former lessor must not sell or dispose of the goods except as provided under subsections (2), (4) and (5), unless the former lessor has a reasonable excuse.

Maximum penalty—40 penalty units.

(7) If, before the goods are disposed of, the person entitled to the goods (the “**owner**”) claims possession of them by written notice given to the former lessor, the former lessor must let the owner reclaim possession of the goods on paying the reasonable removal and storage costs to the former lessor.

Maximum penalty—40 penalty units.

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101 See *Residential Tenancies Regulation 1995*, section 22 (Storage period for goods left on premises—Act s 230A(3)) for the prescribed storage period.

102 See *Residential Tenancies Regulation 1995*, section 23 (Prescribed procedures for selling goods by auction—Act s 230A(5)) for the prescribed procedures.

(8) If the former lessor sells the goods, the former lessor—

- (a) may keep out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods; and
- (b) must pay any balance to the public trustee within 10 days after the sale.

(9) The public trustee must pay the balance into the Unclaimed Moneys Fund (the “**fund**”) kept under the *Public Trustee Act 1978*.

(10) If, on application made to a tribunal by the former lessor, the tribunal is satisfied an amount (the “**owed amount**”) is owed to the former lessor by the tenant under the agreement, the tribunal may make an order conferring on the lessor an entitlement to receive an amount in the fund (the “**fund amount**”) that is equal to the smaller of the following amounts—

- (a) the owed amount;
- (b) the balance paid to the public trustee under subsection (8).

(11) The former lessor does not incur any liability for removing, selling or disposing of the goods if the former lessor acts under this section without negligence.

(12) A person who acquires the goods (whether as purchaser or in another way) acquires a good title to the goods, and the interest of anyone else in the goods ends, unless the person acquiring the goods did not act honestly.

### **230B Documents left on premises**

(1) This section applies if—

- (a) an agreement is terminated; and
- (b) a document is left at the premises.

(2) The person who was the lessor must, within the required period—

- (a) if the person knows the former tenant is the owner of the document—give the document to the former tenant; or
- (b) if the person knows the former tenant is not the owner of the document and knows who the owner of the document is—give the document to the owner; or

- (c) if neither paragraph (a) nor paragraph (b) applies—give the document to the public trustee.

Maximum penalty—10 penalty units.

(3) Despite subsection (2)(a) and (b), if the person does not know where the former tenant or owner is, the person must, within the required period, give the document to the public trustee.

Maximum penalty—10 penalty units.

(4) Money given to the public trustee under subsection (3) must be dealt with under the *Public Trustee Act 1978* as unclaimed moneys.

(5) A personal document given to the public trustee under subsection (3)—

- (a) must be retained by the public trustee for at least 6 months, unless reclaimed by the owner; and
- (b) at the end of the 6 months, may be disposed of by the public trustee in any way the public trustee considers appropriate.

(6) In this section—

“**document**” means a personal document or money.

“**required period**” means the period ending 7 days after the first of the following to happen—

- (a) the agreement is terminated;
- (b) the person finds the document.

### **230C Application about goods left on premises**

(1) This section applies if an interested person is dissatisfied with the way a former lessor dealt with, or is dealing with, goods left on premises after a residential tenancy agreement for the premises was terminated.

(2) The interested person may apply to a tribunal for an order under this section.

(3) On an application under this section, the tribunal may—

- (a) make an order requiring the former lessor to pay to the interested person an amount it considers appropriate as compensation for any loss or expense incurred by the interested person because of the former lessor’s action in dealing with the goods; or

(b) make any other order it considers appropriate.

(4) In this section—

“**interested person**” means—

- (a) the former tenant under an agreement; or
- (b) a person, other than the former tenant under an agreement, who is the owner of goods left on premises to which a residential tenancy agreement applied.

## CHAPTER 5—RESOLUTION OF TENANCY ISSUES

### PART 1—CONCILIATION OF TENANCY DISPUTES

#### *Division 1—Requirement for conciliation*

#### **231 Meaning of “urgent application”**

(1) An application to a tribunal is an “**urgent application**” if it is an application for a termination order made because of—

- (a) a failure to leave; or
- (b) a failure to leave as intended; or
- (c) excessive hardship; or
- (d) damage; or
- (e) injury; or
- (f) objectionable behaviour; or
- (g) repeated breaches.

(2) An application to a tribunal is an “**urgent application**” if it is an application for a termination order for moveable dwelling premises in a

moveable dwelling park to which a short tenancy (moveable dwelling) applies.<sup>103</sup>

(3) An application to a tribunal is an **“urgent application”** if—

- (a) it is an application made under section 132A; and
- (b) the notice to relocate on which the application is based was given because of an emergency or for health or safety reasons.

(4) An application to a tribunal is an **“urgent application”** if—

- (a) it is an application for an order to restrain a person from causing damage or injury; and
- (b) the applicant also has made, or makes, an application for a termination order on the ground of damage or injury.

(5) An application to a tribunal is an **“urgent application”** if it is made under any of the following sections—

- section 108A (Orders of tribunal)
- section 128 (Orders of tribunal about emergency repairs)
- section 138 (Application to tribunal about proposal)
- section 150 (Injury to spouse)
- section 150A (Injury or damage affecting occupants)
- section 165A (Application to tribunal about notice to leave without ground)
- section 221A (Dispute about abandonment termination notice)
- section 222 (Order about abandonment)
- section 225 (Tenant remaining in possession)
- section 226 (Compensation on abandonment termination notice)
- section 228 (Review of abandonment order)
- section 230A (Goods left on premises)
- section 230C (Application about abandoned goods)

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103 See sections 30 (Short tenancy statements) and 31 (Extending short tenancy statements) for provisions about short tenancies.



- section 248 (Application of Act to agreements)
- section 283 (Application to tribunal for order to exclude person from park).

## **232 Applications to tribunal**

- (1) A lessor or tenant may apply to a tribunal under this Act only if—
- (a) the conciliation process about the issue to which the application relates has ended without a conciliated resolution having been reached about the issue; or
  - (b) the conciliation process ended with a conciliated resolution having been reached but the applicant believes on reasonable grounds that the other party has breached the conciliation agreement.
- (2) Subsection (1) does not apply to an urgent application.

### *Division 1A—Conciliation*

## **232A Conciliation process**

(1) A “**conciliation process**” is a process of conciliation under which the parties are helped and encouraged to achieve a resolution of their dispute.

(2) In division 5,<sup>104</sup> a “**conciliation process**” includes all the steps involved in the process of conciliation, including, for example—

- (a) telephone conferencing; and
- (b) joint sessions; and
- (c) private sessions; and
- (d) another step prescribed under a regulation.

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104 Division 5 (Confidentiality, privilege and immunity)

**232B Some matters not suitable for conciliation**

(1) The authority may refuse to provide a conciliation service to parties to a dispute about an agreement if the authority considers the dispute is unsuitable for conciliation.

(2) The authority must publish guidelines about matters to be taken into account when deciding whether a dispute is unsuitable for conciliation.

**232C Functions of conciliators**

The functions of a conciliator are—

- (a) to encourage the settlement of a tenancy dispute by facilitating, and helping to conduct, negotiations between parties to the dispute; and
- (b) to promote the open exchange of information relevant to the dispute by the parties; and
- (c) to provide to the parties information about the operation of this Act relevant to a settlement of the dispute; and
- (d) to help in the settlement of the dispute in any other appropriate way.

*Examples of facilitating and helping conduct negotiations—*

1. Facilitating telephone conferencing.
2. Interviewing the parties, together or separately.

***Division 2—Starting the conciliation process*****233 Making dispute resolution request**

(1) This section applies if an application about an issue may be made to a tribunal by the lessor or tenant only if a conciliated resolution is not reached about the issue.

(2) The lessor or tenant may make a request (a “**dispute resolution request**”) to the authority asking it to try to resolve the issue in dispute (the “**tenancy dispute**”).

(3) The dispute resolution request must be in the approved form.

**234 Reference to making of tribunal application includes making of dispute resolution request**

(1) This section applies if—

- (a) an application about an issue (the “**dispute issue**”) may be made to a tribunal by the lessor or tenant under a residential tenancy agreement; and
- (b) under a provision of this Act, the question whether the application has been made is relevant to an issue.

(2) A reference in the provision to the making of an application about the dispute issue includes a reference to the making of a dispute resolution request<sup>105</sup> to the authority about the dispute issue.

**235 Action to be taken on dispute resolution request**

(1) As soon as practicable after a dispute resolution request is made to the authority, the authority must start a conciliation process for the parties to the tenancy dispute.

(2) However, if the authority considers the tenancy dispute is not suitable for conciliation, it may give written notice to the parties that the dispute is not suitable for conciliation.<sup>106</sup>

*Division 3—Conduct of conciliation process***236 Conciliation fee**

(1) This section applies if a conciliation fee is prescribed under a regulation.

(2) If a dispute resolution request is made, the conciliator may start the conciliation process only if the prescribed fee has been paid to the authority by the person who made the dispute resolution request.

(3) However, the authority may waive the fee if it is satisfied in all the circumstances it would be unreasonable to impose a fee.

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105 Section 249 (Applications about breach of agreements) provides for the time in which the lessor or tenant may apply to the tribunal for an order about a breach of the agreement.

106 See also section 232B (Some matters not suitable for conciliation).

**237 Limited right of representation**

During the conciliation process, each party to the tenancy dispute—

- (a) must conduct the party's own case; and
- (b) may be represented by an approved representative only if—
  - (i) the party is a corporation; or
  - (ii) the conciliator is satisfied, and continues to be satisfied, a person should be allowed to represent the party.

**239 Parties' participation in conciliation process not compellable**

(1) A party to the tenancy dispute can not be compelled to participate in the conciliation process.

(2) A party may withdraw from the process at any time.

(3) The conciliation process may be ended at any time by the conciliator.

**240 Parties to conciliation process**

(1) A person who is not a party to the tenancy dispute may take part in the conciliation process if the authority or conciliator is satisfied the person has a sufficient interest in the resolution of the dispute.

(2) However, the person does not become a party to the dispute.

**241 Conciliation agreements**

(1) This section applies if the parties to the tenancy dispute reach an agreement on resolving the dispute.

(2) The agreement must be put into writing and signed by or for the parties.

(4) The agreement must not be inconsistent with this Act.<sup>107</sup>

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107 See also section 35(3) (Terms of agreements include duties under Act etc.) which provides that the terms of the conciliation agreement are taken to be included as terms of the residential tenancy agreement.

**242 No record of conciliation process**

(1) A person must not make a record of anything said during the conciliation process.

Maximum penalty—20 penalty units.

(2) However, the conciliator may make notes of the conciliation process the conciliator considers appropriate.

(3) The conciliator may destroy the notes after the conciliation process ends.

***Division 4—Withdrawal of disputes*****244 Withdrawal of disputes**

(1) A person may, by written notice given to the authority, withdraw a dispute resolution request made by the person.

(2) The notice may be given before or after a conciliator starts the conciliation process for the tenancy dispute.

***Division 5—Confidentiality, privilege and immunity*****245 Conciliators to maintain secrecy**

(1) A conciliator involved in a conciliation process must not disclose information coming to the conciliator's knowledge during the conciliation process.

Maximum penalty—20 penalty units.

(2) However, a conciliator may disclose information—

- (a) with the agreement of all parties to the tenancy dispute; or
- (b) for statistical purposes without revealing the identity of any person about whom the information is relevant; or
- (c) for an inquiry or proceeding about an offence or other misconduct that happens during the conciliation process; or

- (d) if the information is about injury or the threat of injury to any person; or
- (e) under a requirement under this or another Act.

### **246 Ordinary protection and immunity allowed**

(1) A conciliator has, in performing the conciliator's functions, the same protection and immunity as a Supreme Court judge performing the functions of a judge.

(2) A person who is a party, or the party's representative, appearing during the conciliation process for a tenancy dispute has the same protection and immunity the person would have if the dispute were being heard in the Supreme Court.

(3) A document produced during, or used for, a conciliation process has the same protection during the mediation conference it would have if produced before the Supreme Court.

### **247 Admissions made in conciliation process**

(1) Evidence of anything said or an admission made during the conciliation process for a tenancy dispute is inadmissible—

- (a) at the hearing before a tribunal of an application relating to an issue to which the conciliation process relates; or
- (b) in another proceeding before a court or elsewhere.

(2) In subsection (1)—

**“proceeding”** does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.

## **PART 2—GENERAL POWERS OF TRIBUNALS**

### **248 Application of Act to agreements**

(1) A person may apply to a tribunal for an order, and the tribunal may make an order, declaring that a stated agreement is, or is not, a residential tenancy agreement to which this Act applies.

(2) The tribunal may allow the authority to intervene in, or support, an application under subsection (1).

### **249 Applications about breach of agreements**

(1) If a lessor or tenant claims there has been a breach of a term of an agreement, the lessor or tenant may apply to a tribunal for an order about the breach.

(2) The application must be made within 6 months after the lessor or tenant becomes aware of the breach.

(3) The application may be made—

- (a) during the term, or after the termination, of the agreement; and
- (b) whether or not an application for termination, or a termination order, has been made about the agreement; and
- (c) whether or not a rental bond for the agreement is held by the authority when the application is made.

### **250 Orders about breach of agreements**

(1) If an application about a breach is made to a tribunal, the tribunal may make any 1 or more of the following orders—

- (a) an order restraining any action in breach of the agreement;
- (b) an order for the payment of money;
- (c) an order requiring an action in performance of the agreement;
- (d) an order that a party to the agreement perform the work, or take the steps, stated in the order to remedy a breach of the agreement;
- (e) an order for compensation;

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- (f) an order requiring payment of all or part of the rent under the agreement to the tribunal until—
  - (i) the whole or part of the agreement has been performed; or
  - (ii) an application for compensation has been decided;
- (g) an order requiring payment (from rent paid to the tribunal) towards—
  - (i) the cost of remedying a breach of the agreement; or
  - (ii) an amount for compensation.

*Examples of matters for which compensation orders may be made—*

1. For loss of rent.
- 2., If the lessor acts unreasonably in failing to agree to the attaching of a fixture, or the making of a structural change, to the premises.
3. For another breach of the agreement.

**(2)** An order under subsection (1)(a) may be made even if it provides a remedy in the nature of an injunction or order for specific performance in circumstances where the remedy would not otherwise be available.

**(3)** Without limiting subsection (1), in making an order for compensation in favour of a lessor, a tribunal must have regard to the following—

- (a) rent required to be paid but not paid for the period starting when the agreement is terminated because of the tenant's action and ending—
  - (i) when the period fixed as the term of the tenancy ends; or
  - (ii) if the premises are relet before the end of the period mentioned in subparagraph (i)—when the premises are relet;
- (b) advertising expenses incurred by the lessor for reletting the premises;
- (c) other expenses incurred by the lessor for work carried out by the lessor for reletting the premises;
- (d) whether the lessor has met the lessor's duty under section 230 to mitigate loss or expense.



**251 Application of Aboriginal tradition**

(1) This section applies if—

(a) the lessor is—

- (i) an Aboriginal Council under the *Community Services (Aborigines) Act 1984*; or
- (ii) a local government under the *Local Government (Aboriginal Lands) Act 1978*; or
- (iii) an entity prescribed under the regulations; and

(b) the tenant is an Aborigine.

(2) In deciding an application for a termination order, a tribunal must have regard to the lessor's practice (the "**lessor's Aboriginal tradition practice**") in observing Aboriginal tradition in dealing with similar breaches of other residential tenancy agreements by other tenants of the lessor.

(3) In considering Aboriginal tradition, the tribunal may hear evidence from, and the opinions of—

- (a) persons recognised under Aboriginal tradition as respected persons; or
- (b) other persons with special knowledge of, or expertise in, Aboriginal tradition.

(4) The opinion of persons mentioned in subsection (3) are not inadmissible as evidence merely because they are hearsay.

(5) The tribunal may decide not to make the termination order if it would be inconsistent with the lessor's Aboriginal tradition practice.

**252 Application of Island custom**

(1) This section applies if—

(a) the lessor is—

- (i) an Island Council under the *Community Services (Torres Strait) Act 1984*; or
- (ii) an entity prescribed under the regulations; and

(b) the tenant is a Torres Strait Islander.

(2) In deciding an application for a termination order, a tribunal must have regard to the lessor's practice (the "**lessor's Island custom practice**") in observing Island custom in dealing with similar breaches of other residential tenancy agreements by other tenants of the lessor.

(3) In considering Island custom, the tribunal may hear evidence from, and the opinions of—

- (a) persons recognised under Island custom as respected persons; or
- (b) other persons with special knowledge of, or expertise in, Island custom.

(4) The opinions of persons mentioned in subsection (3) are not inadmissible as evidence merely because they are hearsay.

(5) The tribunal may decide not to make the termination order if it would be inconsistent with the lessor's Island custom practice.

### **253 Disputes about tenants' notices**

(1) If a lessor disputes the ground stated in a notice to remedy breach, or notice of intention to leave premises, given to the lessor by the tenant under an agreement, the lessor may apply to a tribunal for an order about the notice.

(2) If the tribunal is satisfied the tenant was not entitled to give the notice on the ground stated, it may make an order under this section.

(3) If the tribunal decides the application before the agreement is terminated, it may make any order it considers appropriate.

(4) If the tribunal decides the application after the agreement is terminated because of the tenant's action, it may make an order requiring the tenant to pay to the lessor an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the lessor by the tenant leaving the premises.

(5) This section does not apply to a notice of intention to leave without ground.

### **253A Disputes about lessors' notices**

(1) If a tenant disputes the ground stated in a notice to remedy breach or a notice to leave premises given to the tenant by the lessor under an agreement, the tenant may apply to a tribunal for an order about the notice.

(2) If the tribunal is satisfied the lessor was not entitled to give the notice on the ground stated, it may make an order under this section.

(3) If the tribunal decides the application before the agreement is terminated, it may make any order it considers appropriate.

(4) If the tribunal decides the application after the agreement is terminated because of the lessor's action, it may make an order requiring the lessor to pay to the tenant an amount it considers appropriate as compensation for any loss or expense incurred by the tenant for having to leave the premises.

(5) This section does not apply to a notice to leave without ground.

### **254 General disputes between lessors and tenants**

(1) If there is a dispute between the lessor and tenant about an agreement, either party may apply to a tribunal for an order, and the tribunal may make any order it considers appropriate, to resolve the dispute.

(2) An application under subsection (1) may be made by a cotenant.

### **255 Disputes between cotenants about rental bonds**

(1) If there is a dispute between cotenants about a rental bond for an agreement, any cotenant may apply to a tribunal for an order, and the tribunal may make any order it considers appropriate, to resolve the dispute.

(2) The tribunal may not make an order under this section without giving the lessor an opportunity to be heard on the application.

### **256 Different applications may be decided together**

If different applications about an agreement are made to a tribunal by the parties or either party, the tribunal may consider and decide the applications at the same time.

### **257 Joining applications**

A tribunal may allow an application of a subtenant to be joined with an application of the lessor or tenant.

## **CHAPTER 6—ENFORCEMENT**

### **PART 1—AUTHORISED PERSONS**

#### **258 Authorised persons under this chapter**

(1) This chapter includes provision for the appointment of authorised persons, and gives authorised persons certain powers.

(2) The purpose of these provisions is to ensure that the authority has available to it suitably qualified persons who can help the authority properly deal with issues about compliance with this Act or the accommodation Act.

#### **259 Appointment**

(1) The authority may appoint any of the following persons as authorised persons—

- (a) officers of the authority;
- (b) officers or employees of a department;
- (c) other persons prescribed under the regulations.

(2) The authority may appoint a person as an authorised person only if—

- (a) in the authority's opinion, the person has the necessary expertise or experience to be an authorised person; or
- (b) the person has satisfactorily finished training approved by the authority.

#### **260 Limitation of authorised person's powers**

(1) The powers of an authorised person may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice of the authority given to the authorised person.

(2) Notice under subsection (1)(c) may be given orally, but must be confirmed in writing as soon as practicable.

**261 Authorised person's conditions of appointment**

(1) An authorised person holds office on the conditions stated in the instrument of appointment.

(2) An authorised person—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice of resignation given to the authority; and
- (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) under subsection (2)(b) if a term of the authorised person's employment to the main office requires the authorised person to hold the secondary office.

**262 Authorised person's identity card**

(1) The authority must give each authorised person an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) include an expiry date; and
- (d) identify the person as an authorised person under this Act and the accommodation Act.

(3) A person who ceases to be an authorised person must return his or her identity card to the authority within 21 days after the person ceases to be an authorised person, unless the person has a reasonable excuse for not returning it.

Maximum penalty—80 penalty units.

(4) This section does not prevent the giving of a single identity card to a person under this section and for other provisions, Acts or purposes.

**263 Production or display of authorised person's identity card**

(1) An authorised person may exercise a power under this Act in relation to someone else (the “**other person**”) only if the authorised person—

- (a) first produces his or her identity card for the other person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.

**PART 2—POWERS OF AUTHORISED PERSONS FOR PLACES****264 Entry to places**

(1) An authorised person may enter a place under this part if—

- (a) its occupier agrees to the entry; or
- (b) the entry is permitted by a warrant.

(2) An authorised person, without the occupier's agreement or a warrant, may—

- (a) enter a place when it is open to the public; or
- (b) enter land to ask for the occupier's agreement to the authorised person entering the land or a building or structure on the land.

(3) Unless an entry under this part is made under the authority of a warrant, the entry must be made at a reasonable time.

**265 Warrants for entry**

(1) An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and must state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application be given by statutory declaration.

(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of the commission of an offence against this Act or the accommodation Act; and
- (b) the evidence is at the place, or may be at the place within the next 7 days.

(5) The warrant must state—

- (a) the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this Act; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours of the day or night when entry may be made; and
- (d) the day (within 14 days after the warrant’s issue) when the warrant ends.

(6) The magistrate must record the reasons for issuing the warrant.

## **266 Warrants—applications made other than in person**

(1) An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person’s remote location.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing a warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person—

- (a) the magistrate must—
  - (i) record on the warrant the reasons for issuing the warrant; and
  - (ii) tell the authorised person the date and time the warrant was signed; and
  - (iii) tell the authorised person the warrant's terms; and
- (b) the authorised person must write on a form of warrant (the “**warrant form**”)—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate signed the warrant; and
  - (iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the magistrate.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if a warrant form was completed by the authorised person—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Unless the contrary is proved, a court must presume a power exercised by an authorised person was not authorised by a warrant issued under this section if—

- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
- (b) the warrant is not produced in evidence.

## **267 Authorised person's general powers for places**

(1) An authorised person who enters a place under this part may—

- (a) search any part of the place; or



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- (b) examine, inspect, test, photograph or film anything at the place; or
- (c) copy a document at the place; or
- (ca) seize a document at the place if the authorised person reasonably believes the document is evidence of an offence against this Act or the accommodation Act and the seizure is necessary to prevent the document—
  - (i) being hidden, lost or destroyed; or
  - (ii) being used to commit, continue or repeat the offence; or
- (d) take into the place any persons, equipment and materials the authorised person reasonably requires for exercising a power in relation to the place; or
- (e) require a person at the place or the occupier of the place, to give the authorised person reasonable help for the exercise of the powers mentioned in paragraphs (a) to (d).

(2) A person who is required by an authorised person under subsection (1)(e) to give the authorised person reasonable help for the exercise of a power must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

(3) If the help is required to be given by—

- (a) answering a question; or
- (b) producing a document (other than an authority or other document required to be kept by the person under this Act or another Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

(4) This section applies to an authorised person who enters a place to get the occupier's agreement only if the agreement is given or the entry is otherwise authorised.

## **PART 3—OTHER ENFORCEMENT MATTERS**

### **267A Procedure after document seized**

(1) As soon as practicable after a document is seized by an authorised person under section 267, the authorised person must give a receipt for it to the person from whom it was seized.

(2) Until the document is returned, the authorised person must allow a person who would be entitled to the seized document if it were not in the authorised person's possession to copy it.

(3) The authorised person must return the seized document to the person—

- (a) at the end of 1 year; or
- (b) if a proceeding for an offence involving it is started within 1 year—at the end of the proceeding and any appeal from the proceeding.

(4) Despite subsection (3), the authorised person must return the seized document to the person if the authorised person—

- (a) stops being satisfied its continued retention as evidence is necessary; and
- (b) is satisfied its return is not likely to result in its use in repeating the offence.

### **267B Power to require information from certain persons**

(1) This section applies if an authorised person suspects, on reasonable grounds, that—

- (a) an offence against this Act or the accommodation Act has been committed; and
- (b) a person (the “**nominated person**”) may be able to give information about the offence.

(2) The authorised person may, by written notice given to the nominated person, require the nominated person to give information about the offence to the authorised person at a reasonable time and place stated in the notice.

(3) When making the requirement, the authorised person must warn the nominated person it is an offence to fail to give the information, unless the person has a reasonable excuse.

(4) The nominated person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(5) It is a reasonable excuse for the nominated person to fail to give information if giving the information might tend to incriminate the person.

(6) The nominated person does not commit an offence against this section if—

- (a) the information sought by the authorised person is not in fact relevant to the offence; or
- (b) an offence is not proved to have been committed.

## **268 False or misleading information**

(1) A person must not—

- (a) state anything to an authorised person the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—20 penalty units.

(2) It is enough for a complaint for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.

## **269 False, misleading or incomplete documents**

(1) A person must not give an authorised person a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—20 penalty units.

(2) However, the person does not commit an offence against subsection (1) if, when giving the document, the person—

- (a) informs the authorised person, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the authorised person if the person has, or can reasonably obtain, the correct information.

(3) It is enough for a complaint for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

### **270 Authorised person to give notice of damage**

(1) This section applies if—

- (a) an authorised person damages anything in the exercise of a power under part 2; or
- (b) a person who is authorised by an authorised person to take action under this Act damages anything in taking the action.

(2) The authorised person must promptly give written notice of the particulars of the damage to the person who appears to the authorised person to be the thing's owner.

(3) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the authorised person's control, the authorised person may state this in the notice.

(4) If, for any reason, it is not practicable to comply with subsection (2), the authorised person must—

- (a) leave the notice at the place where the damage happened; and
- (b) ensure the notice is left in a reasonably secured way in a conspicuous position.

(5) This section does not apply to damage the authorised person believes, on reasonable grounds, is trivial.

### **271 Compensation**

(1) A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under part 2, including, for example, in complying with a requirement made of the person under the part.

(2) Compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act or the accommodation Act brought against the person making the claim for compensation.

(3) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### **272 Agreement to entry**

(1) This section applies if an authorised person seeks the agreement of an occupier of a place to an authorised person entering the place under part 2.

(2) In seeking the agreement, the authorised person must inform the occupier—

- (a) of the purpose of the entry; and
- (b) that information obtained by the authorised person may be used in evidence in court; and
- (c) that the occupier is not required to agree to the entry.

(3) If the agreement is given, the authorised person may ask the occupier to sign an acknowledgment of the occupier's agreement.

(4) The acknowledgment must—

- (a) state the occupier was informed—
  - (i) of the purpose of the entry; and
  - (ii) that information obtained by the authorised person may be used in evidence in court; and
  - (iii) that the occupier was not required to agree to the entry; and
- (b) state the occupier agreed to the authorised person entering the place and exercising powers under this Act; and
- (c) state the time and date the agreement was given.

(5) If the occupier signs an acknowledgment of agreement, the authorised person must immediately give a copy to the occupier.

**273 Evidence of agreement**

(1) This section applies to a proceeding if—

- (a) a question arises whether an occupier of a place agreed to the entry of the place by an authorised person under part 2; and
- (b) an acknowledgment of the occupier's agreement is not produced in evidence.

(2) In a proceeding to which this section applies, the court may presume the occupier did not agree to the entry, unless the contrary is proved.

**274 Obstruction of authorised person**

(1) In this section—

“**authorised person**” includes a person who is authorised by an authorised person to take action under part 2.

(2) A person must not obstruct an authorised person in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**275 Impersonation of authorised person**

A person must not pretend to be an authorised person.

Maximum penalty—80 penalty units.

**276 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with this Act.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.

- (4) However, it is a defence for an executive officer to prove—
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

## **PART 4—EVIDENCE**

### **277 Evidentiary provisions**

(1) This section applies to a proceeding under this Act or the accommodation Act.

(2) The appointment or power of an authorised person must be presumed unless a party, by reasonable notice, requires proof of—

- (a) the appointment; or
- (b) the power to do anything under this Act.

(3) A signature purporting to be the signature of the chief executive officer, the chairperson of the authority or an authorised person is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by a person mentioned in subsection (3) and stating any of the following matters is evidence of the matter—

- (a) a stated document is—
  - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or
  - (ii) a notice, or a copy of a notice, given under this Act; or
  - (iii) a record, or a copy of a record, kept under this Act; or
  - (iv) a document, or a copy of a document, kept under this Act;

- (b) on a stated day, a stated person was given a stated notice, order, requirement or direction under this Act;
- (c) anything else prescribed under the regulations.

## CHAPTER 7—CAUSING NUISANCE IN MOVEABLE DWELLING PARKS

### **278 Behaviour in moveable dwelling park causing serious nuisance**

A person causes a serious nuisance in a moveable dwelling park if, while in the park, the person causes a serious nuisance to residents of, or anyone else in, the park.<sup>108</sup>

*Example of serious nuisance—*

1. A person assaults a resident or someone else.
2. A person uses threatening or abusive language towards a resident or someone else.
3. A person behaves in a riotous, violent, disorderly, indecent, offensive or threatening way towards a resident or someone else.
4. A person causes substantial, unreasonable annoyance to a resident or someone else.
5. A person causes substantial, unreasonable disruption to the privacy of a resident or someone else.
6. A person wilfully damages property of a resident or someone else.

### **283 Application to tribunal for order to exclude person from park**

(1) The owner of a moveable dwelling park may apply to a tribunal for an order excluding a person from the park because of the person's behaviour in the park.

(2) The application may be made in a proceeding for an offence for contravention of a final nuisance direction or at any other time.

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<sup>108</sup> For the power to give directions to persons causing a serious nuisance and remove persons from a moveable dwelling park see the *Police Powers and Responsibilities Act 2000*, chapter 9 (Other powers), part 4 (Powers relating to nuisance in moveable dwelling parks).



(3) If the application is not made in a proceeding for an offence mentioned in subsection (2), the applicant must give written notice of the application to the person at least 21 days before the application is heard.

(4) The notice must state particulars of the claimed behaviour.

### **284 Order of tribunal excluding person from park**

(1) If an application is made to a tribunal for an order excluding a person from a moveable dwelling park because of the person's behaviour in the park, the tribunal may make an order prohibiting a person from entering, or being in, the park in a stated period (not longer than 1 year).

(2) The tribunal may make the order only if it is satisfied—

- (a) the person's behaviour justifies being excluded from the park; and
- (b) it is appropriate to exclude the person from the park.

(3) In deciding whether the person's behaviour justifies being excluded from the park, the tribunal may have regard to—

- (a) the nature of the behaviour, including, in particular, whether the behaviour involved violence and, if violence is involved, the degree of the violence; and
- (b) whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences; and
- (c) the number of persons adversely affected by the behaviour; and
- (d) whether persons adversely affected by the behaviour have acted in a reasonable way; and
- (e) the time of day the behaviour was engaged in; and
- (f) whether any nuisance directions have been given to the person about the person's behaviour in the park and, if directions have been given—
  - (i) the nature of the behaviour for which the directions were given; and
  - (ii) the number and type of directions given; and
  - (iii) the frequency of the directions.

(4) In deciding whether it is appropriate to exclude the person from the park, the tribunal may have regard to—

- (a) whether the person is residing in a moveable dwelling in the park; and
- (b) if the person is residing in the park—
  - (i) whether the person's spouse resides with the person; and
  - (ii) whether any dependant of the person (including, in particular, any child of the person) resides with the person; and
  - (iii) whether the person has access to other accommodation; and
- (c) the person's general health and welfare.

(5) Subsections (3) and (4) do not limit the issues to which the tribunal may have regard.

(6) A person must not contravene an order of a tribunal prohibiting the person from entering, or being in, a moveable dwelling park, unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (6)—20 penalty units.

## **CHAPTER 8—RESIDENTIAL TENANCIES AUTHORITY**

### **PART 1—ESTABLISHMENT OF AUTHORITY**

#### **286 Establishment of authority**

The Residential Tenancies Authority is established.

#### **287 Legal status of authority**

The authority—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

**288 Authority represents the State**

(1) The authority represents the State.

(2) Without limiting subsection (1), the authority has all the privileges and immunities of the State.

**PART 2—FUNCTIONS AND POWERS OF AUTHORITY****289 Authority's functions**

The authority's functions are—

- (a) to ensure the proper administration and enforcement of this Act and the accommodation Act; and
- (b) to receive, hold and pay rental bonds under this Act and the accommodation Act; and
- (c) to give advice to the Minister about—
  - (i) residential tenancy issues and residential services issues generally; and
  - (ii) the operation of this Act and the accommodation Act in particular; and
- (d) without limiting paragraph (c), to give advice to the Minister about—
  - (i) the application of this Act to agreements, premises or entities; and
  - (ii) the application of this Act or the accommodation Act to residential service agreements, rental premises under the accommodation Act or entities; and
- (e) to provide information, educational and advisory services about the operation of this Act and the accommodation Act; and
- (f) to collect and analyse information about residential tenancy issues and residential services issues; and
- (g) to provide a conciliation service to parties to disputes about agreements and residential service agreements; and

- (h) to intervene in, or support, proceedings about the application of this Act to agreements and proceedings about the application of the accommodation Act to residential service agreements; and
- (i) to perform other functions given to the authority under this Act or another Act; and
- (j) to perform functions incidental to its other functions.

### **290 Authority's powers**

(1) The authority has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) charge for, and fix conditions for the supply of, goods, services and information it supplies; and
- (e) engage consultants; and
- (f) do anything else necessary or convenient to be done in performing its functions.

(2) Without limiting subsection (1), the authority has the powers given to it under this or another Act.

(3) The authority may exercise its powers inside and outside Queensland, including outside Australia.

### **291 Reserve power of Minister to give directions in public interest**

(1) The Minister may give the authority a written direction if the Minister is satisfied it is necessary to give the direction in the public interest because of exceptional circumstances.

(2) The authority must ensure the direction is complied with.

(3) Before giving a direction, the Minister must consult with the authority.

(4) The Minister must cause a copy of the direction to be gazetted within 21 days after it is given.

## **PART 3—THE BOARD**

### **292 The board**

The authority has a board of directors.

### **293 Role of the board**

(1) The board is responsible for the way the authority performs its functions and exercises its powers.

(2) Without limiting subsection (1), it is the board's role to ensure the authority performs its functions in an appropriate, effective and efficient way.

### **294 Composition of board**

(1) The board consists of the chairperson and 6 other directors.

(1A) The members must include representatives of industry and consumer organisations.

(2) The Governor in Council appoints the chairperson and other directors.

### **295 Duration of appointment**

(1) The appointment of a director is for the term (not longer than 3 years) decided by the Governor in Council.

(2) The office of a director becomes vacant if—

- (a) the director resigns by signed notice of resignation given to the Minister; or
- (b) the director is found guilty of an indictable offence or an offence against this Act; or
- (c) the director becomes employed by, or becomes a contractor of, the authority; or
- (d) the director's appointment is ended by the Governor in Council under subsection (3).

(3) The Governor in Council may, at any time, end the appointment of a director for any reason or none.

**296 Conditions of appointment**

- (1) A director is appointed on a part-time basis.
- (2) A director is entitled to be paid the remuneration and allowances fixed by the Governor in Council.

**PART 4—PROCEEDINGS OF THE BOARD****297 Time and place of meetings**

- (1) The board may hold its meetings when and where it decides.
- (2) However, the board must meet at least once every 3 months.
- (3) The chairperson—
  - (a) may at any time call a meeting of the board; and
  - (b) must call a meeting if asked by at least 25% of the other directors.

**298 Conduct of proceedings**

- (1) The chairperson presides at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent, the director chosen by the directors present presides.
- (3) At a meeting of the board—
  - (a) a quorum is at least half the directors appointed; and
  - (b) a question is decided by a majority of the votes of the directors present and voting; and
  - (c) each director present has a vote on each question to be decided and, if the votes are equal, the director presiding has a casting vote.
- (4) The board may otherwise conduct its proceedings (including its meetings) as it considers appropriate.

(5) The board may hold meetings, or permit directors to take part in meetings, by telephone, closed-circuit television or another form of communication.

(6) A director who takes part in a meeting of the board under subsection (5) is taken to be present at the meeting.

(7) A resolution is a valid resolution of the board, even though it is not passed at a meeting of the board, if—

- (a) at least half the directors give written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the board.

## **299 Disclosure of interests**

(1) A director must disclose to a meeting of the board a direct or indirect financial interest in an issue being considered or about to be considered by the board if—

- (a) the director, or a person who, under the regulations,<sup>109</sup> is related to the director, has the interest; and
- (b) the interest could conflict with the proper performance of the director's duties about the consideration of the issue.

(2) The disclosure must be recorded in the board's minutes and, unless the board otherwise directs, the director must not be present when the board considers the issue, or take part in a decision of the board on the issue.

(3) Another director who also has, or who is, under the regulations,<sup>110</sup> related to a person who also has, a direct or indirect financial interest in the issue must not—

- (a) be present when the board is considering its decision under subsection (2); or
- (b) take part in making the decision.

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109 See *Residential Tenancies Regulation 1995*, section 24 (When a person is "related" to a director—Act s 299(1)(a)).

110 See *Residential Tenancies Regulation 1995*, section 25 (When a director is "related" to a person—Act s 299(3)).

(4) If, because of this section, a director is not present at a meeting of the board for the deliberation of the board about an issue, but there would be a quorum if the director were present, the remaining directors present are a quorum for the board's deliberation or decision about the issue at the meeting.

### **300 Minutes**

The board must keep minutes of its proceedings.

## **PART 5—FINANCIAL MATTERS**

### **301 Application of Financial Administration and Audit Act**

The authority is a statutory body within the meaning of the *Financial Administration and Audit Act 1977*.

### **301A Authority is statutory body for Statutory Bodies Financial Arrangements Act 1982**

(1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the authority is a statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B<sup>111</sup> sets out the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### **302 Administration budget**

(1) For each financial year, the authority must develop, adopt and submit to the Minister an administration budget within the time the Minister directs.

(2) An administration budget has no effect until approved by the Minister.

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111 *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)



(3) During a financial year the authority may develop, adopt and submit to the Minister amendments to its administration budget.

(4) An amendment has no effect until approved by the Minister.

## **PART 6—OTHER THINGS ABOUT THE AUTHORITY**

### **303 Seal**

Judicial notice must be taken of the imprint of the authority's seal appearing on a document, and the document must be presumed to have been properly sealed unless the contrary is proved.

### **304 Application of certain Acts**

The authority is—

- (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
- (b) an agency under the *Equal Opportunity in Public Employment Act 1992*.

### **305 Delegation**

The authority may delegate its powers to a director or an officer of the authority.

## **PART 7—STAFF OF THE AUTHORITY**

### *Division 1—Chief executive officer*

### **306 Chief executive officer**

(1) The authority must have a chief executive officer (however called).

(2) The chief executive officer is responsible for ensuring the authority is managed as required by the policies of the board.

(3) The chief executive officer is appointed by the Governor in Council.

(4) A director must not be appointed as chief executive officer.

(5) The chief executive officer is to be appointed under this Act, and not under the *Public Service Act 1996*.

(6) The chief executive officer holds office for the term (not longer than 5 years) decided by the Governor in Council.

(7) The chief executive officer holds office on the conditions (including conditions for remuneration, allowances and remuneration when the appointment ends) fixed by the authority.

### **307 Chief executive officer not to engage in other paid employment**

The chief executive officer must not, without the board's approval—

- (a) engage in paid employment outside the duties of the office of chief executive officer; or
- (b) actively take part in the activities of a business, or in the management of a corporation carrying on business.

### **308 Acting chief executive officer**

The Governor in Council may appoint a person, who is eligible for appointment as chief executive officer, to act in the office of chief executive officer during—

- (a) any vacancy, or all vacancies, in the office; or
- (b) any period, or all periods, when the chief executive officer is absent from duty, or cannot, for another reason, perform the duties of the office.

## *Division 2—Staffing the authority*

### **309 Authority staff**

(1) The authority may engage the employees it considers necessary to perform its functions.

(2) The authority may decide its employees' conditions of employment.

(3) However, subsection (2) has effect subject to any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement.

(4) The employees are to be employed under this Act, and not under the *Public Service Act 1996*.

(5) In this section—

“**conditions of employment**” includes conditions about duration of the employment and ending the employment.

### **310 Alternative staffing arrangements**

The authority may arrange with the chief executive of a department or an authority of the State for the services of officers or employees of the department or authority to be made available to the authority.

## *Division 3—Conflict of interest*

### **311 Disclosure of interests**

(1) This section applies to an employee of the authority if—

- (a) the employee, or a person who, under the regulations,<sup>112</sup> is related to the employee, has a direct or indirect financial interest in an issue being decided, or about to be decided by the authority (whether or not under a delegation from the authority); and
- (b) the interest could conflict with the proper performance of the employee's duties about the decision.

(2) As soon as practicable after the employee becomes aware of the facts causing this section to apply to the employee, the employee must disclose the nature of the interest to the authority.

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112 See *Residential Tenancies Regulation 1995*, section 26 (When a person is “related” to an employee—Act s 311(1)(a)).

## CHAPTER 9—LEGAL PROCEEDINGS

### PART 1—OFFENCES

#### **312 False, misleading or incomplete documents**

(1) A person must not give the authority a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—20 penalty units.

(2) However, the person does not commit an offence against subsection (1) if, when giving the document, the person—

- (a) informs the authority, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the authority if the person has, or can reasonably obtain, the correct information.

(3) It is enough for a complaint for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

#### **313 Attempts to commit offences**

(1) A person who attempts to commit an offence against this Act commits an offence.

Maximum penalty—half the maximum penalty for committing the attempted offence.

(2) Section 4 of the Criminal Code<sup>113</sup> applies to the attempt.

#### **314 Offences are summary offences**

An offence against this Act is a summary offence.

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113 The Criminal Code, section 4 (Attempts to commit offences)

**314A Limitation on time for starting proceedings**

A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* may start at any time but, if started more than 1 year after the commission of the offence, must start within 6 months after the offence comes to the complainant's knowledge.

**PART 2—EVIDENTIARY PROVISIONS****315 Responsibility for acts or omissions of representatives**

(1) If, in a proceeding for an offence against this Act, it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(2) An act or omission done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been done or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the acts or omissions.

**316 Condition reports**

(1) In a proceeding before a tribunal, a copy of a condition report stating the condition of stated premises and its inclusions, is evidence of the condition of the premises and inclusions—

- (a) if the report is signed by the tenant—when the report was signed; or
- (b) if the report is not signed by the tenant—when the report was made.

(2) However, if the report is signed by the tenant and marked to show the tenant's disagreement with the statement, the report is evidence of the

condition of the premises and inclusions when the report was signed by the tenant only as far as its contents are unmarked.

### **317 Rental bonds**

In a proceeding, a certificate purporting to be signed for the authority stating that at a stated time, or during a stated period, the authority held, or did not hold, a rental bond for a stated agreement is evidence of the matter stated.

## **CHAPTER 10—MISCELLANEOUS**

### **318 Applications for more than prescribed amount**

(1) In this section—

“**prescribed amount**” has the meaning given by the *Small Claims Tribunals Act 1973*.

(2) This section applies to an application if—

- (a) a provision of this Act provides that it may be made to a tribunal; and
- (b) the application seeks the payment of an amount (the “**application amount**”) greater than the prescribed amount.

(3) In a provision of this Act about the application—

- (a) a reference to a tribunal or registrar is taken to be a reference to a court having jurisdiction for the application amount; and
- (b) the provision applies with all necessary changes, and with any changes prescribed under the regulations, as if the tribunal or registrar were the court.

### **319 Protection from liability**

(1) In this section—

“**official**” means—

- (a) the chief executive officer; and

- (b) an authorised person; and
- (c) an employee of the authority; and
- (d) a person acting under the direction of the chief executive officer or an authorised person.

(2) An official does not incur civil liability for an act or omission done honestly and without negligence under this Act or the accommodation Act.

(3) A liability that would, apart from this section, attach to an official attaches instead to the State.

### **320 Forms**

The chief executive officer may approve forms for use under this Act.

### **321 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may—

- (a) impose fees; or
- (b) create offences and prescribe penalties of not more than 20 penalty units for each offence.

## **CHAPTER 11—TRANSITIONAL, REPEALS AND AMENDMENTS**

### **PART 1—TRANSITIONAL PROVISIONS FOR ACT NO. 86 OF 1994**

#### *Division 2—Transitional references*

### **323 Application of division**

This division applies to references in Acts or documents in existence at its commencement.

**324 References to former Acts**

A reference to the *Rental Bond Act 1989* or *Residential Tenancies Act 1975* is taken to be a reference to this Act.

**325 References to former authority**

A reference to the Rental Bond Authority is taken to be a reference to the authority.

*Division 4—Other transitional provisions***PART 2—TRANSITIONAL PROVISIONS FOR  
RESIDENTIAL TENANCIES AMENDMENT ACT 1998****340 Definitions for pt 2**

In this part—

“**amendment Act**” means the *Residential Tenancies Amendment Act 1998*.

“**commencement day**” means the day on which the provision in which the term is used commences.

**341 Fixed term agreements in force at commencement**

(1) This section applies to a fixed term agreement in force immediately before the commencement day.

(2) This Act continues to apply to the agreement as if the amendment Act had not commenced.

(3) However, if after the period fixed as the term of the tenancy ends, the agreement continues to apply because of section 46(3)<sup>114</sup>—

- (a) subsection (2) stops having effect for the agreement; and
- (b) this Act, as amended by the amendment Act, applies to the agreement.

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114 Section 46 (Continuation of fixed term agreements)



**342 Periodic agreements in force at commencement**

(1) This section applies to a periodic agreement in force immediately before the commencement day.

(2) This Act continues to apply to the agreement as if the amendment Act had not commenced, but only until—

(a) 6 months after the commencement day; or

(b) if, within the 6 month period, the agreement is amended—the day the amendment of the agreement takes effect.

(3) This Act, as amended by the amendment Act, applies to the agreement when subsection (2) stops having effect for the agreement.

(4) However, if the lessor is the State, section 39<sup>115</sup> does not apply to the agreement for 3 years after the commencement day.

**343 Short tenancy (moveable dwelling) agreements in force at commencement**

(1) This section applies to an agreement for a short tenancy (moveable dwelling) in force immediately before the commencement day.

(2) This Act continues to apply to the agreement as if the amendment Act had not commenced.

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115 Section 39 (Written agreements required)

**SCHEDULE 3****DICTIONARY**

section 3(1)

**“abandonment termination notice”** see section 221.

**“accommodation Act”** means the *Residential Services (Accommodation) Act 2002*.

**“affordable housing scheme”** means a scheme under which the Commonwealth, the State, a local government or a non-profit corporation provides accommodation assistance, other than—

- (a) as approved supported accommodation; or
- (b) under a subletting mentioned in section 25A.

**“agent”** of a lessor means a person employed, or otherwise authorised, by the lessor to act as the lessor’s agent.

**“agreement”** see section 11.

**“allowed period”** see section 69.

**“allowed remedy period”** means the period stated in a notice to remedy breach as the period within which a party to an agreement is required to remedy the breach of the agreement stated in the notice.

**“approved form”** see section 320.

**“approved representative”**, for a party to a tenancy dispute, means a person approved by the conciliator conducting the conciliation process for the dispute to represent the party in the dispute.

**“approved supported accommodation”** means accommodation provided under an agreement between the Commonwealth and the State under—

- (a) the program known as the ‘Crisis Accommodation Program’, or, if the program is continued under another name, the program as continued under the other name; or

## SCHEDULE 3 (continued)

(b) the program known as the ‘Supported Accommodation Assistance Program’, or, if the program is continued under another name, the program as continued under the other name.

**“arrangement”** includes a promise, scheme, transaction (with or without consideration), understanding and undertaking (whether expressed or implied).

**“authorised person”** means a person who is appointed under this Act as an authorised person.

**“authority”** means the Residential Tenancies Authority.

**“base period”** see section 30.

**“board”** means the authority’s board of directors.

**“caravan”** see section 3A.

**“chairperson”** means the chairperson of the board.

**“chief executive officer”** means the authority’s chief executive officer.

**“compulsory acquisition”**, for a notice to leave, see section 158.

**“compulsory acquisition”**, for a notice of intention to leave, see section 178.

**“compulsory park closure”**, for a notice to leave, see section 161.

**“conciliation agreement”** means an agreement mentioned in section 241.

**“conciliator”** see section 3B.

**“condition report”**, for residential premises and inclusions, means a report describing the physical condition of the premises and inclusions.

**“damage”**, for an application for a termination order, see sections 169, 183 and 184.

**“director”** means a director of the board, and includes the chairperson.

**“dispute resolution request”** see section 233.

**“domestic violence”** has the meaning given by the *Domestic Violence (Family Protection) Act 1989*.

**“domestic violence issues”** see sections 150 and 211.

**“domestic violence order”** has the meaning given by the *Domestic Violence (Family Protection) Act 1989*.

## SCHEDULE 3 (continued)

“**emergency repairs**” see section 123A.

“**employment termination**”, for a notice to leave, see section 162.

“**ending of accommodation assistance**”, for a notice to leave, see section 163.

“**ending of housing assistance**”, for a notice to leave, see section 163A.

“**enforcement warrant**” means an enforcement warrant under the *Supreme Court of Queensland Act 1991*.

“**entry notice**” see section 110.

“**excessive hardship**”, for an application for a termination order, see sections 168 and 182.

“**executive officer**” of a corporation means—

- (a) if the corporation is the Commonwealth or a State—a chief executive of a department or a person who is concerned with, or takes part in, the management of a department, whatever the person’s position is called; or
- (b) if the corporation is a local government—
  - (i) the local government’s chief executive officer; or
  - (ii) a person who is concerned with, or takes part in, the local government’s management, whatever the person’s position is called; or
- (c) if paragraphs (a) and (b) do not apply—a person who is—
  - (i) a member of the governing body of the corporation; or
  - (ii) concerned with, or takes part in, the corporation’s management;

whatever the person’s position is called and whether or not the person is a director of the corporation.

“**failure to leave**”, for an application for a termination order, see section 166.

“**failure to leave as intended**”, for an application for a termination order, see section 167.

“**final nuisance direction**” see the *Police Powers and Responsibilities Act 2000*.

## SCHEDULE 3 (continued)

**“fixed term agreement”** means a residential tenancy agreement for a residential tenancy for a fixed term.

**“general service charge”**, for premises that are not moveable dwelling premises in a moveable dwelling park, means a service charge that is not a water service charge.

**“goods”** include animals, plants, money, documents and anything else of value.

**“handover day”**, for premises, means the day stated in a notice to leave, or notice of intention to leave, as the day vacant possession of the premises is required to be, or will be, handed over to the lessor.

**“holding deposit”**, for premises, means an amount paid as consideration for an option to enter into an agreement for the premises.

**“inclusions”**, for premises, means everything supplied with the premises for the tenant’s use (whether or not the things are supplied under an agreement).

**“incompatibility”**, for an application for a termination order, see sections 171 and 186.

**“individually metered”**, for premises, means there is, for the premises, a meter that—

- (a) has been installed or approved by a supply authority; and
- (b) measures, for the premises only, the quantity of something supplied to, or used at, the premises under a service or facility made available by the authority.

**“initial nuisance direction”** see the *Police Powers and Responsibilities Act 2000*.

**“injury”**, for an application for a termination order, see sections 169, 183 and 184.

**“key”** of a lock means a device or information normally used to operate the lock.

**“key deposit”** see section 84A.

**“lessor”** see section 4.

**“lock”** means a device for securing a door, gate, window or another part of premises.

## SCHEDULE 3 (continued)

**“long tenancy (moveable dwelling)”** see section 34.

**“maximum rental bond”**, for an agreement, is an amount equal to the rent payable under the agreement for the period of—

- (a) for movable dwelling premises—
  - (i) if the tenancy is a long tenancy (moveable dwelling) and electricity supplied to the premises is supplied in the lessor’s name and individually metered—3 weeks; or
  - (ii) otherwise—2 weeks; or
- (b) for other premises—4 weeks.

**“mobile home”** means a structure—

- (a) designed for use for residential purposes; and
- (b) designed to be able to be moved from one position to another; and
- (c) not attached permanently to land.

**“mobile home agreement”** means a relevant agreement under the *Mobile Homes Act 1989*.

**“mobile home occupier”** means an occupier under the *Mobile Homes Act 1989*.

**“mortgagee”**, for a mortgage, includes any person from time to time deriving title to the mortgage under a previous mortgagee.

**“moveable dwelling”** means a caravan or mobile home.

**“moveable dwelling park”** means a place where moveable dwellings are situated for occupation on payment of consideration.

**“moveable dwelling premises”** means premises consisting of—

- (a) for a moveable dwelling that is a caravan—the dwelling or its site, or both the dwelling and site; or
- (b) for a moveable dwelling that is a mobile home in, or intended to be situated in, a moveable dwelling park—the dwelling or its site, or both the dwelling and site.

**“nominated repairer”** see section 124.

## SCHEDULE 3 (continued)

- “**non-compliance (moveable dwelling relocation)**”, for a notice to leave, see section 157.
- “**non-compliance (tribunal order)**”, for a notice to leave, see section 156.
- “**non-compliance (tribunal order)**”, for a notice of intention to leave, see section 177.
- “**non-livability**”, for a notice to leave, see sections 158 and 159.
- “**non-livability**”, for a notice of intention to leave, see sections 178 and 179.
- “**nonprofit corporation**” means a corporation formed for a purpose other than the purpose of making a profit.
- “**non-resolution notice**”, for park rules for a moveable dwelling park, see section 136.
- “**notice of intention to leave**” means a notice given by the tenant to the lessor indicating the tenant’s intention to hand over vacant possession of the premises to the lessor on the handover day.
- “**notice to leave**” means a notice given by the lessor to the tenant requiring the tenant to hand over vacant possession of the premises to the lessor on the handover day.
- “**notice to relocate**” see section 130.
- “**notice to remedy breach**” means a notice given by a party to an agreement to the other party requiring the other party to remedy a breach of the agreement stated in the notice.
- “**nuisance direction**” means an initial or final nuisance direction.
- “**objectionable behaviour**”, for an application for a termination order, see sections 170 and 185.
- “**objection closing day**”, for park rules for a moveable dwelling park, see section 134.
- “**objector**”, for park rules for a moveable dwelling park, see section 136.
- “**obstruct**” includes hinder, resist and attempt to obstruct.
- “**officer**” of the authority means any of the following—
- (a) the chief executive officer;

## SCHEDULE 3 (continued)

- (b) an authority employee, whether or not there is a written contract of employment between the authority and the employee;
- (c) an individual who performs services for the authority—
  - (i) under a contract (other than a contract of employment) between the individual and the authority; or
  - (ii) under an arrangement between the authority and a person (other than the individual).

**“option period”**, for an option created by the payment of a holding deposit, means—

- (a) the period stated in the receipt for the payment as the period in which the option may be exercised; or
- (b) if a period is not stated—the period ending 48 hours after the receipt is given.

**“park liaison committee”**, for a moveable dwelling park, see section 136.

**“park rules”** means rules made by the owner of a moveable dwelling park about the use, enjoyment, control and management of the park.

**“periodic agreement”** means an agreement that is not a fixed term agreement.

**“personal document”** of a person means a document it would be reasonable to expect the person would want to keep.

*Examples—*

1. A passport.
2. A birth or marriage certificate.
3. A photograph.

**“premises”** see sections 5 and 13.

**“proposal”**, for park rules for a moveable dwelling park, see section 134.

**“protection order”** means an order under the *Domestic Violence (Family Protection) Act 1989*, section 20(1).

**“public place”** means a place that the public is entitled to use, is open to the public, or used by the public, whether or not on payment of money.



## SCHEDULE 3 (continued)

**“registrar”** has the meaning given by the *Small Claims Tribunals Act 1973*.

**“registry”** has the meaning given by the *Small Claims Tribunals Act 1973*.

**“relative”** of a person—

- (a) means the person’s spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, cousin, niece, nephew, parent-in-law, daughter-in-law, son-in-law, sister-in-law or brother-in-law; and
- (b) for an Aboriginal person—includes a person who, under Aboriginal tradition, is regarded as a relative of the Aboriginal person; and
- (c) for a Torres Strait Islander person—includes a person who, under Island custom, is regarded as a relative of the Torres Strait Islander person.

**“rent payment record”** see section 50.

**“rental bond”** see section 57.

**“rental bond account”** see section 79.

**“rental bond contributor”** see section 58.

**“rental bond interest account”** see section 81.

**“rental bond notice”** means a notice about a rental bond given to the authority under section 59.

**“rental bond supplier”** see section 72.

**“rental purchase plan agreement”** means an agreement entered into between the State and someone else (the **“buyer”**) about residential premises—

- (a) under which the buyer agrees to buy, or after the buyer has bought, a part interest (a **“share”**) in the premises; and
- (b) under which the State gives the buyer the right to occupy the premises; and
- (c) under which the buyer is required to make payments to the State and—

## SCHEDULE 3 (continued)

- (i) if the buyer is buying a share—the payments are divided by the State between the amount owing for the purchase of the share and rent for the right to occupy the premises; or
- (ii) if the buyer has bought a share and is not buying a further share—the payments are payments of rent for the right to occupy the premises.

**“replacement cotenant”**, for an agreement for which there is a rental bond, means a person who, after the rental bond notice for the agreement is given to the authority becomes a cotenant in place of a former cotenant who was a rental bond contributor (whether the person becomes a cotenant directly from the former cotenant or indirectly through another former cotenant who was, or other former cotenants each of whom was, a rental bond contributor).

**“representative”** of a person means—

- (a) if the person is a corporation—an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual—an employee or agent of the individual.

**“resident”** means a person—

- (a) who, in the course of a residential service, occupies 1 or more rooms as the person’s only or main residence; and
- (b) who is not—
  - (i) the service provider; or
  - (ii) a relative of the service provider; or
  - (iii) a person employed in the service by the service provider.

**“resident”** of a moveable dwelling park means a person occupying moveable dwelling premises in the park as the tenant under an agreement.

**“residential premises”** see section 6.

**“residential service”** see the *Residential Services (Accreditation) Act 2002*, section 4.

## SCHEDULE 3 (continued)

**“residential service agreement”** means an agreement under which a service provider provides accommodation to a resident in the course of a residential service.

**“residential tenancy”** see section 7.

**“residential tenancy agreement”** see section 8.

**“retirement village”** has the meaning given by the *Retirement Villages Act 1988*.<sup>116</sup>

**“rules of entry”** see section 112.

**“sale contract”**, for a notice to leave, see section 160.

**“service charge”** see section 90.

**“service provider”** means—

- (a) for a residential service registered under the *Residential Services (Accreditation) Act 2002*—the person registered under that Act as the service provider for the service; or
- (b) for another residential service—the person conducting the service.

**“short tenancy (extension) statement”** see section 31.

**“short tenancy (moveable dwelling)”** see section 33.

**“short tenancy statement”** see section 30.

**“site”** of a moveable dwelling means the site where the moveable dwelling is, or is intended to be, situated.

**“special terms”**, of a residential tenancy agreement, means terms of the agreement that are not—

- (a) standard terms; or
- (b) terms included in the agreement under section 35(1).

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<sup>116</sup> Now see *Retirement Villages Act 1999*, section 237.

## SCHEDULE 3 (continued)

“**spouse**” see *Domestic Violence (Family Protection) Act 1989*, section 12(1).<sup>117</sup>

“**standard terms**”, of a residential tenancy agreement, see section 38.

“**state of mind**” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

“**structural change**” to premises means any renovation, alteration or addition to the premises.

“**tenancy dispute**” see section 233.

“**tenant**” see sections 9 and 12.

“**termination day**” means the day stated in a notice of termination of an agreement as the day on which vacant possession of the residential premises is to be, or will be, delivered up to the lessor.

“**termination order**” means an order of a tribunal terminating a residential tenancy agreement.

“**tribunal**” means a small claims tribunal under the *Small Claims Tribunals Act 1973*.

“**unremedied breach**”, for a notice to leave, see section 155.

“**unremedied breach**”, for a notice of intention to leave, see section 175.

“**urgent application**” see section 231.

“**voluntary park closure**”, for a notice to leave, see section 161.

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<sup>117</sup> *Domestic Violence (Family Protection) Act 1989*—

**12 Who is a “spouse”?**

(1) A “**spouse**” means—

- (a) either 1 of a male or female who are or have been married to each other; or
- (b) either 1 of the biological parents of a child, whether or not they are or have been married or are residing or have resided together; or
- (c) either 1 of 2 persons, whether of the same or the opposite sex, who are residing or have resided together as a couple.

## SCHEDULE 3 (continued)

**“water service charge”**, for premises, means a service charge for water supplied to the premises.

**“without ground”**, for a notice to leave, see section 165.

**“without ground”**, for a notice of intention to leave, see section 181.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 23 August 2002. Future amendments of the Residential Tenancies Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	3 April 1995
2	to Act No. 58 of 1995	2 February 1996
2A	to Act No. 54 of 1996	7 March 1997
2B	to Act No. 28 of 1997	2 June 1997
2C	to Act No. 28 of 1997	11 August 1997
3	to Act No. 28 of 1997	3 October 1997
3A	to Act No. 81 of 1997	5 January 1998
3B	to Act No. 29 of 1998	19 May 1998
4	to Act No. 29 of 1998	1 December 1998
4A	to Act No. 5 of 1999	23 April 1999
4B	to Act No. 20 of 2000	1 September 2000
4C	to Act No. 46 of 2000	8 November 2000
5	to Act No. 46 of 2000	2 March 2001
5A	to Act No. 45 of 2001	13 August 2001
5B	to Act No. 69 of 2001	11 January 2002

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	2, 3

## 6 List of legislation

### **Residential Tenancies Act 1994 No. 86**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 3 April 1995 (1995 SL No. 35)

amending legislation—

### **Statute Law (Minor Amendments) Act (No. 2) 1995 No. 51 ss 1, 3–4 sch**

date of assent 22 November 1995

commenced on date of assent

### **Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2**

date of assent 28 November 1995

commenced on date of assent

### **Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 2**

date of assent 28 November 1995

s 4 sch 2 commenced on 29 November 1995 (see s 2(1) sch 2)

remaining provisions commenced on date of assent

### **Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

### **Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

### **Residential Tenancies Amendment Act 1997 No. 15**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 10 August 1996 (see s 2)

### **Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3**

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)



**Statute Law (Miscellaneous Provisions) Act 1997 No. 81 ss 1–3, sch**

date of assent 5 December 1997

commenced on date of assent

**Residential Tenancies Amendment Act 1998 No. 29 pts 1–2**

date of assent 18 May 1998

ss 1–2, 4 (to the extent it ins new s 3B into the Residential Tenancies Act 1994), 13, 99, 110, 112–129, 135–136, 138, 140, 143(1) (to the extent it om from the Residential Tenancies Act 1994, sch 3, defs “approved representative”, “mediation conference”, “mediation notice” and “mediator”), 143(2) (to the extent it ins into the Residential Tenancies Act 1994, sch 3, new defs “approved representative”, “conciliation agreement” and “conciliator”) commenced on date of assent

s 35 commenced 18 May 1999 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced 1 December 1998 (see s 2(3))

**Residential Tenancies Amendment Act 1999 No. 5**

date of assent 18 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1998 (see s 2)

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3**

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

**GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3**

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1**

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

**Domestic Violence Legislation Amendment Act 2002 No. 6 ss 1–2, 53 sch 2**

date of assent 13 March 2002

ss 1–2 commenced on date of assent  
 remaining provisions not yet proclaimed into force (see s 2)

**Residential Services (Accommodation) Act 2002 No. 19 pts 1, 14 div 3**

date of assent 17 May 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 23 August 2002 (2002 SL No. 203)

## **7 List of annotations**

### **Commencement**

s 2 om R2 (see RA s 37)

### **Caravan**

s 3A ins 1998 No. 29 s 4

### **Conciliator**

s 3B ins 1998 No. 29 s 4

### **Residential tenancy agreement**

s 8 amd 1998 No. 29 s 5

### **Act binds all persons**

s 15 amd 1998 No. 29 s 6

### **Application of Property Law Act to agreements**

s 17 amd 1998 No. 29 s 7

### **Minors**

s 19 sub 1998 No. 29 s 8

### **Contracts of sale and mortgages**

s 20A ins 1995 No. 51 s 4 sch

### **Premises used for holidays**

s 21 amd 1998 No. 29 s 9

### **Residential service agreements, boarders and lodgers**

s 22 sub 2002 No. 19 s 147

### **Rental purchase plan agreements**

s 23A ins 1995 No. 51 s 4 sch

### **Headleases for employee housing**

s 25A ins 1998 No. 29 s 10

### **Headleases for affordable housing agreements**

s 25B ins 1998 No. 29 s 10

### **Short tenancy statements**

s 30 amd 1998 No. 29 s 11

### **Extending short tenancy statements**

s 31 amd 1998 No. 29 s 12

**Terms of agreements include duties under Act**

s 35            amd 1998 No. 29 s 13

**Inconsistency**

prov hdg    sub 1998 No. 29 s 14(1)

s 37            amd 1998 No. 29 s 14(2)

**Standard terms**

s 38            sub 1998 No. 29 s 15

**Lessor to give proposed agreement to tenant**

s 38A          ins 1998 No. 29 s 15

**Written agreements required**

s 39            amd 1998 No. 29 s 16

**Giving and signing written agreement**

s 40            sub 1998 No. 29 s 17

**Orders of tribunal about giving and signing written agreement**

s 41            sub 1998 No. 29 s 17

**Condition report at start of tenancy**

prov hdg    sub 1998 No. 29 s 18(1)

s 42            amd 1995 No. 51 s 4 sch; 1998 No. 29 s 18(2)–(5)

**Condition report at end of tenancy**

s 42A          ins 1998 No. 29 s 19

**Information statement**

s 43            amd 1998 No. 29 s 20

**By-laws**

s 45            amd 1995 No. 51 s 4 sch; 1997 No. 28 s 295 sch 3

**Continuation of fixed term agreements**

s 46            amd 1995 No. 51 s 4 sch

**Rent in advance**

s 49            amd 1998 No. 29 s 21

**Receipts and other records**

s 50            amd 1998 No. 29 s 22

**Rent increases**

s 53            amd 1998 No. 29 s 23

**Tenant's application to tribunal about rent increase**

s 53A          ins 1998 No. 29 s 24

**Rent decreases**

s 54            amd 1998 No. 29 s 25

**Seizure of tenant's goods for rent etc.**

s 55            amd 1998 No. 29 s 26; 2002 No. 19 s 148

**Meaning of "rental bond"**

s 57            amd 1998 No. 29 s 27

**Meaning of “rental bond contributor”**

s 58 sub 1998 No. 29 s 28

**Duty to pay rental bond**

s 59 amd 1995 No. 51 s 4 sch

**Duty to pay rental bond instalments**

s 59A ins 1995 No. 51 s 4 sch

**Acknowledging receipt of rental bond**

s 60A ins 1998 No. 29 s 29

**Payment to party on joint application or other party’s direction**

s 66 sub 1998 No. 29 s 30

**Payment to cotenants on lessor’s direction**

s 66A ins 1998 No. 29 s 30

**Payment on cotenant’s direction**

s 68A ins 1998 No. 29 s 31

**Allowed period for notices**

prov hdg sub 1998 No. 29 s 32(1)

s 69 amd 1998 No. 29 s 32(2)

**Payment to cotenants**

s 71 om 1998 No. 29 s 33

**Payments above maximum amount**s 77 amd 1995 No. 51 s 4 sch; 1998 No. 29 s 34  
sub 1999 No. 5 s 4**Order for payment if guilty of offence**

s 78 amd 2002 No. 19 s 149

**Rental bond account**

s 80 amd 1996 No. 54 s 9 sch; 2002 No. 19 s 150

**Rental bond interest account**

s 81 amd 1996 No. 54 s 9 sch; 2002 No. 19 s 151

**Other payments from rental bond interest account**

s 82 amd 1998 No. 29 s 35; 2002 No. 19 s 152

**Increase in rental bond**

s 83 amd 1998 No. 29 s 36

**CHAPTER 2—RESIDENTIAL TENANCY AGREEMENTS****PART 4—HOLDING DEPOSITS**

pt hdg sub 1998 No. 29 s 37

**Division 1—Key deposits**

div hdg ins 1998 No. 29 s 37

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s 84A ins 1998 No. 29 s 37

**Receipts for key deposits**

s 84B ins 1998 No. 29 s 37

**Refunding key deposit**

s 84C ins 1998 No. 29 s 37

**Division 2—Holding deposits**

div hdg ins 1998 No. 29 s 37

**PART 5—OUTGOINGS OF LESSOR****Division 1—Outgoings other than service charges**

div hdg ins 1998 No. 29 s 38

**Division 2—Service charges**

div hdg ins 1998 No. 29 s 39

**Meaning of “service charge”**

s 90 amd 1998 No. 29 s 40

**General service charges for premises other than moveable dwelling premises**

prov hdg sub 1998 No. 29 s 41(1)

s 91 amd 1998 No. 29 s 41(2)

**Water service charge for premises other than moveable dwelling premises**

s 91A ins 1998 No. 29 s 42

amd 1999 No. 5 s 5

**Orders of tribunal**

s 94 amd 1998 No. 29 s 43

**Incentive amounts prohibited**

s 95A ins 1998 No. 29 s 44

**Certain terms about penalties and other payments void**

prov hdg sub 1998 No. 29 s 45(1)

s 96 amd 1998 No. 29 s 45(2)

**Lessor’s obligations generally**

s 103 amd 1995 No. 51 s 4 sch; 1998 No. 29 s 46

**Lessor’s obligations for facilities in moveable dwelling parks**

s 104 amd 1998 No. 29 s 47

**Lessor’s obligations for moveable dwelling site**

s 105 amd 1998 No. 29 s 48

**Tenant’s obligations generally**

s 106 amd 1998 No. 29 s 49

**Orders of tribunal**

s 108A ins 1998 No. 29 s 50

**Notice of entry**

s 110 amd 1998 No. 29 s 51

**General qualifications about entry**

s 111 amd 1998 No. 29 s 52

**Lessor's or agent's name and other details**

s 116      amd 1998 No. 29 s 53

**Changing locks**

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**Agreement about changing locks**

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**Meaning of "emergency repairs"**

s 123A    ins 1998 No. 29 s 57

**Meaning of "routine repairs"**

s 123B    ins 1998 No. 29 s 57

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PART 6—ADDITIONAL PROVISIONS FOR MOVEABLE DWELLING  
PREMISES**

pt hdg    sub 1998 No. 29 s 58

**Notice to relocate**

s 130      amd 1998 No. 29 s 59

**Restriction against enforcing relocation**

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**Application to tribunal**

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**Lessor's fee for sale of caravan**

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**Transfer by lessor**

s 148      amd 1998 No. 29 s 62

**End of tenant's occupation**

s 149      amd 1998 No. 29 s 63

**Death of a cotenant**

s 149A    ins 1998 No. 29 s 64

**Injury to spouse**

s 150      amd 1998 No. 29 s 65

**Injury or damage affecting occupants**

s 150A    ins 1998 No. 29 s 66

**Termination of agreements**

s 151      amd 1995 No. 51 s 4 sch

**Acceptance of rent does not operate as waiver of tenant's breach**

prov hdg   amd 1998 No. 29 s 67(1)

s 152      amd 1998 No. 29 s 67(2)

**Offer or payment of rent does not operate as waiver of lessor's breach**

s 152A ins 1998 No. 29 s 68

**Notice to remedy tenant's breach**

s 153 amd 1998 No. 29 s 69

**Tenant may dispute notice to remedy breach**

s 154 om 1998 No. 29 s 70

**Notice to leave for unremedied breach**

s 155 amd 1998 No. 29 s 71

**Notice to leave if tenant's employment ends**

s 162 amd 1998 No. 29 s 72

**Notice to leave if tenant's entitlement to supported accommodation ends**

s 163 amd 1998 No. 29 s 73

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s 163A ins 1998 No. 29 s 74

**Tenant may dispute notice to leave**

s 164 om 1998 No. 29 s 75

**Notice to leave without ground**

s 165 amd 1998 No. 29 s 76

**Application to tribunal about notice to leave without ground**

s 165A ins 1998 No. 29 s 77

**Application for termination for failure to leave**

s 166 amd 1998 No. 29 s 78

**Application for termination for repeated breaches**

s 171A ins 1998 No. 29 s 79

**Notice to remedy lessor's breach**

s 173 amd 1998 No. 29 s 80

**Lessor may dispute notice to remedy breach**

s 174 om 1998 No. 29 s 81

**Lessor may dispute notice of intention to leave**

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**Power of arrest**

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**Authority represents the State**

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**Authority's functions**

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**Act's application to affected (holiday letting) agreements**

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(1) AIA s 20A applies (see s 326(3))

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**Duty to assist transfer of property**

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(1), (2) AIA s 20A applies (see s 329(3))

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**Existing rental bond amounts**

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 (1) AIA s 20A applies (see s 332(2))

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 (1), (2) AIA s 20A applies (see s 333(3))

**Retention of receipt given under former Act**

- s 334 exp 3 April 1996 (see s 338)

**Condition of premises reports**

- s 335 exp 3 April 1996 (see s 338)  
 (1), (2) AIA s 20A applies (see s 335(3))

**Rental bond account under the former Act**

- s 336 exp 3 October 1995 (see s 336(3))

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- s 338 exp 3 April 1996

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- s 339 exp 3 April 2000 (see s 339(5))

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- pt hdg prev pt 2 hdg om R1 (see RA s 40)  
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- s 340 prev s 340 exp 3 April 1996 (see s 340(2))  
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**Fixed term agreements in force at commencement**

- s 341 prev s 341 exp 3 April 1996 (see s 341(3))  
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- s 343 prev s 343 om R1 (see RA s 40)  
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- pt hdg ins 1999 No. 5 s 8  
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**Particular rental bond payments lawful**

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prev sch 1 om R1 (see RA s 40)  
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**SCHEDULE 2—ACTS AMENDED**

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def “**approved form**” ins 1995 No. 51 s 4 sch  
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def “**conciliator**” ins 1998 No. 29 s 143(2)  
def “**dispute notice**” om 1998 No. 29 s 143(1)  
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def “**domestic violence**” amd 2002 No. 6 s 53 sch 2  
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def “**final nuisance direction**” amd 2000 No. 5 s 461 sch 3  
def “**full term**” om 1998 No. 29 s 143(1)  
def “**general service charge**” ins 1998 No. 29 s 143(2)  
def “**industrial agreement**” om 1998 No. 29 s 143(1)  
def “**initial nuisance direction**” amd 2000 No. 5 s 461 sch 3  
def “**key deposit**” ins 1998 No. 29 s 143(2)  
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- def “**mediation notice**” om 1998 No. 29 s 143(1)  
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     om 1998 No. 29 s 143(1)  
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 def “**resident**” (first mention) ins 2002 No. 19 s 162  
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## **8 List of forms**

### **Form 1 version 1—Condition Report**

pubd gaz 24 March 1995 p 1286

### **Form 1a December 1998—Entry Condition Report—General Tenancies**

pubd gaz 20 November 1998 p 1063

### **Form 1b December 1998—Entry Condition Report—Moveable Dwelling/Site**

pubd gaz 20 November 1998 p 1063

### **Form 2 December 1998—Bond Lodgement**

pubd gaz 20 November 1998 p 1063

### **Form 3 December 1998—Transfer of Bond**

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### **Form 4 December 1998—Refund of Rental Bond**

pubd gaz 20 November 1998 p 1063

### **Form 5 December 1998—Change of Lessor or Lessor’s Agent**

pubd gaz 20 November 1998 p 1063

### **Form 6 December 1998—Change of Shared Bond Arrangement**

pubd gaz 20 November 1998 p 1063



**Form 7 December 1998—Part-Payment of Rental Bond**

pubd gaz 20 November 1998 p 1063

**Form 8 December 1998—Lessor's Agent Signature Record**

pubd gaz 20 November 1998 p 1063

**Form 9 December 1998—Entry Notice**

pubd gaz 20 November 1998 p 1063

**Form 9c December 1998—Entry Notice**

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**Form 10 December 1998—Notice of Lessor's Intention to Sell Premises**

pubd gaz 20 November 1998 p 1063

**Form 11 December 1998—Notice to Remedy Breach**

pubd gaz 20 November 1998 p 1063

**Form 11a version 1—Notice to Remedy Breach (Rent Arrears) \*QDHLGP use only**

pubd gaz 24 March 1995 p 1286

**Form 11b version 1—Notice to Remedy Breach (Other than Rent Arrears)****\*QDHLGP use only**

pubd gaz 24 March 1995 p 1286

**Form 11c(1) December 1998—Notice to Remedy Breach—Rent Arrears**

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**Form 11c(2) December 1998—Notice to Remedy Breach—Other than Rent Arrears**

pubd gaz 27 November 1998 p 1163

**Form 12 December 1998—Notice to Leave**

pubd gaz 20 November 1998 p 1063

**Form 12a version 1—Notice to Leave (Rent Arrears) \*QDHLGP use only**

pubd gaz 24 March 1995 p 1286

**Form 12b version 1—Notice to Leave (Other than Rent Arrears) \*QDHLGP use only**

pubd gaz 24 March 1995 p 1286

**Form 12c(1) December 1998—Notice to Leave—Rent Arrears**

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**Form 13 December 1998—Notice of Intention to Leave**

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**Form 14 version 1—Dispute Notice**

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pubd gaz 27 November 1998 p 1163

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pubd gaz 20 November 1998 p 1063

**Form 16 December 1998—Dispute Resolution Request**  
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**Form 17a December 1998—Information Statement Renting in Queensland Your rights and responsibilities as a tenant in general tenancies**  
pubd gaz 20 November 1998 p 1063

**Form 17b December 1998—Information Statement Renting in Queensland Your rights and responsibilities as a tenant in moveable dwelling tenancies**  
pubd gaz 20 November 1998 p 1063

**Form 18a December 1998—General Tenancy Agreement**  
pubd gaz 20 November 1998 p 1063

**Form 18b December 1998—Moveable Dwelling Tenancy Agreement**  
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**Form 18c December 1998—State Tenancy Agreement**  
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## **9 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Domestic Violence Legislation Amendment Act 2002 No. 6 s 53 sch 2 reads as follows—**

### **RESIDENTIAL TENANCIES ACT 1994**

**1 Schedule 3, definitions “domestic violence”, “domestic violence order” and “protection order”, ‘Domestic Violence (Family Protection) Act 1989’—**

*omit, insert—*

*‘Domestic and Family Violence Protection Act 1989’.*

**2 Schedule 3, definition “spouse”—**

*omit, insert—*

- ‘ **“spouse”** see *Domestic and Family Violence Protection Act 1989*, section 12(2).<sup>1</sup>’.

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1 *Domestic Violence (Family Protection) Act 1989*, section 12(2)—

**(2) A “spouse” means—**

- (a) either 1 of a male or female who are or have been married to each other;  
or
- (b) either 1 of the biological parents of a child, whether or not they are or have been married or are residing or have resided together; or
- (c) either 1 of 2 persons, whether of the same or the opposite sex, who are residing or have resided together as a couple.