

Queensland



**RESIDENTIAL SERVICES  
(ACCOMMODATION) ACT  
2002**

**Act No. 19 of 2002**



Queensland



**RESIDENTIAL SERVICES  
(ACCOMMODATION) ACT 2002**

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**DICTIONARY**

Queensland



**Residential Services (Accommodation) Act  
2002**

**Act No. 19 of 2002**

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

*[Assented to 17 May 2002]*

The Parliament of Queensland enacts—

## PART 1—PRELIMINARY

### *Division 1—Introduction*

#### **1 Short title**

This Act may be cited as the *Residential Services (Accommodation) Act 2002*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### *Division 2—Interpretation*

#### **3 Definitions**

The dictionary in the schedule defines particular words used in this Act.

#### **4 Meaning of “residential service agreement”**

(1) A “**residential service agreement**” is an agreement under which a service provider provides accommodation to a resident in the course of a residential service.

(2) Subsection (1) applies whether the agreement is—

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

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**Division 3—Application and object****5 Explanation about relationship with other Acts**

(1) This Act, the accreditation Act and certain provisions of the *Residential Tenancies Act 1994* regulate various matters concerned with residential services.

(2) The accreditation Act—

- (a) defines what is a residential service for this Act; and
- (b) establishes systems for the registration and accreditation of residential services, to ensure the services are conducted at an appropriate standard.

(3) The *Residential Tenancies Act 1994* mostly does not apply to residential services,<sup>1</sup> but does include—

- (a) provision about the keeping of accounts by the authority for rental bonds paid to it under this Act; and
- (b) provision for the appointment of conciliators, who are given functions under this Act; and
- (c) provision for the administration and enforcement of this Act, including—
  - (i) the conferring of functions on the authority relating to this Act; and
  - (ii) the appointment of authorised persons with powers exercisable in relation to this Act.

**6 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) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

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<sup>1</sup> See *Residential Tenancies Act 1994*, section 22 (Residential service agreements, boarders and lodgers).

## **7 Object**

(1) The object of this Act is to balance the rights and responsibilities of residents and service providers relating to the provision of accommodation in the course of a residential service.

(2) The object is to be achieved mainly by—

- (a) regulating the making, content, operation and ending of residential service agreements; and
- (b) providing for the resolution of disputes about residential service agreements.

## **8 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 consistent with this Act.

# **PART 2—RIGHTS AND RESPONSIBILITIES OF RESIDENTS AND SERVICE PROVIDERS**

## **9 Resident's responsibilities**

A resident in a residential service has the following responsibilities—

- (a) to use the resident's room and common areas only or mainly as a place of residence;
- (b) not to use the resident's room or common areas for an illegal purpose;
- (c) not to interfere with, and to ensure the resident's guests do not interfere with, the reasonable peace, comfort or privacy of

another resident or another resident's appropriate use of the other resident's room or common areas;

- (d) to pay the rent when it falls due;
- (e) not to keep an animal on the rental premises without the service provider's permission;
- (f) not to intentionally or recklessly damage or destroy, or allow the resident's guests to intentionally or recklessly damage or destroy, any part of the rental premises or a facility in the rental premises;
- (g) to maintain the resident's room in a condition that does not give rise to a fire or health hazard.<sup>2</sup>

## **10 Service provider's responsibilities**

The service provider for a residential service has the following responsibilities in relation to each resident in the service—

- (a) to take reasonable steps to ensure the resident has quiet enjoyment of the resident's room and common areas;
- (b) not to interfere with, and to ensure the service provider's agents do not interfere with, the reasonable peace, comfort or privacy of the resident in using the resident's room or common areas;
- (c) to take reasonable steps to ensure the resident—
  - (i) always has access to the resident's room and to bathroom and toilet facilities; and
  - (ii) has reasonable access to any other common areas;
- (d) to take reasonable steps to ensure the security of the resident's room and the resident's personal property in the room;
- (e) to maintain the resident's room and common areas in a way that the room and areas remain fit for the resident to live in;
- (f) to take reasonable steps to ensure the resident's room and common areas and facilities provided in the room and areas—
  - (i) are kept safe and in good repair; and

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<sup>2</sup> Under section 11(a), these responsibilities are taken to be included as part of the residential service agreement.

- (ii) subject to any agreement with the resident about cleaning the resident's room, are kept clean;
- (g) to ensure that the times during which the service provider, or an agent of the service provider, is available to be contacted by the resident are reasonable, having regard to all the circumstances including the services being provided to the resident under the residential service agreement.<sup>3</sup>

### **PART 3—RESIDENTIAL SERVICE AGREEMENTS**

#### **11 Terms of agreement include responsibilities under Act etc.**

The following are taken to be included as terms of a residential service agreement between a service provider and resident—

- (a) the responsibilities imposed on the resident under section 9;
- (b) the responsibilities imposed on the service provider in relation to the resident under section 10;
- (c) the house rules for the rental premises;
- (d) the terms of any conciliation agreement in force about the residential service agreement;
- (e) other duties imposed on, or entitlements given to, the service provider or resident under this Act.

#### **12 Standard terms**

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

(2) The terms prescribed for this section are the “**standard terms**” of a residential service agreement.<sup>4</sup>

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3 Under section 11(b), these responsibilities are taken to be included as part of the residential service agreement.

4 Under section 16(2), every residential service agreement must include the standard terms.



### **13 Special terms**

(1) The “**special terms**” of a residential service agreement are the terms of the agreement that are not—

- (a) standard terms; or
- (b) terms included in the agreement under section 11.

(2) The special terms may include, for example, terms about the provision of a food service or a personal care service to the resident.

### **14 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 service agreement.

(2) However, a failure to comply with section 16 or 17 in relation to a residential service agreement does not invalidate the agreement.

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

Maximum penalty—50 penalty units.

(4) In this section—

“**defeating**” includes evading and preventing.

### **15 Inconsistency**

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

(2) If a standard term of a residential service 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.

## **16 Written agreement**

(1) A service provider must ensure a residential service agreement entered into with a resident is in writing to the extent, and in the way, required by this section.<sup>5</sup>

Maximum penalty—10 penalty units.

(2) The written agreement must include the standard terms, and any special terms, for 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 rental premises), the agreement is taken to include the standard term only if the information is properly included.

(4) The agreement must—

- (a) be written in a clear and precise way; and
- (b) state the service provider's name, address and any telephone number and the resident's name and any telephone number; and
- (c) fully describe the services to be provided under the agreement; and
- (d) state the amount of rent payable, when it is payable and how it must be paid; and
- (e) state the components of the rent attributable to accommodation, a food service, a personal care service or another service; and
- (f) state the amount of any rental bond payable; and
- (g) for a fixed term agreement, state the term for which it applies; and
- (h) be signed by the parties; and
- (i) comply with any other requirement prescribed under a regulation.

(5) The costs of preparing the agreement are payable by the service provider.

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<sup>5</sup> See also section 139 (Transitional—continuing agreements).

**17 Resident's copy of agreement**

(1) To enter a residential service agreement with a resident, the service provider must—

- (a) give the document prepared for section 16 to the proposed resident for signing; and
- (b) within 3 days after receiving the document signed by the proposed resident, sign the document and return a copy signed by both parties to the resident.

Maximum penalty—10 penalty units.

(2) A service provider does commit an offence against subsection (1) unless the service provider and resident have signed the document.

**PART 4—RENT*****Division 1—Records*****18 Receipts**

(1) If a person pays rent in cash, or asks for a receipt before or when paying rent other than in cash, the person receiving the payment must give a written receipt under this section.

Maximum penalty—10 penalty units.

(2) The receipt must be signed by the person receiving the payment.

(3) The receipt must be given to the person making the payment—

- (a) if the person makes the payment personally—when the payment is made; or
- (b) otherwise—within 5 days after the payment is made.

(4) The receipt must state the following—

- (a) the resident's name;
- (b) the address of the rental premises;
- (c) the date the payment is received;

- (d) the period for which the payment is made;
- (e) the amount of the payment;
- (f) that the payment is a payment of rent.

## **19 Keeping records**

For each payment of rent under a residential service agreement, the service provider must—

- (a) make a copy of the receipt given for the payment or make another appropriate written record of the payment; and
- (b) keep the copy or other record for at least 2 years after the end of the agreement.

Maximum penalty—10 penalty units.

## **20 False, misleading or incomplete rent record**

(1) A person must not—

- (a) make an entry in a rent record that 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 can not reasonably obtain, the necessary information.

Maximum penalty—10 penalty units.

(2) In this section—

“**rent record**” means a receipt or another record made under this Act for a rent payment.

### *Division 2—Amount of rent*

## **21 Rent increases**

(1) This section applies if a service provider proposes to increase the rent payable by a resident under a residential service agreement.

(2) The resident is not required to pay the increase unless it is made under this section.

**(3)** The service provider must give the resident a notice stating—

- (a) the amount of the increased rent; and
- (b) the day, not earlier than 4 weeks after the day the notice is given, from which the increased rent is payable.

**(4)** Also, if the residential service agreement is for a fixed term, the rent may not be increased before the term ends unless—

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

**(5)** Subsections (2) to (4) do not apply if the parties amend the residential service agreement to provide for another service to be provided by the service provider to the resident and for an increase in the rent in payment of the service.

## **22 Rent decreases**

**(1)** This section applies to a residential service agreement if—

- (a) a resident's room or common areas become partly unfit to live in, or their amenity or standard substantially decreases, other than because of intentional or reckless damage caused by the resident or a guest of the resident; or
- (b) a service provided to the resident under the agreement is no longer available or is withdrawn, or the standard of the service substantially decreases, other than because the resident has not met the resident's obligations under the agreement.

**(2)** The rent payable under the agreement decreases by the amount, and from the time, agreed between the service provider and the resident.

**(3)** If the service provider and the resident can not agree on the amount or time for the decrease, either of them may apply to a tribunal for an order decreasing the rent by a stated amount from a stated time.

**(4)** On an application under this section a tribunal may make the order it considers appropriate.

### **23 Charge for utility service**

(1) This section applies to the amounts payable by a service provider, as the owner or occupier of rental premises, for utility services provided to the premises.

(2) A provision of a residential service agreement requiring the resident to pay an amount for a utility service is of no effect unless—

- (a) the resident’s room is separately metered for the utility service by an appliance approved by the supplying entity; and
- (b) the amount the resident is required to pay is not more than the amount that the service provider is charged by the supplying entity for the utility service used by the resident.

(3) In this section—

“**utility service**”, provided to premises, means—

- (a) electricity, gas or water supplied to the premises; or
- (b) water fit for human consumption supplied to the premises by delivery in a vehicle; or
- (c) another service supplied to the premises, or facility used at the premises, prescribed under a regulation.

### *Division 3—Other provisions about rent*

### **24 How rent is to be paid**

(1) This section applies to the rent payable by a resident under a residential service agreement.

(2) The resident must pay the rent in an approved way.

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

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

- (a) the service provider or resident gives to the other party a 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 resident must pay the rent in the way stated while the rent agreement remains in force.

(5) 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 service provider; or
- (d) credit card; or
- (e) an EFTPOS system; or
- (f) deduction from pay, or a pension or other benefit, payable to the resident; or
- (g) another way agreed on by the service provider and resident.

## **25 Where rent is to be paid**

(1) This section applies to the rent payable by a resident under a residential service agreement.

(2) If the place for payment of rent is stated in the agreement, the resident must pay the rent at the place stated.

(3) However, if, after signing the agreement, the service provider gives the resident a notice stating a place, or a different place, as the place where rent is required to be paid and the place is reasonable, the resident must pay the rent at the place stated in the notice while the notice is in force.

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

## **26 Rent in advance**

A service provider must not require a resident to pay more than 2 weeks rent in advance.

Maximum penalty—20 penalty units.

## **27 Seizure of resident’s property for rent etc.**

(1) A service provider must not seize or dispose of a resident’s property as security for, or in payment of, any of the following—

- (a) rent payable under the residential service agreement;
- (b) an amount payable to the service provider, or at the service provider's direction, in reimbursement of an amount that was payable by the resident under the residential service agreement but was paid by the service provider for the resident;
- (c) a claim for loss or damage caused by the resident's breach of the residential service agreement.

Maximum penalty—40 penalty units.

(2) However, subsection (1) does not apply to the deduction of an amount under section 90(4)<sup>6</sup> or the seizure or disposal of property under section 91<sup>7</sup> or an enforcement warrant.

## **PART 5—RENTAL BONDS**

### *Division 1—Payments to authority*

#### **28 Meaning of “rental bond”**

- (1) A “**rental bond**” for a residential service agreement is an amount—
- (a) paid by or for the resident under the agreement; and
  - (b) intended to be available for the financial protection of the service provider against the resident breaching the agreement.
- (2) However, a “**rental bond**” does not include rent paid in advance.
- (3) 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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6 Section 90 (Personal document or money)

7 Section 91 (Item other than personal document or money)



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

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

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

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

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

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

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

## **30 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 31 applies.

## **31 Duty to pay rental bond instalments**

(1) This section applies if the service provider under a residential service agreement receives from the resident a number of rental bonds for the agreement (the “**rental bond instalments**”).

(2) If the service provider has received all the rental bond instalments, the service provider 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 ended before the service provider receives all the rental bond instalments, the service provider must, within 10 days after the ending of the agreement—

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

Maximum penalty—40 penalty units.

(4) If, on the day that is 3 months after the service provider receives the first rental bond instalment, the agreement has not ended and the service provider has not received all the rental bond instalments, the service provider must—

- (a) within 10 days after that day—
  - (i) pay to the authority the instalments received by the service provider; and
  - (ii) give the authority a notice, in the approved form, about the instalments; and
- (b) for each instalment received after that day—
  - (i) pay the instalment to the authority within 10 days after receiving it; and
  - (ii) give the authority a notice, in the approved form, about the instalment.

Maximum penalty for subsection (4)—40 penalty units.

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

(1) This section applies to the service provider under a residential service agreement if—

- (a) financial protection against a breach of the agreement by the resident is given to the service provider (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 service provider 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 service provider under subsection (2) is taken to be a rental bond.

### **33 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 service provider and resident.

### **34 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.

### **35 Continuance of rental bond**

(1) This section applies if—

- (a) the authority holds a rental bond for a residential service agreement; and
- (b) the agreement ends; and
- (c) the resident continues occupying a room in the rental premises under another residential service agreement (the “**new agreement**”) with the service provider; 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*

#### **36 Purpose of div 2**

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

#### **37 Making payment**

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

#### **38 Application for payment**

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

#### **39 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 service provider and resident; or
- (b) if the application is made by the resident and directs that payment be made to the service provider only; or
- (c) if—
  - (i) there is only 1 rental bond contributor; and
  - (ii) the application is made by the service provider and directs that payment be made to the contributor only.

#### **40 Payment to coresidents on service provider's direction**

(1) This section applies if—

- (a) an application for the payment of a rental bond is made to the authority by the service provider; 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 a 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>8</sup>—
  - (i) apply to a tribunal for an order about the payment; and
  - (ii) give the authority a 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.

#### **41 Payment to service provider on service provider’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 service provider only; and
- (b) the application directs that a payment be made to the service provider.

(2) The authority—

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8 See section 44 (Allowed period for notices).

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

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

- (a) the resident does not, within the allowed period<sup>9</sup>—
  - (i) apply to a tribunal for an order about the payment; and
  - (ii) give the authority a notice (the “**resident’s notice**”) informing it of the application; or
- (b) after the application is made, and the resident’s notice is given, under paragraph (a)—the application is withdrawn.

## **42 Payment to resident on resident’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 resident only; and
- (b) the application directs that a payment be made to the resident.

(2) The authority—

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

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

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9 See section 44 (Allowed period for notices).

- (a) the service provider does not, within the allowed period<sup>10</sup>—
  - (i) apply to a tribunal for an order about the payment; and
  - (ii) give the authority a notice (“**service provider’s notice**”) informing it of the application; or
- (b) after the application is made, and the service provider’s notice is given, under paragraph (a)—the application is withdrawn.

### **43 Payment on coresident’s direction**

(1) This section applies if—

- (a) a rental bond notice for a residential service agreement states there are 2 or more coresidents 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 coresidents; or
  - (ii) jointly by the service provider and 1, or some only, of the coresidents; and
- (c) the application directs that a payment be made to 1 or more of the applicants.

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

- (a) any coresident who is not an applicant (an “**associated person**”); and
- (b) if the service provider is not an applicant—the service provider (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—

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<sup>10</sup> See section 44 (Allowed period for notices).

- (a) an associated person does not, within the allowed period<sup>11</sup>—
  - (i) apply to a tribunal for an order about the payment; and
  - (ii) give the authority a 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.

#### **44 Allowed period for notices**

For sections 40, 41, 42 and 43,<sup>12</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 a regulation—the longer period.

#### **45 Tribunal order about payment**

(1) On an application under this division for an order about the payment of a rental bond, a tribunal may make the order it considers appropriate.

(2) If a tribunal makes an order about payment of a rental bond and the authority is given a copy of the order, the authority must pay the rental bond in accordance with the order.

#### **46 Payment to rental bond supplier**

(1) This section applies if—

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

(2) The authority must pay the rental bond to the person and not the resident.

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11 See section 44 (Allowed period for notices).

12 Sections 40 (Payment to coresidents on service provider’s direction), 41 (Payment to service provider on service provider’s own direction), 42 (Payment to resident on resident’s own direction) and 43 (Payment on coresident’s direction)



**47 Limitation affecting payment**

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

- (a) the service provider or resident has given a notice under part 9<sup>13</sup> ending the residential service agreement on a stated day or the service provider has given the resident a notice under part 9 requiring the resident to leave the rental premises by a stated day; and
- (b) the stated day has not arrived.

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

**48 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 service provider or resident, 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 service provider and resident and one of the parties withdraws from the application, the authority must deal with the application as an application made by the other party.

**49 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 resident, the authority may make the payment to a person other than the resident only if, under the regulations, the person is taken to have contributed to the rental bond.

(3) Subsection (2) is subject to section 46.

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13 Part 9 (Ending of residential service agreements and related matters)

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

### *Division 3—Enforcement provisions*

#### **50 Receipt**

(1) A service provider or service provider'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 resident's name and, if the person receiving the bond is not the service provider, the service provider's name;
- (c) the address of the rental premises for which the bond is paid;
- (d) the date the bond is received;
- (e) the amount of the bond;
- (f) if there are coresidents and the coresidents tell the person receiving the bond the proportions in which the bond is paid—the amount paid by each coresident.

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

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

#### **51 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 the service provider is the resident's employer and gives the resident a rental subsidy—the amount fixed under subsection (2); or
- (a) otherwise—the maximum rental bond for the residential service agreement.

Maximum penalty—20 penalty units.

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

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

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

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

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

(1) If a person is found guilty of an offence against section 30, 31 or 32,<sup>14</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—Miscellaneous*

## **53 Increase in rental bond**

The resident must increase a rental bond if—

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<sup>14</sup> Section 30 (Duty to pay rental bond), 31 (Duty to pay rental bond instalments) or 32 (Duty to pay rental bond if financial protection given)

- (a) the rent payable under the residential service agreement increases; and
- (b) the service provider gives a notice to the resident 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 resident is given the notice about the increase.

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

(1) This section applies if, in the first 6 months of the term of a residential service 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 service provider disputes the amount being treated as a rental bond, the service provider 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 resident on payment of the excess amount to it.

## PART 6—HOUSE RULES

### *Division 1—General*

#### **55 House rules**

(1) House rules are rules about the use, enjoyment, control or management of rental premises.

(2) The house rules in force for rental premises are—

- (a) the prescribed rules that apply to the rental premises; and
- (b) any other house rules made by the service provider under this part.

#### **56 Prescribed rules**

(1) A regulation may prescribe house rules for rental premises (the “prescribed rules”).

(2) A prescribed rule may state that it applies to rental premises subject to another house rule made for the premises under this part by the service provider that deals with a particular circumstance or matter.

*Example—*

A prescribed rule states that a resident must not consume an amount of alcohol in the rental premises that causes the resident to become drunk. The rule also states that it applies subject to any house rule made under this part by the service provider that prohibits the consumption of any alcohol in the rental premises.

(3) Unless it provides otherwise, a prescribed rule applies to all rental premises.

#### **57 Rules made by the service provider**

(1) A service provider may make house rules for rental premises about any of the following matters—

- (a) using shared facilities;
- (b) parking motor vehicles;
- (c) drinking alcohol or illegally consuming other drugs;
- (d) making noise;

- (e) keeping pets;
- (f) another matter prescribed under a regulation.

(2) A rule made under subsection (1) has effect as a house rule for the rental premises only if—

- (a) the rule is consistent with the prescribed rules; and
- (b) the rule is made under division 2.

(3) Subsection (2)(b) does not apply to the making of a rule when there are no residents for the rental premises.

### *Division 2—Rule changes*

#### **58 Meaning of “rule change”**

A reference in this division to making a “**rule change**” for rental premises is a reference to—

- (a) making a new house rule for the premises; or
- (b) amending, revoking or replacing an existing house rule for the premises.

#### **59 Notice of proposed rule change**

(1) Before making a rule change for rental premises, a service provider must give a notice to each resident—

- (a) setting out the proposed change; and
- (b) stating the day when it is proposed the change is to take effect (the “**proposed commencement day**”); and
- (c) stating that the resident may object to the change; and
- (d) stating how the objection may be made.

(2) The notice must be given to a resident—

- (a) at least 7 days before the proposed commencement day; or
- (b) for a person who becomes a resident less than 7 days before the proposed commencement day—when the person becomes a resident.

## **60 Withdrawal of proposed rule change**

If a service provider decides not to proceed with a proposed rule change, the service provider may withdraw the proposed change by giving a notice to each resident to whom a notice under section 59 has been given.

## **61 Objection to proposed rule change**

(1) A resident may object to a proposed rule change if the resident considers the change is unreasonable.

(2) The objection may be made only by giving a notice to the service provider, before the proposed commencement day, stating—

- (a) the resident's name; and
- (b) that the resident objects to the proposed change; and
- (c) why the resident considers the proposed change is unreasonable.

(3) If the service provider does not receive objections from at least half of the residents before the proposed commencement day, and does not withdraw the proposed change under section 60, the change takes effect on the proposed commencement day.

(4) If the service provider receives objections from at least half of the residents before the proposed commencement day—

- (a) the proposed change does not take effect; and
- (b) the service provider must immediately give a notice to each resident stating—
  - (i) that at least half of the residents have objected to the change; and
  - (ii) that the proposed change will not take effect on the proposed commencement day.

## **62 Application to tribunal about proposed rule change**

(1) This section applies if, under section 61(4), a proposed rule change does not take effect.

(2) The service provider may apply to a tribunal for an order declaring the proposed change to be reasonable.

(3) The application may only be made within 7 days after the proposed commencement day for the change.

(4) The application must—

- (a) be accompanied by a copy of each objection to the proposed change given under section 61; and
- (b) state particulars of why the service provider considers the proposed change to be reasonable.

(5) The tribunal may decide the application by—

- (a) declaring the proposed change to be reasonable; or
- (b) amending the proposed change in a way it considers appropriate to make it reasonable; or
- (c) declaring the proposed change to be unreasonable; or
- (d) making any other order it considers appropriate.

(6) If the tribunal makes an order declaring the proposed change to be reasonable or amending it in a way the tribunal considers appropriate to make it reasonable, the proposed change takes effect on the day decided by the tribunal.

(7) As soon as practicable after the tribunal decides the application, the service provider must give a notice of the decision to each resident of the rental premises.

### *Division 3—Publication of house rules*

#### **63 Proposed resident to be given a copy of house rules**

The service provider for rental premises must not enter into a residential service agreement to provide accommodation in the premises to a person unless the service provider has given the person a copy of the house rules for the premises.

Maximum penalty—10 penalty units.



## **64 Display of house rules**

The service provider for rental premises must ensure a copy of the house rules for the premises is displayed, at all times, at a place in the rental premises where it is likely to be seen by the residents.

Maximum penalty—10 penalty units.

## **PART 7—ENTRY TO RESIDENTS' ROOMS**

### **65 Unauthorised entry to resident's room**

The service provider for a residential service must not enter a resident's room in the rental premises other than under this part.

Maximum penalty—10 penalty units.

### **66 Entry with resident's agreement**

(1) The service provider may enter the resident's room, for any reason, if the resident agrees.

*Examples of resident's agreement to entry—*

1. The service provider orally asks to enter the resident's room and the resident orally agrees.
2. The residential service agreement states times at which the service provider may enter the room each week to carry out cleaning.

(2) If the service provider has agreed to provide a service other than accommodation to the resident, the service provider may enter the resident's room at the times that are reasonably necessary to provide the service.

### **67 Entry to carry out inspection**

(1) The service provider may enter the resident's room, at a reasonable time, to inspect the room.

(2) The service provider must give a notice of the proposed entry to the resident at least 48 hours before the entry.

(3) An entry may not be made under this section more than once each month.

## **68 Entry after giving notice**

(1) The service provider may enter the resident's room, at a reasonable time—

- (a) to clean the room; or
- (b) to carry out pest control in the room; or
- (c) to make routine repairs to, or carry out maintenance of, the room or another part of the rental premises; or
- (d) to show the room to a prospective purchaser or resident; or
- (e) to allow a valuation of the rental premises to be carried out.

(2) The service provider must give a notice of the proposed entry to the resident at least 24 hours before the entry.

(3) A notice under subsection (2)—

- (a) may relate to more than 1 proposed entry to a room; and
- (b) may relate to entry to more than 1 room; and
- (c) if it relates to entry to more than 1 room—may be given by posting it, at least 24 hours before the entry, or first entry, to which it relates, on a notice board or other place in the rental premises where it is likely to be seen by the residents to whom it is given.

*Example for subsection (3)—*

The service provider may post a notice stating the times at which entry is proposed to be made each week to residents' rooms to clean the rooms.

## **69 Entry without notice**

The service provider may enter the resident's room without notice—

- (a) in an emergency; or
- (b) if the service provider reasonably believes the room has been abandoned;<sup>15</sup> or

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<sup>15</sup> See section 126 (Indications a resident has abandoned a room).

- (c) to carry out urgent repairs to the rental premises or a facility in the rental premises.

*Examples for paragraph (c)—*

1. To repair a facility for providing gas, electricity or water.
2. To carry out repairs to prevent imminent flooding or water damage.
3. To make emergency repairs to the roof of the rental premises.
4. To repair a fault or damage that makes the rental premises unsafe or insecure or is likely to unreasonably disrupt a resident's appropriate use of the premises.

## **70 General qualifications about entry**

(1) Immediately before entering the resident's room, the service provider must tell the resident about the proposed entry, unless the resident is not in or near the room at the time.

(2) After entering the resident's room, the service provider—

- (a) must preserve, as far as practicable, the resident's privacy; and
- (b) must not remain in the room for longer than is reasonably necessary to carry out the purpose of the entry.

## **71 Entry by service provider's agent or other person**

(1) A reference in this part to the service provider includes an agent of the service provider.

(2) However, if—

- (a) an agent of the service provider proposes to enter or remain in the resident's room under this part; and
- (b) the agent is not accompanied by the service provider; and
- (c) the agent is not a person to whom the resident normally pays the rent; and
- (d) the resident asks for written evidence of the agent's appointment;

the agent must not enter or remain in the room without producing the evidence.

(3) The service provider may enter the resident's room under this part with someone else as far as is necessary to achieve the purpose of the entry.

## **PART 8—CONDITION REPORTS**

### **72 Application of pt 8**

This part applies to the service provider and resident under a residential service agreement only if a rental bond is payable, or has been paid, under the agreement.

### **73 Condition report at start of residency**

(1) Before providing accommodation to the resident in a room in the rental premises, the service provider must—

- (a) prepare, in the approved form, a condition report for the room and the facilities in the room; and
- (b) sign the report; and
- (c) give 2 copies of the report to the resident.

Maximum penalty—10 penalty units.

(2) Within 3 days after starting to reside in the room, the resident must—

- (a) if the resident does not agree with the report—show the parts of the report the resident disagrees with by marking the copies in an appropriate way; and
- (b) sign the copies; and
- (c) return a copy to the service provider or the service provider's agent.<sup>16</sup>

(3) However, if the service provider has not given the copies of the report to the resident before the resident starts to reside in the room, subsection (2) applies to the resident as if a reference to starting to reside in the room were a reference to receiving the copies.

(4) The service provider must keep, until at least 2 years after the residential service agreement ends—

- (a) the signed copy of the report returned to the service provider or the service provider's agent; or

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<sup>16</sup> For the effect of the resident's obligation under this subsection, see sections 11(e), 73(4) and 74.

- (b) if the resident does not comply with subsection (2)(c)—another copy of the report.

Maximum penalty—10 penalty units.

(5) In this section—

“**resident**”, in relation to rental premises, includes a person who proposes to be a resident of the premises.

## **74 Evidentiary provision**

(1) In a proceeding before a tribunal, a copy of a condition report stating the condition of a room in rental premises and the facilities in the room is evidence of the condition of the room and facilities—

- (a) if the report is signed by the resident—when the report was signed; or
- (b) otherwise—when the report was made.

(2) However, if the report is signed by the resident and marked to show the resident’s disagreement with the statement, the report is evidence of the condition of the room and facilities when the report was signed by the resident only as far as its contents are unmarked.

# **PART 9—ENDING OF RESIDENTIAL SERVICE AGREEMENTS AND RELATED MATTERS**

## *Division 1—General*

### **75 Ending of agreement**

(1) A residential service agreement ends only in a way mentioned in this section.

(2) A residential service agreement ends by written agreement of the service provider and resident.

(3) If a service provider gives a resident a notice under this part requiring the resident to leave the rental premises by a stated day—

- (a) the agreement ends on the stated day if the resident leaves on or before that day; or
- (b) otherwise, the agreement ends on the day the resident leaves.

(4) If a party to a residential service agreement gives a notice under this part ending the agreement on a stated day, the agreement ends on the stated day.

(5) A residential service agreement ends if the resident has abandoned the resident's room<sup>17</sup> and the period for which the rent has been paid has ended.

## **76 Purporting to end agreement in unauthorised way**

A service provider must not purport to end a residential service agreement other than in a way the agreement may be ended under this part. Maximum penalty—40 penalty units.

### *Division 2—Action by service provider*

## **77 Notice to remedy breach**

(1) This section applies if a service provider reasonably believes that a resident has breached the residential service agreement and that the breach has not been remedied.

(2) The service provider may give the resident a notice requiring the resident to remedy the breach.

(3) The notice must—

- (a) be in the approved form; and
- (b) give particulars of the breach; and
- (c) state the day (the “**due day**”) by which the resident must remedy the breach; and
- (d) be signed by the service provider.

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<sup>17</sup> See section 126 (Indications a resident has abandoned a room).

(4) The notice may also state the steps that the service provider reasonably believes are necessary to remedy the breach or avoid a further breach of the residential service agreement.

(5) The due day must not be earlier than—

- (a) if the breach is nonpayment of rent and, at the time the rent was due, the resident had been a resident of the rental premises for less than 28 days—2 days after the notice is given; or
- (b) if the breach is nonpayment of rent and paragraph (a) does not apply—4 days after the notice is given; or
- (c) otherwise—5 days after the notice is given.

(6) This section does not apply to a breach comprising nonpayment of rent if—

- (a) when the rent was due, the resident had been a resident of the rental premises for at least 28 days; and
- (b) the rent has remained unpaid in breach of the agreement for less than 2 days.

## **78 Notice to leave because of failure to remedy breach**

(1) A service provider may give to a resident a notice requiring the resident to leave the rental premises if—

- (a) the service provider reasonably believes the resident has breached the residential service agreement; and
- (b) the service provider has given the resident a notice under section 77 requiring the resident to remedy the breach by a stated due day; and
- (c) the due day has passed; and
- (d) the service provider reasonably believes that—
  - (i) the breach has not been remedied; or
  - (ii) after the notice was given and before the due day, the resident repeated the breach and has not remedied the repeated breach.

(2) The notice must—

- (a) be in the approved form; and

- (b) state why the resident is being required to leave the premises; and
- (c) state the day by which the resident must leave the premises; and
- (d) be signed by the service provider.

(3) If the breach is nonpayment of rent and, at the time the rent was due, the resident had been a resident of the rental premises for less than 28 days, the resident may be required to leave immediately.

(4) Otherwise, the day by which the resident is required to leave the premises must not be less than—

- (a) if the breach is nonpayment of rent—4 days after the notice is given; or
- (b) otherwise—2 days after the notice is given.

(5) The service provider may withdraw the notice at any time before the resident leaves.

## **79 Notice to leave immediately because of serious breach**

(1) A service provider may give to a resident a notice requiring the resident to leave the rental premises immediately if the service provider reasonably believes—

- (a) the resident has used the resident's room or common areas for an illegal purpose; or
- (b) the resident, or a guest of the resident, has intentionally or recklessly—
  - (i) destroyed or seriously damaged a part of the rental premises or a facility in the rental premises; or
  - (ii) endangered another person in the rental premises; or
  - (iii) significantly interfered with the reasonable peace, comfort or privacy of another resident or another resident's appropriate use of the other resident's room or common areas.

(2) The notice must—

- (a) state why the resident is being required to leave the premises; and
- (b) be signed by the service provider.



**80 Notice to leave if premises destroyed etc.**

(1) A service provider may give to a resident a notice requiring the resident to leave the rental premises because the premises—

- (a) have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the residential service agreement by the service provider; or
- (b) no longer may be used lawfully as a residence; or
- (c) have been appropriated or acquired compulsorily under a law.

(2) The notice may only be given within 1 month after the happening of the event mentioned in subsection (1).

(3) The notice must—

- (a) be in the approved form; and
- (b) state why the resident is being required to leave the premises; and
- (c) state the day by which the resident must leave the premises; and
- (d) be signed by the service provider.

(4) If the notice is given under subsection (1)(a) or (b), the resident may be required to leave immediately.

(5) If the notice is given under subsection (1)(c), the day by which the resident must leave the premises must not be less than 2 months after the notice is given.

**81 Ending of agreement by service provider without ground**

(1) A service provider may end a periodic agreement by giving at least 30 days notice to the resident.

(2) A service provider may end a fixed term agreement by giving the resident a notice stating the day, not before the end of the term and not less than 14 days after the notice is given, on which the agreement ends.

(3) A notice under this section must state the day the resident is required to leave the rental premises.

(4) However, the service provider may not give a notice to a resident under this section because—

- (a) the resident has applied, or is proposing to apply, to a tribunal for an order under this Act; or

- (b) the resident has complained to a government entity about an act or omission of the service provider adversely affecting the resident or another resident of the rental premises; or
- (c) the resident has taken some other action to enforce the resident's rights or the rights of another resident of the rental premises; or
- (d) an order of a tribunal is in force relating to the service provider and resident.

## **82 Power to remove resident**

(1) This section applies if—

- (a) a service provider has given a resident a notice under this part requiring the resident to leave the rental premises and the due day for leaving has passed; or
- (b) a service provider has given a resident a notice under this part ending the residential service agreement and the agreement has ended.

(2) If the resident refuses to leave the premises, it is lawful for the service provider and anyone helping the service provider to use necessary and reasonable force to remove the resident and the resident's property from the rental premises.

(3) However, the service provider or someone helping the service provider may use force under subsection (2) only while a police officer is present.<sup>18</sup>

(4) For exercising a power under subsection (2), the service provider or other person may enter the resident's room.

(5) The force that may be used under subsection (2) does not include force that is likely to cause bodily harm to the resident or damage the resident's property.

(6) In this section—

**“bodily harm”** means any bodily injury that interferes with health or comfort.

**“due day”**, for leaving rental premises, means—

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<sup>18</sup> See *Police Powers and Responsibilities Act 2000*, section 372B (Attendance at rental premises while person or property is removed).

- (a) for a notice requiring a resident to leave by a stated day—the stated day; or
- (b) for a notice requiring a resident to leave immediately—the day on which the notice is given.

### *Division 3—Action by resident*

#### **83 Notice to remedy breach**

(1) This section applies if a resident reasonably believes that the service provider has breached the residential service agreement and that the breach has not been remedied.

(2) The resident may give the service provider a notice requiring the service provider to remedy the breach.

(3) The notice must—

- (a) be in the approved form; and
- (b) give particulars of the breach; and
- (c) state the day (the “**due day**”), not earlier than 5 days after the notice is given, by which the service provider must remedy the breach; and
- (d) be signed by the resident.

#### **84 Notice ending fixed term agreement because of failure to remedy breach**

(1) A resident under a fixed term agreement may give the service provider a notice ending the agreement before the end of the fixed term if—

- (a) the resident reasonably believes the service provider has breached the agreement; and
- (b) the resident has given the service provider a notice under section 83 requiring the service provider to remedy the breach by a stated due day; and
- (c) the due day has passed; and
- (d) the resident reasonably believes that—
  - (i) the breach has not been remedied; or

- (ii) after the notice was given and before the due day, the service provider repeated the breach and has not remedied the repeated breach.

(2) The notice must—

- (a) be in the approved form; and
- (b) state why the resident is ending the agreement; and
- (c) state the day, not earlier than 7 days after the notice is given, on which the resident is ending the agreement; and
- (d) be signed by the resident.

### **85 Notice ending agreement if premises destroyed etc.**

(1) A resident may give the service provider a notice ending the residential service agreement because the resident's room or common areas have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the residential service agreement by the resident.

(2) The notice may only be given within 1 month after the happening of the event mentioned in subsection (1).

(3) The notice must—

- (a) be in the approved form; and
- (b) state why the resident is ending the agreement; and
- (c) state the day on which the agreement is ended; and
- (d) be signed by the resident.

(4) The notice may end the agreement immediately.

### **86 Ending of agreement by resident without ground**

A resident may end a periodic agreement by giving at least 7 days notice to the service provider.

*Division 4—Continuation of fixed term agreements***87 Continuation of fixed term agreement**

(1) This section applies to a residential service agreement if—

- (a) under the agreement, accommodation is provided to the resident for a fixed term; and
- (b) the agreement does not provide for its continuance after the last day of the term (the “**end day**”); and
- (c) neither the service provider nor the resident gives the other party a notice under this part ending the agreement; and
- (d) the resident continues to occupy the resident’s room after the end day.

(2) The agreement continues to apply after the end day, as a periodic agreement, on the same terms on which it applied immediately before the end day other than the term about the fixed term.

(3) This section does not stop the service provider and resident from entering into another residential service agreement starting at the end of the fixed term.

*Division 5—Goods or money left behind in premises***88 Application of div 5**

This division applies if—

- (a) a residential service agreement ends; and
- (b) money, a personal document or another item belonging, or apparently belonging, to the former resident (the “**lost property**”) is left at the rental premises.

**89 Unauthorised dealing with lost property**

The service provider must not dispose of, or otherwise deal with, the lost property other than under this division, unless the service provider has a reasonable excuse.

Maximum penalty—40 penalty units.

**90 Personal document or money**

(1) This section applies if the lost property is a personal document or money.

(2) The service provider must—

- (a) make reasonable efforts to contact the former resident about the property; and
- (b) store the property safely for at least 28 days, unless it is reclaimed before that time.

(3) If, at the end of 28 days, the property has not been reclaimed, the service provider must give it to the public trustee.

(4) However, if the lost property is money and has not been reclaimed after 28 days, the service provider may deduct any outstanding amount owed by the former resident under the residential service agreement before giving the remainder to the public trustee.

**91 Item other than personal document or money**

(1) This section applies if the lost property is not a personal document or money.

(2) The service provider may sell the property, or dispose of it in another way, if the service provider reasonably believes—

- (a) it is perishable; or
- (b) its value is less than the amount prescribed under a regulation for this subsection.

(3) Otherwise, the service provider must—

- (a) make reasonable efforts to contact the former resident about the property; and
- (b) store the property safely for at least 28 days, unless it is reclaimed within that time.

(4) If, at the end of 28 days, the property has not been reclaimed, the service provider must—

- (a) continue to store the property for the former resident; or
- (b) sell the property after advertising it in a newspaper circulating generally in the area in which the rental premises are situated.

(5) However, if the service provider reasonably believes the value of the property is less than the amount prescribed under a regulation for this subsection, the service provider may donate the property to charity instead of selling it under subsection (4)(b).

(6) If the person entitled to the property claims it before it is disposed of under this section, and pays the reasonable costs incurred by the service provider under this section, the service provider must give the property to the person.

(7) If the service provider sells the property under this section, the proceeds must be applied—

- (a) in payment of the reasonable costs incurred by the service provider under this section; and
- (b) in payment of any outstanding amount owed by the former resident under the residential service agreement; and
- (c) in payment of any balance—
  - (i) if the person entitled to the property has been located by the time of the sale—to the person; or
  - (ii) otherwise—to the public trustee.

## **92 Personal document given to public trustee**

(1) This section applies if a service provider gives a personal document to the public trustee under section 90.

(2) The public trustee must keep the document for at least 6 months, unless it is reclaimed within that time.

(3) If, at the end of the 6 months, the document has not been reclaimed, the public trustee may deal with it in any way the public trustee considers appropriate.

## **93 Money given to public trustee**

(1) This section applies if a service provider gives an amount to the public trustee under section 90 or 91.

(2) The public trustee must pay the amount into the unclaimed moneys fund kept under the *Public Trustee Act 1978*.

(3) The public trustee may, on application by the service provider, pay an amount to the service provider from the fund—

- (a) in payment of the reasonable expenses incurred by the service provider under this division relating to the lost property; or
- (b) in payment of any outstanding amount owed by the former resident under the residential service agreement.

(4) On application made to a tribunal by the service provider, the tribunal may make an order conferring on the service provider an entitlement to receive, from the fund, an amount mentioned in subsection (3)(a) or (b).

(5) An amount paid by the public trustee under subsection (3) or an amount to which an order relates under subsection (4) may not be more than the amount given to the public trustee under section 90 or 91.

#### **94 Application to tribunal about lost property**

(1) This section applies if the person entitled to the lost property is dissatisfied with the way the service provider has dealt with it or is dealing with it.

(2) The 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 service provider to pay to the person an amount it considers appropriate as compensation for any loss or expense incurred by the person because of the service provider's action in dealing with the property; or
- (b) make any other order it considers appropriate.

### **PART 10—CONCILIATION OF SERVICE DISPUTES**

#### *Division 1—Preliminary*

#### **95 Service dispute**

This part applies if—



- (a) there is an issue in dispute relating to a residential service agreement (a “**service dispute**”); and
- (b) the service provider and resident have been unable to resolve the service dispute through negotiation or, if there is a dispute resolution process operating for the residential service, by using that process.

### ***Division 2—Conciliation***

#### **96 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 6,<sup>19</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.

#### **97 Some matters not suitable for conciliation**

(1) The authority may refuse to provide a conciliation service to parties to a service dispute if the authority considers the dispute is unsuitable for conciliation.

(2) The authority may refuse to provide a conciliation service to parties to a service dispute about the provision of a food service or a personal care service to the resident under a residential service agreement.

#### **98 Functions of conciliator**

The functions of a conciliator under this Act are—

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<sup>19</sup> Division 6 (Confidentiality, privilege and immunity)

- (a) to encourage the settlement of a service 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 the settlement of the dispute; and
- (d) to help in the settlement of the dispute in any other appropriate way.

*Examples of facilitating and helping to conduct negotiations—*

1. Facilitating telephone conferencing.
2. Interviewing the parties, together or separately.

### ***Division 3—Starting the conciliation process***

#### **99 Making dispute resolution request**

(1) The service provider or a resident under a residential service agreement may make a request (a “**dispute resolution request**”) to the authority asking it to try to resolve a service dispute.

(2) The dispute resolution request must be in the approved form.

#### **100 Action to be taken on dispute resolution request**

(1) As soon as practicable after receiving a dispute resolution request, the authority must start a conciliation process for the parties to the service dispute.

(2) However, if the authority considers the service dispute is not suitable for conciliation, it may give a notice to the parties that the dispute is not suitable for conciliation.

***Division 4—Conduct of conciliation process*****101 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 person who made the request has paid the prescribed fee to the authority.

(3) However, the authority may waive the fee if it is satisfied in all the circumstances it would be unreasonable to impose a fee.

**102 Limited right of representation**

(1) During the conciliation process, each party to the service dispute must conduct the party's own case.

(2) However, a party may be represented by a person if—

(a) the party is a corporation or the conciliator is satisfied, and continues to be satisfied, a person should be allowed to represent the party; and

(b) the representative is approved by the conciliator.

**103 Party's participation in conciliation process not compellable**

(1) A party to the service dispute can not be compelled to participate in the conciliation process.

(2) A party may withdraw from the conciliation process at any time.

(3) The conciliation process may be ended at any time by the conciliator.

**104 Parties to conciliation process**

(1) A person who is not a party to the service 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.

**105 Conciliation agreement**

(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 the parties.

(3) The agreement must not be inconsistent with this Act.<sup>20</sup>

***Division 5—Withdrawal of dispute*****106 Withdrawal of dispute**

(1) A person may, by giving a notice 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 service dispute.

***Division 6—Confidentiality, privilege and immunity*****107 Conciliator 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) Subsection (1) does not apply to the disclosure of information—

- (a) with the agreement of all parties to the service 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

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<sup>20</sup> Under section 11(d), the terms of the agreement are taken to be included as part of the residential service agreement.

- (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.

### **108 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 a party's representative, appearing during the conciliation process for a service 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 process it would have if produced before the Supreme Court.

### **109 Admission made in conciliation process**

(1) Evidence of anything said or an admission made during the conciliation process for a service 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 this section—

**“proceeding”** does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.

## PART 11—APPLICATIONS TO TRIBUNALS

### *Division 1—Preliminary*

#### **110 Dispute resolution request required before applying to tribunal**

(1) The service provider or resident under a residential service agreement may apply under this Act to a tribunal about an issue only if the applicant has first made a dispute resolution request about the issue and—

- (a) the conciliation process has ended without a conciliated resolution having been reached, because—
  - (i) the authority refuses to provide a conciliation service about the issue;<sup>21</sup> or
  - (ii) a party refuses to participate, or continue to participate, in the conciliation process;<sup>22</sup> or
  - (iii) the parties participate in the conciliation process but do not reach an agreement on resolving the dispute; or
- (b) a conciliated resolution is reached but the applicant reasonably believes the other party has breached the conciliation agreement.

(2) This section does not apply to an application under section 112.

#### **111 Reference to making 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 service provider or resident under a residential service 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 to the authority about the dispute issue.

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21 See section 97 (Some matters not suitable for conciliation).

22 See section 103 (Party’s participation in conciliation process not compellable).

## ***Division 2—General powers of tribunals***

### **112 Application of Act to agreement**

(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 service agreement.

(2) The tribunal may allow the authority to intervene in, or support, an application under subsection (1).

### **113 Application about breach of agreement**

(1) The service provider or a resident under a residential service agreement who claims there has been a breach of the agreement may apply to a tribunal for an order about the breach.

(2) The application may only be made within 6 months after the service provider or resident becomes aware of the breach.

(3) The application may be made—

- (a) during the term of the agreement or after the agreement has ended; and
- (b) whether or not the authority is holding a rental bond for the agreement when the application is made.

### **114 Orders about breach of agreement**

(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;
- (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 of compensation.

(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 service provider, 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 ended because of the resident's action and ending—
  - (i) when the period fixed as the term of the accommodation ends; or
  - (ii) if the resident's room is relet before the end of the period mentioned in subparagraph (i)—when the room is relet;
- (b) advertising expenses incurred by the service provider for reletting the resident's room;
- (c) other expenses incurred by the service provider for work carried out by the service provider for reletting the resident's room;
- (d) whether the service provider has taken all reasonable steps to mitigate the loss or expense.

### **115 Dispute about resident's notice**

(1) This section applies if a resident gives to the service provider—

- (a) a notice under section 83 requiring the service provider to remedy a breach; or
- (b) a notice under this Act ending the residential service agreement, other than a notice under section 86.<sup>23</sup>

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23 Section 86 (Ending of agreement by resident without ground)



(2) If the service provider disputes the ground stated in the notice, the service provider may apply to a tribunal for an order about the notice.

(3) If the tribunal is satisfied the resident was not entitled to give the notice on the ground stated, it may make an order under this section.

(4) If the tribunal decides the application before the agreement ends, it may make any order it considers appropriate.

(5) If the tribunal decides the application after the agreement is ended because of the resident's action, it may make an order requiring the resident to pay to the service provider an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the service provider by the resident ending the agreement.

### **116 Dispute about service provider's notice**

(1) This section applies if a service provider gives to a resident—

- (a) a notice under section 77 requiring the resident to remedy a breach; or
- (b) a notice requiring the resident to leave the rental premises, other than a notice under section 81.<sup>24</sup>

(2) If the resident disputes the ground stated in the notice, the resident may apply to a tribunal for an order about the notice.

(3) If the tribunal is satisfied the service provider was not entitled to give the notice on the ground stated, it may make an order under this section.

(4) If the tribunal decides the application before the agreement ends, it may make any order it considers appropriate.

(5) If the tribunal decides the application after the agreement is ended because of the service provider's action, it may make an order requiring the service provider to pay to the resident an amount it considers appropriate as compensation for any loss or expense incurred by the resident for having to leave the rental premises.

### **117 Dispute about entry to resident's room or removal of resident**

(1) This section applies if a resident claims the service provider or someone helping the service provider has—

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24 Section 81 (Ending of agreement by service provider without ground)

- (a) unlawfully entered the resident's room; or
- (b) unlawfully removed the resident or the resident's property from the rental premises.

(2) The resident may apply to a tribunal for an order.

(3) The application may only be made within 6 months after the happening of the event mentioned in subsection (1).

(4) The application may be made during the term of the agreement or after the agreement has ended.

(5) The tribunal may make any order it considers appropriate, including an order for compensation.

### **118 Application to end fixed term agreement because of excessive hardship**

(1) The service provider or a resident under a fixed term agreement may apply to a tribunal for an order ending the agreement because the applicant would suffer excessive hardship if the agreement were not terminated.

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

(3) If the tribunal makes the order, it may also make any other order it considers appropriate including, for example, an order that the applicant pay compensation to the other party.

### **119 General dispute between service provider and resident**

If there is a dispute between the service provider and a resident under a residential service agreement about the 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.

### **120 Disputes between coresidents about rental bonds**

(1) If there is a dispute between coresidents about a rental bond for a residential service agreement, any coresident 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 service provider an opportunity to be heard on the application.

### **121 Other powers**

A tribunal also has the powers given by sections 22, 45, 54, 62, 93 and 94.<sup>25</sup>

### **122 Different applications may be decided together**

If different applications about a residential service agreement are made to a tribunal by the service provider and the resident, or either of them, the tribunal may consider and decide the applications at the same time.

## **PART 12—PROCEEDINGS**

### *Division 1—Evidence*

### **123 Rental bonds**

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 residential service agreement is evidence of the matter stated.

### **124 Accreditation Act matters**

A certificate, purporting to be signed by the chief executive of the department in which the accreditation Act is administered, stating any of the following matters is evidence of the matter—

- (a) on a stated day, or during a stated period, a residential service was or was not registered under that Act;

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<sup>25</sup> Sections 22 (Rent decreases), 45 (Tribunal order about payment), 54 (Rental bond resulting from rent decrease), 62 (Application to tribunal about proposed rule change), 93 (Money given to public trustee) and 94 (Application to tribunal about lost property),

- (b) on a stated day, or during a stated period, a stated person was or was not registered as the service provider for a registered service;
- (c) on a stated day, or during a stated period, premises were or were not registered as premises in which a registered service is conducted.

### **125 Other evidentiary aids**

(1) A certificate signed by the chief executive officer, the chairperson or an authorised person, and stating any of the following matters is evidence of the matter—

- (a) a stated document is—
  - (i) a notice, or a copy of a notice, given under this Act; or
  - (ii) a record, or a copy of a record, kept under this Act; or
  - (iii) 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 under this Act.

(2) A certificate purporting to be signed by a registrar under the *Small Claims Tribunals Act 1973*, stating that a stated document is an order, or a copy of an order, made by a tribunal under this Act, is evidence of the matter.

### **126 Indications a resident has abandoned a room**

(1) A tribunal may have regard to the matters stated in subsection (2) in—

- (a) deciding under section 69(b)<sup>26</sup> whether, at a particular time, a service provider held a reasonable belief that a resident had abandoned the resident's room; or
- (b) deciding under section 75(5)<sup>27</sup> whether, at a particular time, a resident had abandoned the resident's room.

(2) Indications that a resident has abandoned the resident's room include the following—

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26 Section 69 (Entry without notice)

27 Section 75 (Ending of agreement)

- (a) a failure of the resident to pay rent under the residential service agreement;
- (b) the presence at the rental premises of uncollected mail, newspapers or other material for the resident;
- (c) reports from other residents or other persons indicating the resident has abandoned the room;
- (d) the absence of household goods in the room;
- (e) a failure of the resident to respond to a notice given to the resident under part 7 about a proposed entry to the room.

### *Division 2—Offence proceedings*

#### **127 Summary proceedings for offence**

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) A proceeding for an offence against section 30 or 31<sup>28</sup> must start—

- (a) within 1 year after the offence comes to the complainant's knowledge; and
- (b) during the currency of the residential service agreement for which the rental bond or rental bond instalment is paid or within 1 year after the end of the agreement.

(3) A proceeding for an offence against a provision other than section 30 or 31 must start within 1 year after the offence comes to the complainant's knowledge and within 2 years after the offence is committed.

#### **128 Statement of complainant's knowledge**

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

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28 Section 30 (Duty to pay rental bond) or 31 (Duty to pay rental bond instalments)

**129 False or misleading entry or document**

In a proceeding for an offence against section 20(1)(a) or 132,<sup>29</sup> it is enough for a charge to state that the relevant entry or document was, without specifying which, ‘false or misleading’.

**130 Responsibility for act or omission of representative**

(1) This section applies in a proceeding for an offence against this Act.

(2) If 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 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.

(3) An act 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 to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

“**representative**” means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

“**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.

**131 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

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<sup>29</sup> Section 20 (False, misleading or incomplete rent record) or 132 (False or misleading documents)

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

(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 exercised reasonable diligence 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.

### **132 False or misleading documents**

(1) A person must not give the authority a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authority, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

## PART 13—MISCELLANEOUS

### 133 Giving notice to resident with impaired capacity

(1) This section applies if—

- (a) the service provider for a residential service knows that 1 or more administrators for a financial matter have been appointed under the *Guardianship and Administration Act 2000* for a resident of the residential service; or
- (b) the service provider for a residential service reasonably considers a resident of the residential service is a person with impaired capacity for a financial matter and the service provider knows that 1 or more attorneys for a financial matter have been appointed by the resident under an enduring power of attorney under the *Powers of Attorney Act 1998*.

(2) If a provision of this Act requires the service provider to give a notice to the resident—

- (a) the service provider must instead give the notice to the person appointed or, if more than 1 person has been appointed, to any 1 of the persons appointed; and
- (b) the giving of a notice under paragraph (a) is sufficient compliance with the provision.

(3) In this section—

“**financial matters**” see the *Guardianship and Administration Act 2000*, schedule 2, section 1.

“**person with impaired capacity**”, for a financial matter, means a person who is incapable of—

- (a) understanding the nature and effect of decisions about the matter; or
- (b) freely and voluntarily making decisions about the matter; or
- (c) communicating the decisions in some way.

### 134 Applications for more than prescribed amount

(1) This section applies to an application if—



- (a) a provision of this Act provides that the application may be made to a tribunal; and
- (b) the application seeks the payment of an amount (the “**application amount**”) greater than the prescribed amount under the *Small Claims Tribunals Act 1973*, section 4(1).

(2) In a provision of this Act about the application, a reference to a tribunal is taken to be a reference to a court with jurisdiction for the application amount.

(3) A provision of this Act about the application applies with necessary changes as if the tribunal were the court.

### **135 Reporting a matter relating to the accreditation Act**

(1) This section applies to a person if—

- (a) the person is an authorised person, a public service officer in the department or an officer of the authority; and
- (b) in the course of carrying out a function or exercising a power under this Act, the person becomes aware of a matter that the person reasonably believes is a contravention of the accreditation Act or is relevant to a decision under that Act about the registration or accreditation of a residential service.

(2) The person must report the matter to the chief executive of the department within which that Act is administered, unless—

- (a) the person knows, or reasonably supposes, that the chief executive of that department is aware of the matter; or
- (b) the person reasonably believes the matter is a trivial contravention of the accreditation Act or of minor relevance to a decision under that Act about the registration or accreditation of a residential service.

### **136 Confidentiality**

(1) This section applies to a person—

- (a) who is, or has been, the chief executive officer, a member of the authority’s board of directors, an employee of the authority or an authorised person; and

- (b) who, in the course of administering this Act or because of opportunity provided by involvement in administering this Act—
  - (i) acquired confidential information about someone else; or
  - (ii) gained access to a document containing confidential information about someone else.

(2) The person must not make a record of the information, disclose the information to anyone else or give access to the document containing the information to anyone else, other than—

- (a) for a purpose of this Act; or
- (b) with the consent of the person to whom the information relates; or
- (c) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- (d) as expressly permitted or required by another Act.

Maximum penalty—50 penalty units.

(3) In this section—

**“confidential information”** means information about a person’s affairs, including the person’s criminal history, but does not include—

- (a) information that is publicly available; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom it relates.

### **137 Approved forms**

The chief executive officer may approve forms for use under this Act.

### **138 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may—

- (a) impose a fee; or
- (b) impose a penalty of not more than 20 penalty units for a contravention of a regulation.

**139 Transitional—continuing agreements**

(1) This section applies to a residential service agreement in force immediately before the commencement day.

(2) Section 16<sup>30</sup> does not apply to the agreement until—

- (a) for a written fixed term agreement—the day that is 1 year after the commencement day; or
- (b) otherwise—the day that is 6 months after the commencement day.

(3) An amount paid under the agreement before the commencement day is taken to be a rental bond if, at the time of payment, the amount was a rental bond under the *Residential Tenancies Act 1994*.

(4) If the service provider received 1 or more rental bond instalments under the agreement before the commencement day that, on the commencement day, have not been paid to the authority, section 31(4)<sup>31</sup> applies to the service provider as if a reference to the day that is 3 months after the service provider receives the first rental bond instalment were a reference to the day that is 3 months after the commencement day.

(5) In this section—

“**commencement day**” means the day this section commences.

**PART 14—AMENDMENTS*****Division 1—Amendment of Police Powers and Responsibilities Act 2000*****140 Act amended in div 1**

This division amends the *Police Powers and Responsibilities Act 2000*.

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30 Section 16 (Written agreement)

31 Section 31 (Duty to pay rental bond instalments)

**141 Insertion of new s 372B**

Before section 373—

*insert—*

**‘372B Attendance at rental premises while person or property is removed**

‘(1) At the request of a service provider, a police officer may enter and stay in a person’s room in rental premises while the service provider, or someone helping the service provider, exercises a power under the *Residential Services (Accommodation) Act 2002*, section 82<sup>32</sup> to remove the person or the person’s property from the rental premises.

‘(2) Subsection (1) does not limit any other power of the police officer under another Act or law.

‘(3) In this section—

“**rental premises**” means premises in which a residential service is being conducted.

“**residential service**” see the *Residential Services (Accreditation) Act 2002*, section 4.

“**service provider**” means a person conducting a residential service.’.

***Division 2—Amendments of Property Agents and Motor Dealers Act 2000*****142 Act amended in div 2**

This division amends the *Property Agents and Motor Dealers Act 2000*.

**143 Amendment of s 125 (Acting as restricted letting agent)**

Section 125—

*insert—*

‘(3) A person does not act as a restricted letting agent only because the person collects rents for the service provider for a residential service, as an

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32 *Residential Services (Accommodation) Act 2002*, section 82 (Power to remove resident)

employee of the service provider, if the rents are collected in the course of the conduct of the service.’.

#### **144 Amendment of s 160 (Acting as real estate agent)**

Section 160(4)(a)—

*omit, insert—*

- ‘(a) a person does not act as a real estate agent only because the person—
- (i) collects rents for a real estate agent as an employee of the agent; or
  - (ii) collects rents for the service provider for a residential service, as an employee of the service provider, if the rents are collected in the course of the conduct of the service; and’.

#### **145 Amendment of sch 3 (Dictionary)**

Schedule 3—

*insert—*

‘ **“residential service”** see the *Residential Services (Accreditation) Act 2002*, section 4.

**“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.’.

#### ***Division 3—Amendments of Residential Tenancies Act 1994***

#### **146 Act amended in div 3**

This division amends the *Residential Tenancies Act 1994*.

**147 Replacement of s 22 (Boarders and lodgers)**

Section 22—

*omit, insert—*

**‘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.’.

**148 Amendment of s 55 (Seizure of tenant’s goods for rent etc.)**

Section 55(2)—

*omit, insert—*

‘(2) However, subsection (1) does not apply to the seizure or disposal of goods under section 230A<sup>33</sup> or an enforcement warrant.’.

**149 Amendment of s 78 (Order for payment if guilty of offence)**

Section 78(1), ‘section 59 or 60,’—

*omit, insert—*

‘section 59, 59A or 60,<sup>34</sup>’.

**150 Amendment of s 80 (Rental bond account)**

(1) Section 80(1), after ‘receives’—

*insert—*

‘under this Act or the accommodation Act’.

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33 Section 230A (Goods left on premises)

34 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)

(2) Section 80(2)(b)—  
*renumber* as section 80(2)(c).

(3) Section 80(2)—  
*insert*—

‘(b) amounts payable under part 5, division 2 of the accommodation Act;<sup>35</sup>’.

### **151 Amendment of s 81 (Rental bond interest account)**

Section 81(2)(a), after ‘Act’—  
*insert*—  
‘or the accommodation Act’.

### **152 Amendment of s 82 (Other payments from rental bond interest account)**

(1) Section 82(1)(c), after ‘tenants’—  
*insert*—  
‘or relationships between service providers and residents’.

(2) Section 82(1)(d), ‘agreements’—  
*omit, insert*—  
‘residential tenancy agreements or residential service agreements’.

### **153 Amendment of s 258 (Authorised persons under this chapter)**

Section 258(2), after ‘this Act’—  
*insert*—  
‘or the accommodation Act’.

### **154 Amendment of s 262 (Authorised person’s identity card)**

Section 262(2)(d), after ‘this Act’—

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

*insert—*

‘and the accommodation Act’.

**155 Amendment of s 265 (Warrants for entry)**

Section 265(4)(a), after ‘this Act’—

*insert—*

‘or the accommodation Act’.

**156 Amendment of s 267 (Authorised person’s general powers for places)**

Section 267(1)(ca), after ‘this Act’—

*insert—*

‘or the accommodation Act’.

**157 Amendment of s 267B (Power to require information from certain persons)**

Section 267B(1)(a), after ‘this Act’—

*insert—*

‘or the accommodation Act’.

**158 Amendment of s 271 (Compensation)**

Section 271(2)(b), after ‘this Act’—

*insert—*

‘or the accommodation Act’.

**159 Amendment of s 277 (Evidentiary provisions)**

Section 277(1), after ‘this Act’—

*insert—*

‘or the accommodation Act’.



**160 Amendment of s 289 (Authority's functions)**

(1) Section 289(a), (b) and (c)(ii), after 'this Act'—

*insert—*

'and the accommodation Act'.

(2) Section 289(c)(i) and (f), after 'issues'—

*insert—*

'and residential services issues'.

(3) Section 289(d)—

*omit, insert—*

(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'.

(4) Section 289(e), 'this Act's operation'—

*omit, insert—*

'the operation of this Act and the accommodation Act'.

(5) Section 289(g), after 'agreements'—

*insert—*

'and residential service agreements'.

(6) Section 289(h), after 'agreements'—

*insert—*

'and proceedings about the application of the accommodation Act to residential service agreements'.

**161 Amendment of s 319 (Protection from liability)**

Section 319(2), after 'this Act'—

*insert—*

'or the accommodation Act'.

**162 Amendment of sch 3 (Dictionary)**

Schedule 3—

*insert—*

‘**“accommodation Act”** means the *Residential Services (Accommodation) Act 2002*.

**“enforcement warrant”** means an enforcement warrant under the *Supreme Court of Queensland Act 1991*.

**“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.

**“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.

**“residential service”** see the *Residential Services (Accreditation) Act 2002*, section 4.

**“residential service agreement”** means an agreement under which a service provider provides accommodation to a resident in the course of a residential service.

**“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.’.

#### ***Division 4—Amendments of Small Claims Tribunals Act 1973***

#### **163 Act amended in div 4**

This division amends the *Small Claims Tribunals Act 1973*.

#### **164 Amendment of s 4 (Interpretation)**

Section 4(1), definition “tenancy application”, after ‘the *Residential Tenancies Act 1994*’—

*insert—*

‘or the *Residential Services (Accommodation) Act 2002*’.

#### **165 Amendment of s 20 (Orders of tribunals)**

(1) Section 20(2)(d) and (e)—

*renumber* as section 20(2)(e) and (f).

(2) Section 20(2)(c)—

*omit, insert—*

‘(c) for a tenancy application under the *Residential Tenancies Act 1994*—an order a tribunal may make under that Act;

(d) for a tenancy application under the *Residential Services (Accommodation) Act 2002*—an order a tribunal may make under that Act;’.

#### **166 Amendment of s 24 (Reference of claims to tribunal)**

Section 24(1A)(b), after ‘residential premises’—

*insert—*

‘or rental premises’.

## SCHEDULE

### DICTIONARY

section 3

**“accreditation Act”** means the *Residential Services (Accreditation) Act 2002*.

**“agent”**, of a service provider, means a person employed or otherwise authorised by the service provider to act as the service provider’s agent.

**“allowed period”**, for part 5, division 2, see section 44.

**“approved form”** means a form approved under section 137.

**“authorised person”** means an authorised person under the *Residential Tenancies Act 1994*.

**“authority”** means the Residential Tenancies Authority established under the *Residential Tenancies Act 1994*.

**“chairperson”** means the chairperson of the authority’s board of directors.

**“chief executive officer”** means the authority’s chief executive officer.

**“common areas”**, for a resident of rental premises, means the parts of the rental premises other than the resident’s room that the resident may use under the residential service agreement.

**“conciliation agreement”** means an agreement in force under section 105.

**“conciliation process”** see section 96.

**“conciliator”** means a conciliator under the *Residential Tenancies Act 1994*.

**“condition report”**, for a room in rental premises and the facilities in the room, means a report describing the physical condition of the room and facilities.

**“coresident”** means 1 of 2 or more residents who occupy the same room or rooms in the rental premises under the same residential service agreement.

**“dispute resolution request”** see section 99.

## SCHEDULE (continued)

**“enforcement warrant”** means an enforcement warrant under the *Supreme Court of Queensland Act 1991*.

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“facilities”** includes furniture and equipment.

**“fixed term agreement”** means a residential service agreement under which accommodation is provided to a resident for a fixed term.

**“food service”** means a service of regularly providing meals to a resident.

**“guest”**, of a resident, means a person who enters the resident’s room or common areas with the resident’s consent.

**“house rules”**, for rental premises, means the rules in force for the premises under part 6.

**“lost property”**, for part 9, division 5, see section 88.

**“maximum rental bond”**, for a residential service agreement, is an amount equal to the rent payable under the agreement for the period of 4 weeks.

**“notice”** means a written notice.

**“officer”** of the authority means—

- (a) the chief executive officer; or
- (b) an employee of the authority, whether or not there is a written contract of employment between the authority and the employee; or
- (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.

**“periodic agreement”** means a residential service agreement other than a fixed term agreement.

## SCHEDULE (continued)

**“personal care service”** means a service of regularly providing a resident with—

- (a) help in—
  - (i) bathing, toileting or another activity related to personal hygiene; or
  - (ii) dressing or undressing; or
  - (iii) consuming a meal; or
  - (iv) meeting a mobility problem of the resident; or
  - (v) taking medication; or
- (b) help in managing the resident’s financial affairs.

**“personal document”**, of a person, means a document it would be reasonable to expect the person would want to keep.

*Examples—*

Passport, birth certificate, marriage certificate, photograph.

**“prescribed rules”** see section 56.

**“proposed commencement day”**, for a rule change, see section 59(1)(b).

**“registered service”** means a residential service registered under the accreditation Act.

**“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”** means an amount payable by a resident under a residential service agreement for the provision of accommodation and any other service provided under the agreement.

## SCHEDULE (continued)

**“rental bond”** see section 28.

**“rental bond contributor”** see section 29.

**“rental bond instalments”** see section 31(1).

**“rental bond notice”** means a notice about a rental bond given to the authority under section 30 or 31.

**“rental premises”** means—

- (a) for a registered service—the premises registered as premises in which the service is conducted; or
- (b) for an unregistered service—the premises in which the service is conducted.

**“replacement coresident”**, for a residential service 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 coresident in place of a former coresident who was a rental bond contributor (whether the person becomes a coresident directly from the former coresident or indirectly through another former coresident who was, or other former coresidents each of whom was, a rental bond contributor).

**“resident”**, in relation to a residential service, means a person—

- (a) who, in the course of the 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.

**“residential service”** see the accreditation Act, section 4.

**“residential service agreement”** see section 4.

**“resident’s room”**, for a resident of rental premises, means a room in the premises that the resident occupies as his or her residence under the residential service agreement.

**“rule change”**, in relation to the house rules for rental premises, see section 58.

## SCHEDULE (continued)

**“service dispute”** see section 95(a).

**“service provider”** means—

(a) for a registered service—the person registered under the accreditation Act as the service provider for the service; or

(b) for an unregistered service—the person conducting the service.

**“special terms”**, of a residential service agreement, see section 13(1).

**“standard terms”**, of a residential service agreement, see section 12(2).

**“tribunal”** means a small claims tribunal under the *Small Claims Tribunals Act 1973*.

**“unregistered service”** means a residential service other than a registered service.