

# RESIDENTIAL TENANCIES BILL 1994

## EXPLANATORY NOTES

### 1.0 GENERAL OUTLINE

#### 1.1 Objectives of the Legislation

Residential Tenancies legislation seeks to achieve a balance between the rights and obligations of tenants and lessors who are party to a residential tenancy agreement. The legislation seeks to address issues that arise from time to time in residential tenancy agreement that are not covered in current legislation.

The legislation meets the government's obligations to people living in caravan parks by covering tenants in caravan parks under the Residential Tenancies Act. Tenants in caravan parks will now have similar rights and obligations as tenants in houses and flats and will be able to dispute the imposition of new park rules.

Access to accurate and objective tenancy advice by both lessors and tenants is an important objective of the legislation. A telephone advisory service will form part of the Residential Tenancies Authority. Tenants and lessors can access the service on a 1800 line. The service will provide content advice on the *Residential Tenancies Act 1994* including all tenancy issues covered by the Act such as repairs and maintenance, termination, bonds, abandoned goods etc.

The legislation provides for a low cost mechanism for lessors and tenants to resolve residential tenancies disputes. The Residential Tenancies Authority will provide a mediation service to tenants and lessors (or tenants and co-tenants) in dispute over residential tenancies matters covered by the *Residential Tenancies Act 1994*. Where mediation fails or indeed is not taken up as mechanism for dispute resolution, either party will be able to use the Small Claims tribunal to have the matter resolved.

## **1.2 Reasons for the Bill**

The current *Residential Tenancies Act 1975* provides only limited coverage to tenants in residential tenancy agreements. The content and scope of the Act is limited and restrictive and clearly outdated. The new Act provides extensive coverage of all residential tenancy matters across a range of tenancy types and addresses for the first time emergency repairs, abandoned goods, and written agreements among other matters.

The Bill establishes a two stage process for dispute resolution between parties to residential tenancy agreement. Mediation is the first stage is the dispute resolution process failing which an application may be made to the Small Claims tribunal for a hearing on any residential tenancy matter.

## **1.3 Estimated Cost for Government Implementation**

Costs to the Government are minimal. The retention of the Rental Bond Authority's existing functions and staff have significantly reduced the cost of establishing the Residential Tenancies Authority.

The costs arising from the implementation of the new Authority will be \$1.45 million in the first year and \$0.90 million thereafter. The set up costs (\$1.45 million) are being funded equally from interest on the Auctioneers and Agents Fidelity Guarantee Fund and the Rental Bond Interest Account. The ongoing costs of the RTA are to be funded by the Rental Bond Interest Account in the same manner the RBA is currently funded.

## **1.4 Consultation**

Community stakeholder groups have been extensively consulted since November 1991. In October 1994, the final round of consultation was undertaken with the following organisations:

Real Estate Institute Of Queensland (REIQ)

Property Owners Association (POA)

Tenants Union of Queensland

Queensland Shelter

Caravan Parks Association

Each organisation was provided with a copy of the draft Bill for

comment. Those comments considered technical in nature were accommodated in the final draft and other comments on policy matters were noted.

A range of government stakeholders were consulted. Comments on the draft Bill were included where relevant from:

Rental Bond Authority

Department of Justice and Attorney General

Department of Family Services and Aboriginal and Islander Affairs

Department of Consumer Affairs

The Minister's Parliamentary Legislation Committee was also consulted.

*Clause 1* sets out the short title of the Bill.

*Clause 2* sets out the commencement date.

*Clause 3* refers to the Dictionary for the Act contained in Schedule 3 and other definitions elsewhere in the Act.

*Clause 4* defines a lessor as being a person who gives the right to occupy the premises. A lessor may also be a tenant who sub-lets.

*Clause 5* defines the premises as being a part of the premises and the land on which the premises occupies. 'Premises' also refers to a caravan, a caravan site, or both a caravan and caravan site, a mobile home in a mobile home park, a mobile home site, or both the mobile home and the mobile home site. 'Premises' also includes a houseboat.

*Clause 6* defines residential premises as any premises that a tenant is using or is going to use as a place to live.

*Clause 7* defines residential tenancy as a right to occupy the premises as stated in the form of an agreement.

*Clause 8* states what a residential tenancy agreement is and under what circumstances it applies.

*Clause 9* defines a tenant as someone who is given the right to live in rented premises in an agreement. A tenant includes a prospective tenant or a sub-tenant.

*Clause 10* notes that the Act applies to residential tenancy agreements and to lessors and tenants under a tenancy agreement, but not to all residential tenancy agreements.

*Clause 11* notes that a reference to an agreement in the Act, apart from particular provisions, means a residential tenancy agreement.

*Clause 12* notes that a reference to a lessor or tenant in the Act, apart from particular provisions, means a lessor or tenant under a residential tenancy agreement.

*Clause 13* notes that a reference to premises, apart from particular provisions, means residential premises under a residential tenancy agreement.

*Clause 14* notes that a reference to a tenancy, apart from particular provisions, means a residential tenancy under a residential tenancy agreement.

*Clause 15* provides that the Act applies to all persons involved in a residential tenancy agreement including the State, with some exceptions, and as far as the legislative power of the Parliament can allow, the Commonwealth and other State or Territory governments.

*Clause 16* provides that the Act does not apply to a lease if the lessor is the State or the lease is granted under another Act, except for the State Housing Act. However, if the land or part of the land is then sublet by the lessee for residential purposes then the Act applies as long as the Act is consistent with the other Act.

*Clause 17* states that the *Property Law Act 1974* does not apply to a residential tenancy agreement unless declared otherwise under a regulation.

*Clause 18* The Act does not override other Acts which give rights and remedies to any party to a residential tenancy agreement.

*Clause 19* Persons under the age of 18 years can enter and be bound by residential tenancy agreements.

*Clause 20* provides that residential tenancy agreements, premises or entities may be exempted from the Act, or part of the Act, if declared by regulation.

*Clause 21* exempts agreements and premises from coverage under the Act if given for holiday purposes. If the length of the occupancy is 6 weeks or longer, then it shall be evidence that it is not for holiday purposes.

*Clause 22* exempts boarders and lodgers from the operation of this Act, except in relation to rental bonds.

*Clause 23* exempts educational institutions, hospitals, nursing homes and retirement villages from the Act, except if a part of them is used by an employee as a place of residence. A regulation may declare that an agreement for premises that are part of a retirement village is covered by the Act.

*Clause 24* exempts temporary refuge accommodation if it is not approved supported accommodation.

*Clause 25* excludes from the Act any agreement that is already covered under the *Mobile Homes Act 1989*.

Residential tenancy agreements where the lessor is also an occupier under the *Mobile Homes Act* are covered.

*Clause 26* assures that the Act applies to agreements where the premises are part of a hotel or motel.

*Clause 27* assures that the Act applies to agreements in approved supported accommodation, but allows for exemption by regulation.

*Clause 28* states that this Division of the Act only applies to agreements for moveable dwelling premises.

*Clause 29* classifies tenancies for moveable premises as either short or long.

*Clause 30* specifies that a short tenancy is less than 30 days. The agreement may be in writing (a “short tenancy statement”).

*Clause 31* states that the parties to a short tenancy statement may extend it for a maximum of a further 30 days so that the Act continues to apply to the agreement as a short tenancy.

*Clause 32* allows a tenant under an extended short tenancy statement to apply to the tribunal to have the statement set aside if the lessor exerted excessive pressure to have it extended.

*Clause 33* defines a “short tenancy (moveable dwelling)” as that to which a short tenancy statement or extension statement applies.

*Clause 34* states that if the tenancy is not a short tenancy (moveable dwelling), it is a “long tenancy (moveable dwelling)”.

*Clause 35* states that parties to a residential tenancy agreement are bound by the Act in its entirety and also by park rules if the premises are in a moveable dwelling. A term of a mediated agreement is also included as a

term of the agreement. These responsibilities arise even if they are not in writing.

*Clause 36* provides that an agreement does not apply and is void if it is inconsistent with the Act. Penalties apply to persons who intentionally enter agreements inconsistent with the Act.

*Clause 37* provides that if there is an inconsistency between the agreement and the Act, the Act applies and the inconsistent term is void.

*Clause 38* provides for certain provisions of the Act to be declared as essential terms of a residential tenancy agreement.

*Clause 39* defines the contents of a residential tenancy agreement. The agreement should be in writing (otherwise a penalty can apply) and be written clearly and precisely. The agreement must contain the names and contact addresses of all the parties, the location of the residential premises, rent details, the length of the agreement (if fixed term) and other essential terms. The agreement can also include non-essential terms and these must be consistent with the Act. The lessor is to pay for preparing the agreement.

However, this clause does not apply to short tenancies (moveable dwellings).

*Clause 40* allows residential tenancy agreements to be set out using both a short and a long form. If only the former is used the meaning of the long form applies.

*Clause 41* provides that the lessor is responsible for giving the tenant a copy of the written agreement for signing and must give to the tenant a copy signed by both parties. The lessor must give the tenant the fully signed agreement no later than 1 month after the tenant has signed. If only the short form agreement is signed then there must be another document attached which sets out the full terms and this must be given to the tenant. If the lessor does not comply a penalty applies.

Such agreements are not required if the tenancy is a short tenancy (moveable dwelling).

*Clause 42* provides that the lessor is responsible for preparing at least two copies of a property condition report to be signed by the tenant within 3 days after receiving them. The report can indicate where the tenant disagrees with the report. The report must be returned by the tenant to the lessor or agent. The lessor is also responsible for keeping the signed or unsigned copy of the report for 6 months after the residential tenancy agreement

expires. Failure to comply attracts a penalty. Condition reports are only required if the residential tenancy agreement is in writing. The State as lessor is exempt from this clause.

*Clause 43* ensures that if some of the terms of the agreement are required to be in writing, the lessor must give the tenant certain information in an approved form. The information may be about duties and entitlements of both parties, dispute procedures and referral agencies and must be given when giving a copy of the signed agreement.

*Clause 44* requires lessors are required to provide a written copy of park rules and subsequent changes to park rules to the tenant of moveable dwelling parks if the tenancy is either short or long. Failure to comply attracts a penalty.

*Clause 45* ensures that if body corporate by-laws apply to a tenant then the lessor must inform the tenant of those rules.

*Clause 46* provides that when a fixed term agreement expires the tenant can continue occupation (under the same terms of the fixed term agreement) as a periodic tenant unless there are notices to the contrary in force before the expiry of the fixed term. This clause does not apply to a short tenancy agreement.

*Clause 47* sets out how to pay rent and the way in which rent may be paid. These conditions may be stated in the agreement.

*Clause 48* provides for the agreement to state a place to pay rent. If the lessor wishes to change this, the change must be in writing.

*Clause 49* limits the amount of rent required to be paid in advance.

*Clause 50* with the exception of the State or prescribed agreements, receipts and records of rent payments must be either provided or retained (by the lessor or the agent) and made available upon request.

*Clause 51* requires the lessor to keep rent records for at least 1 year after the tenancy ends, or for more than one year if the Authority requires.

*Clause 52* prohibits any person associated with the keeping of records from falsifying rent records by either including incorrect information or leaving out important information.

*Clause 53* provides for the lessor to increase rent in a particular way. A notice of the intent to increase the rent must be given to the tenant and must include the new rent and the effective date. The lessor is to give at least 1

month's notice.

A lessor can only increase rent in fixed term agreement if the intent to increase the rent is included in the residential tenancy agreement. In this case the lessor must still provide written notice etc.

*Clause 54* provides for rent to be reduced in certain circumstances, such as the premises are wholly or partially destroyed in a way which did not result from a breach of the agreement.

*Clause 55* prohibits a lessor from taking and selling a tenant's goods for failure, for example, to pay rent.

*Clause 56* provides for rent to accumulate day by day. Where a tenancy is terminated, rent is payable by or to the at the daily rate.

*Clause 57* gives a meaning to the term 'rental bond'.

*Clause 58* gives a meaning to the term 'key money', which for the purposes of the Act is included as a rental bond under *Clause 57*.

*Clause 59* provides for the person who receives a rental bond to pay it to the Residential Tenancies Authority and to use a particular form to do so.

*Clause 60* ensures that even when a lessor obtains, for example, bank guarantee to protect him/herself against a breach by the tenant, the lessor must still pay a rental bond to the Residential Tenancies Authority.

*Clause 61* ensures that only the Residential Tenancies Authority has a right to monies earned by investing rental bonds.

*Clause 62* allows for the continuation of a bond when an initial residential tenancy agreement ends and another residential tenancy agreement is commenced at the same premises.

*Clause 63* states that this Division of the Act deals with payment of rental bonds by the Authority.

*Clause 64* only allows the Residential Tenancies Authority to pay a bond if it is paid under this division.

*Clause 65* requires an application to the Residential Tenancies Authority for payment of a bond to be on the approved form.

*Clause 66* provides for the Residential Tenancies Authority to pay a bond where all parties are in agreement.

*Clause 67* indicates how a bond may be paid out by the Residential



Tenancies Authority when the application is made by the lessor only.

*Clause 68* indicates how a bond may be paid out by the Residential Tenancies Authority when the application is made by the tenant only.

*Clause 69* the allowed period for a tenant or lessor to dispute an application for payment of a bond under Clauses 67 and 68 is 14 days or as determined by regulation.

*Clause 70* allows a bond to be paid by the Authority at the tribunal's direction.

*Clause 71* provides that where a bond is to be paid to co-tenants, each receives proportionately what was contributed or as agreed between them unless the tribunal orders otherwise.

*Clause 72* provides for where a bond is payable to a tenant and the bond was paid by, for example, the Department of Housing, Local Government and Planning under its bond loan program, then the Authority is to pay the Department.

*Clause 73* prevents the Authority from paying the rental bond if there is notice terminating the agreement and the handover day has not occurred. However, the Authority can make payment to either party without notice.

*Clause 74* requires processing of the payment of the bond to cease if an applicant's made by one party is withdrawn. However, if both parties apply and one withdraws, the application proceeds as an application by one party only.

*Clause 75* limits the way that the Authority is required to make a payment to the tenant, lessor, lessor's agent or a rental bond supplier.

*Clause 76* requires a lessor or agent who receives a rental bond to give a receipt that contains specific information and to keep a record of the receipt for 1 year after the agreement ends.

*Clause 77* prevents the payment of a bond which is more than the maximum allowed under the agreement. This does not apply if the rent is more than \$300 per week or another amount prescribed by regulation.

*Clause 78* provides for a Court to impose a penalty on a person who fails in their duty to a rental bond and may also require the same person to lodge the bond. If the person does not lodge the bond as directed, the amount of money that was to be paid is said to be a debt to the Authority and the Authority can sue for the amount. Failure to comply with an order is an

offence.

*Clause 79* provides for the Authority to keep a Rental Bond Account and a Rental Bond Interest Account and other accounts as required.

*Clause 80* requires the Residential Tenancies Authority to pay any bond it receives into the Rental Bond Account. The Rental Bond Account must only be used by the Authority to pay out rental bonds and to use for investment purposes in accordance with guidelines approved by the Governor-in-Council.

*Clause 81* reassures any amount the Authority earns from investments or loans to be paid into the Rental Bond Interest Account. Only specified expenditure can be met from this account.

*Clause 82* lists the purposes for which the Residential Tenancies Authority can make grants or loans subject to Ministerial approval.

*Clause 83* describes the circumstances under which the tenant is required to pay additional bond money. The lessor must give written notice of the amount and date of the increase.

*Clause 84* applies when rent decreases during the first 6 months of an agreement as an alternative to the payment of bond money. The tribunal may order that the amount of rent actually paid that is above the lowest level of rent payable may be declared to be a bond. This amount is to be paid to the tenant.

*Clause 85* authorises a person to require the payment of a holding deposit by a prospective tenant.

*Clause 86* requires the making of a receipt for a holding deposit and specifies what the receipt must state.

*Clause 87* provides that a holding deposit is not refunded to the prospective tenant if the tenant does not take up the residential tenancy agreement within the option period or fails to notify the prospective lessor that the agreement is not to proceed.

In other instances, the holding deposit is to be refunded to the tenant within 3 days. If the lessor fails to refund the deposit, the tenant can recover it as a debt. If the lessor fails to enter the agreement as arranged a penalty is applied to the lessor. If the agreement proceeds the holding deposit is to be applied to the bond or to rent.

*Clause 88* empowers the tribunal to make an order about the holding

deposit.

*Clause 89* requires the lessor to pay the outgoings, except for service charges. When the tenant is an organisation receiving assistance from the State, no rent is charged and the State is the lessor then the tenant may be required to pay the outgoings.

*Clause 90* gives a meaning to the term ‘service charge’.

*Clause 91* allows for service charges to be paid by a tenant for all premises except moveable dwellings if the tenant benefits from the service. Where the premises are not individually metered, the residential tenancy agreement is to contain sufficient information to enable determination of the type of service and how its cost is calculated. The tenant pays for the cost of metered services as charged by the supplier.

*Clause 92* allows for service charges to be paid by the tenant of a moveable dwelling if the tenant gains a benefit and where there is individual metering. A maximum charge for the service is indicated.

*Clause 93* applies if service charges for moveable dwellings are not separately listed and form part of the rent. The lessor is responsible for providing details of the charges to the tenant on request. Rent is to be reduced by agreement between the parties or by decision of the tribunal. if the service becomes unavailable.

*Clause 94* allows the tribunal to decide how service charges are to be applied if there is a dispute about the matter between the tenant and lessor.

*Clause 95* makes it an offence and applies a penalty if a prospective tenant is required to purchase goods or services as a condition of entering the residential tenancy agreement.

*Clause 96* voids the term a residential tenancy agreement containing monetary penalties to be paid by the tenant for breaches of the agreement.

*Clause 97* enables a lessor to discount the rent or give a benefit only if the tenant pays the rent on time.

No discounts or other benefits are allowed if it relates to compliance with other terms of the agreement.

*Clause 98* prohibits a lessor from demanding a payment from a prospective tenant of a moveable dwelling for agreeing to enter into arrangement, unless the prospective tenant is receiving some other benefit as a tenant.

*Clause 99* requires a lessor to ensure there is no legal impediment to an agreement.

*Clause 100* provides for a right of vacant possession by the tenant when the agreement specifies.

*Clause 101* gives the tenant a right to quiet enjoyment of the premises.

*Clause 102* restricts the tenants use of premises ie the tenant is not allowed to use the rented premises for illegal purposes or in a way that causes a nuisance, or interferes with a neighbour's rights to privacy and peace.

*Clause 103* requires the lessor to provide to the tenant premises that are clean and in a reasonable state of repair at the beginning of a tenancy. Further, the onus is on the lessor to maintain the premises in that state throughout the tenancy.

*Clause 104* requires the facilities in a movable dwelling park to be in a clean and reasonable state of repair at the beginning of the tenancy. The lessor must maintain those facilities in the same manner throughout the tenancy where those facilities are required to make the park a fit place to live.

*Clause 105* requires the lessor to ensure that the site on which the movable dwelling is positioned under a long term agreement is clean and fit for the dwelling at the beginning of the tenancy. The lessor must continue to keep the site to the same standard as at the commencement of the tenancy. The lessor can also improve the site.

*Clause 106* the tenant is to keep the premises in a clean state having regard to the state of cleanliness at the beginning of the tenancy. The tenant is not allowed to cause any damage to the premises or anything in the premises that belongs to the lessor. Except for fair wear and tear the tenant must return the premises to the lessor in the same state they found it.

*Clause 107* requires the tenant in a movable dwelling park to ensure that the facilities in the park are not damaged by them either purposely or by accident and that they not do anything that makes a facility unusable or that detracts from its appearance.

*Clause 108* requires the tenant to ensure that the site for a movable dwelling under a long term agreement is kept in a way that does not detract from the park, having regard to the condition of the site at the start of the tenancy and any work the lessor has done to the site since the tenancy

began.

*Clause 109* limits the reasons that the lessor or the lessor's agent can enter the rented premises.

*Clause 110* requires an entry notice to be given to the tenant. A notice is to include the time of the entry as determined by the reason for entry. In limited circumstances notice is not required. Where the premises are remote and qualified tradespersons are unavailable the lessor may enter the premises to carry out repairs without giving notice.

*Clause 111* provides that in some circumstances the lessor's agent must provide evidence of the agent's appointment.

*Clause 112* states that obligations under Clauses 109, 110 and 111 are the rules of entry.

*Clause 113* allows the tribunal to make an order about entry to the premises in either the tenant's or the lessor's favour upon application.

*Clause 114* prohibits a lessor or agent of the lessor from entering the premises unless the entry is allowed under the rules of entry or a modified rule.

*Clause 115* prohibits the tenant from giving a false name or address to a lessor or the lessor's agent when asked. If a lessor or the lessor's agent makes a written request of the tenant to provide his/her future address when the tenancy ends the tenant must, unless there is a reasonable excuse, do so.

*Clause 116* requires a lessor to give a written notice to the tenant stating the lessor's or the lessor's agents name and address for service of notice at the commencement of the tenancy. If the information changes the lessor or agent must inform the tenant.

Where an agent is designated, they may stand in place of the lessor and the prescribed proceeding may take place against the agent.

*Clause 117* provides for the tenant to attach fixtures or make changes to the dwelling only with the lessor's approval.

*Clause 118* requires approval for fixtures or structural changes to be in writing and include terms about the future of the fitting or changes, and in whose favour the change should be in at the end of the tenancy. A lessor should not be unreasonable in a refusal to allow the addition of fixtures or other changes.

*Clause 119* provides that where a tenant adds a fixture or makes a change to the premises without the lessor's approval, the lessor may accept the change as a benefit or waive the breach, or act on the breach.

*Clause 120* states the lessor's obligations for the provision and maintenance of lock and key.

*Clause 121* establishes the procedures for changing locks and providing keys, including the changing of locks in emergency situations.

*Clause 122* requires the lessor or tenant to not act unreasonably in failing to agree to the change of a lock.

*Clause 123* allows the tribunal to make an order about the withholding of or giving of a key to either the lessor or the tenant.

*Clause 124* enables a lessor to nominate repairer to carry out emergency repairs to the premises. The nomination and use of the nominated repairer can be included in the agreement.

*Clause 125* requires a tenant to inform the lessor of damage to the premises whether the damage to the premises is in need of routine or emergency repair.

*Clause 126* states how a tenant who is not in a short term movable dwelling tenancy is to deal with emergency repairs where the lessor or lessor's nominated agent is unable to be contacted or the lessor fails to carry out emergency repairs.

*Clause 127* enables the tenant to carry out repairs to the value of 2 weeks rent and to either pay the repairer or seek reimbursement from the lessor. The tenant must provide invoices, receipts and accounts as necessary.

*Clause 128* provides that if the tenant acts appropriately in effecting emergency repairs and the lessor disagrees with the tenant's requirement to reimburse the tenant or pay the repairer, either party can seek an order from the tribunal directing payment or reimbursement.

*Clause 129* states that the Part applies to premises in movable dwelling parks.

*Clause 130* provides for instances where a park owner may need to relocate a tenant from one site to another. Instances include when necessary work is to be carried out, an emergency, or for health/safety. The request is to be written and a comparable site should be provided.

*Clause 131* states that the tenancy agreement is altered by relocation only to the extent that the site has changed.

*Clause 132* requires the lessor to pay the tenant the reasonable costs of relocation and if the lessor fails to do so the tenant may make an application to the tribunal for an order that payment be made.

*Clause 133* allows an owner of a movable dwelling park to make park rules and limits the matters that they will regulate.

*Clause 134* provides for the owner of a park to change park rules only by informing all tenants in writing of the change. The notice will set a day by which all objections to the change must be made and how objections are to be made.

*Clause 135* allows for a tenant to object to a proposed rule change in writing by the date the lessor states and requires the tenant to state the reason for the objection.

*Clause 136* provides for tenants and the park owner to establish a committee after the objection period has ended to hear the objections to the proposed rule. The committee consists of a representative of the objectors, the owner, and another person as agreed.

*Clause 137* provides for the committee to declare a rule reasonable or unreasonable or alter the rule. The Committee is to provide its decisions in writing to the tenants and the park owner.

*Clause 138* allows an application to be made to the tribunal where there is dissatisfaction with the decision of the Committee or where the matter is unresolved.

*Clause 139* allows the tribunal to make a decision about a park rule or to alter a park rule having regard to certain issues.

*Clause 140* provides for when a park rule is to take effect.

*Clause 141* provides that if park rules are not decided or approved under the Act, then they have no effect unless a subsequent decision is made by the tribunal.

*Clause 142* states that it is an offence if a lessor requires a tenant to buy goods or services from the lessor or someone else, except where the tribunal approves the provision of reticulated gas to the tenant by the lessor.

*Clause 143* restricts the tenant's ability to transfer or sublet the premises

without the lessor's approval where: the State is the lessor; the tenancy is employment related; the lessor receives State assistance to provide housing; or the tenancy is a short term movable dwelling premises. This ensures that housing is targeted towards those who are eligible.

*Clause 144* provides for tenants, other than those covered in arrangements in Clause 143, to transfer or sublet premises only where the lessor approves or is ordered by the tribunal to do so. However, the lessor must not refuse the request to transfer or sublet if the refusal is retaliatory.

*Clause 145* allows a tenant who believes that the lessor has acted unreasonably in failing to agree to the request to transfer or sublet to apply to the tribunal for an order. The tribunal takes into account the new tenant's ability to meet the requirements of the agreement.

*Clause 146* restricts the lessor from charging a fee for subletting. Only expenses can be recovered by the lessor from the tenant.

*Clause 147* restricts the lessors ability to seek fees for the sale of a caravan on a site unless a service is carried out by the lessor and the arrangement is in writing.

*Clause 148* provides, with the exception of the State, for a lessor to sell the premises and have the tenant continue the tenancy under the new owner.

*Clause 149* provides for an occupant to apply to the Tribunal to replace a tenant, where that tenant dies or no longer lives in the premises. This application to the tribunal can be made at the same time as, for example, a termination order. The occupant becomes the tenant if the tribunal so orders. The State is exempt from this clause.

*Clause 150* provides for a tenant's spouse or a co-tenant's spouse to apply directly to the tribunal to be recognised as the new tenant because the tenant has committed an act of domestic against the person. The tribunal must take into account domestic violence issues when making a decision about the replacement of the tenant. The tribunal can also make a decision about the terms of the agreement and the bond.

*Clause 151* prescribes how residential tenancy agreements can be terminated by a lessor, tenant or tribunal.

*Clause 152* allows the lessor to accept rent from a tenant who is in breach of the agreement without waiving the breach or creating a new tenancy.



*Clause 153* provides for the lessor giving a notice to remedy a breach, within a defined period of time, if the tenant is in rent arrears or in breach of another term of the agreement.

A tenant must be 7 days in rent arrears before a notice to remedy can be given by the lessor.

*Clause 154* enables a tenant to dispute a notice to remedy.

*Clause 155* enables a lessor to give a notice to leave to the tenant if the lessor wishes to evict the tenant for failing to remedy a breach as set out in a notice to remedy.

*Clause 156* allows the tenant to dispute a notice to leave.

The tenant must give the dispute notice to the tribunal, with a copy to the lessor. The clause indicates there are time limits for the giving of a dispute notice.

*Clause 157* allows a lessor to give the tenant a notice to leave if the tenant has failed to comply with an order of the tribunal.

*Clause 158* allows a lessor to give a tenant in a moveable dwelling a notice to leave without a prior notice to remedy, if they have failed to comply with a notice to relocate.

*Clause 159* allows a lessor to give a tenant a notice to leave without a prior notice to remedy, if the agreement has been frustrated, such as the premises being destroyed, becoming unfit for living in, or no longer being able to be used as a residence.

The clause limits the time period to issue the notice to one month after the happening of the event.

*Clause 160* allows a lessor in relation to a moveable dwelling in a park to give to the tenant a notice to leave without a prior notice to remedy, if the agreement is frustrated by the park becoming unfit to live in.

*Clause 161* allows the lessor to give to the tenant a notice to leave without a prior notice to remedy, if the agreement is a periodic tenancy and the lessor has entered into a contract to sell the premises with vacant possession.

*Clause 162* allows additional grounds for the termination of agreements applying to moveable dwellings in parks without a prior notice to remedy. The grounds relate to the voluntary closure of the park by the lessor and the

compulsory closure by a regulatory body.

*Clause 163* allows the lessor to give to the tenant a notice to leave, without a prior notice to remedy, if the agreement was a term of the tenant's employment and that employment ends.

Any award or agreement under the *Industrial Relations Act 1990* will override this Clause.

*Clause 164* allows the lessor to give to the tenant a notice to leave, without a prior notice to remedy, if the tenant ceases to be eligible for the tenancy provided under a State funded program or under a program involving the State.

*Clause 165* allows the lessor to give to the tenant a notice to leave without any grounds. A notice without grounds will not, under Clauses 197 and 199, terminate a fixed term agreement prior to the end of the term.

No notice to remedy is required before a notice to leave without grounds.

*Clause 166* allows a lessor to apply to the tribunal to terminate the agreement if the tenant has failed to leave after receiving a notice to leave.

*Clause 167* allows the lessor to apply to the tribunal for a termination of the agreement on the grounds that the tenant failed to leave the premises after giving the lessor a notice of intention to leave.

*Clause 168* allows the lessor to apply to the tribunal for a termination of the agreement on the grounds that the lessor will suffer excessive hardship if it were not terminated.

The lessor is not required to have given a notice to remedy or a notice to leave prior to the application.

*Clause 169* allows the lessor to apply to the tribunal for a termination of the agreement on the grounds that the tenant has or is likely to cause serious damage to the premises or injury to a person in certain situations.

The lessor is not required to have given a notice to remedy or notice to leave prior to the application.

*Clause 170* allows the lessor to apply to the tribunal to terminate an agreement on the grounds of objectionable behaviour by the tenant.

Objectionable behaviour includes harassment, intimidation, verbal abuse and serious nuisance to persons nearby.

The lessor is not required to have given a notice to remedy or notice to leave prior to the application.

*Clause 171* allows the lessor to apply to the tribunal to terminate a short term tenancy in a park on the grounds of incompatibility between the lessor and tenant.

The lessor is not required to have given a notice to remedy or notice to leave prior to the application.

*Clause 172* allows the lessor to apply for an interim order from the tribunal to restrain the tenant from causing further damage or injury.

*Clause 173* provides for the tenant to give to a lessor a notice to remedy a breach within a limited period of time if the lessor is in breach of a term of the agreement.

*Clause 174* enables the lessor to dispute a notice to remedy.

*Clause 175* allows a tenant to give a notice of intention to leave on the grounds that the lessor failed to remedy a breach set out in a notice to remedy.

*Clause 176* clarifies that a tenant is able to waive a breach by the lessor if the breach is remedied after receiving a notice to leave. The remedy must be prior to the handover day.

A waiver is required to be in writing.

*Clause 177* allows a tenant to give notice of intention to leave if the lessor has failed to comply with an order of the tribunal.

*Clause 178* allows a tenant to give a lessor a notice to leave without giving a prior notice to remedy if the agreement has been frustrated by the premises being destroyed, becoming unfit for living in, or no longer being able to be used as a residence.

*Clause 179* allows a tenant with an agreement relating to a moveable dwelling in a park to give a notice of intention to leave if facilities in the park are destroyed or become unfit.

The clause limits the time period to issue the notice to one month after the happening of the event.

*Clause 180* allows a lessor to dispute a tenant's notice of intention to leave.

*Clause 181* allows the tenant to give to the lessor a notice of intention to leave, without any grounds, if the agreement is not for a fixed term.

No notice to remedy is required before a notice of intention to leave without grounds.

*Clause 182* allows the tenant to apply to the tribunal for a termination of the agreement on the grounds that the tenant will suffer excessive hardship if it were not terminated.

The tenant is not required to have given a notice to remedy or a notice of intention to leave prior to the application.

*Clause 183* allows the tenant to apply to the tribunal for a termination of the agreement on the grounds that the lessor has, or is likely to cause serious damage to the tenant's goods or injury to the tenant or a person on the premises.

The tenant is not required to have given a notice to remedy or a notice of intention to leave prior to the application.

*Clause 184* allows a co-tenant to apply to the tribunal to terminate the agreement on the grounds that another co-tenant has, or is likely to cause serious damage to the premises or injury to the co-tenant or another person allowed on the premises.

A notice to remedy or notice of intent to leave is not required to be given to the other co-tenant or the lessor prior to making an application.

*Clause 185* allows the tenant to apply to the tribunal for the termination of the agreement on the grounds of objectionable behaviour by the lessor.

Objectionable behaviour means harassment, intimidation, verbal abuse of the tenant or another person allowed on the premises.

The tenant is not required to have given a notice to remedy or a notice of intention to leave prior to the application.

*Clause 186* allows a tenant to apply to the tribunal to terminate a short term tenancy in a park on the grounds of incompatibility between the lessor and tenant.

The tenant is not required to have given a notice to remedy or a notice of intention to leave prior to the application.

*Clause 187* allows the tenant to apply for an interim order from the tribunal to restrain the lessor from causing further damage or injury.

*Clause 188* provides a right for the tenant's spouse to apply for the termination of the agreement on the grounds that the tenant has or is likely to cause serious damage to the premises or has committed an act of domestic violence against the spouse.

The tenant's spouse is not required to have given a notice to remedy or a notice of intention to leave to the lessor or the tenant prior to making the application.

The spouse may also seek an order under *Clause 150* to become the new tenant.

*Clause 189* allows an occupant of the premises to apply to the tribunal to terminate the agreement on grounds of damage and injury.

A notice to remedy or notice of intention to leave is not required to be given to the lessor or tenant prior to the application.

*Clause 190* allows the spouse of a tenant or an occupant of the premises to apply for an interim order from the tribunal to restrain the tenant from causing further damage or injury.

*Clause 191* provides a short form of reference to applications made under clauses relating to damage or injury.

*Clause 192* sets out the requirements for a notice to remedy.

A notice to remedy is to be in an approved form.

*Clause 193* sets out requirements for a notice to leave given by a lessor.

The clause also ensures the effectiveness of a notice to leave in certain circumstances.

*Clause 194* sets out the requirements for a notice of intention to leave given by a tenant.

The clause also ensures the effectiveness of a notice of intention to leave in certain circumstances.

*Clause 195* sets out the requirements for a notice disputing a notice to remedy, a notice to leave or a notice of intention to leave.

*Clause 196* defines the time period which a lessor or a tenant must allow in a notice to remedy for the other party to remedy the breach, ie 7 days.

A different period is provided for agreements relating to moveable dwellings where the breach is for non-payment of rent, ie 5 days.

*Clause 197* sets out the notice periods relating to notices to leave. The periods vary depending on the grounds under which a notice to leave is given.

*Clause 198* sets out the notice periods relating to notices of intention to leave for moveable dwellings.

Differing notice periods are provided for some grounds depending on whether they are short or long tenancies.

*Clause 199* sets out the notice periods relating to notices of intention to leave. The periods vary depending on the grounds under which a notice to leave is given.

*Clause 200* sets out the notice periods relating to notices of intention to leave for a moveable dwelling in a park.

*Clause 201* provides a process for the tenant to withdraw a notice of intention to leave with the lessor's written consent.

*Clause 202* makes it clear that certain applications to the tribunal for termination of the agreement do not require a notice to leave or notice of intention to leave to have been given.

*Clause 203* makes it clear that the tribunal may consider applications by lessors or tenants for termination of the agreement only if it is satisfied that the applicant is entitled to make the application.

*Clause 204* gives the tribunal the power to grant a termination order on the basis of failing to leave for an unremedied breach if it is satisfied about certain particulars, including whether the breach justifies terminating the agreement.

The clause outlines the matters that the tribunal may have regard to in determining whether termination of the agreement is justified.

*Clause 205* allows the tribunal to make an order for termination if a tenant has failed to leave for non compliance with a tribunal order and the tenant has not complied with a tribunal order.

*Clause 206* gives the tribunal the power to grant a termination order for an agreement relating to a moveable dwelling in a park on the grounds of failing to relocate. The tribunal must consider it appropriate and ensure that other particulars are satisfied.

*Clause 207* gives the tribunal the power to grant a termination order on

various grounds if it is satisfied that the grounds have been established by the lessor and the notice to leave was given.

*Clause 208* gives the tribunal the power to grant a termination order without grounds if the tribunal is satisfied as to the reasons for the application and the notice to leave was given.

*Clause 209* gives the tribunal the power to grant a termination order on the grounds that the tenant has failed to leave the premises as intended by the tenant, if the tribunal is satisfied that the lessor has established the grounds of the application.

*Clause 210* gives the tribunal the power to grant a termination order on the grounds of excessive hardship if it is satisfied that the grounds of the application have been established by the applicant.

*Clause 211* gives the tribunal the power to grant a termination order on the grounds of damage or injury if it is satisfied that the grounds of the application have been established.

In considering applications by the spouse or co-tenant any applications or orders relating to domestic violence have to be considered.

*Clause 212* gives the tribunal the power to grant a termination order on the grounds of objectionable behaviour.

The clause lists matters that a tribunal may have regard to in determining whether the behaviour justifies termination.

*Clause 213* gives the tribunal the power to grant a termination order on the grounds of incompatibility if it is satisfied the grounds of the application have been established.

*Clause 214* gives the tribunal the power to grant a restraining order against the tenant for damage or injury if it considers it appropriate.

*Clause 215* makes provision for the tribunal to ignore defects in a notice to leave if it is appropriate in all the circumstances.

*Clause 216* requires the tribunal to make an order for possession if a termination order is granted.

The tribunal has powers to award compensation to the other party if an order is granted for excessive hardship.

*Clause 217* states that a warrant for possession must authorise a police officer or other authorised person to enter the premises and set out certain

other particulars, including the date of effect.

Discretion is provided for when the warrant to the tribunal is to take effect.

*Clause 218* gives the person to whom it is directed the powers included in the warrant.

*Clause 219* prohibits recovering possession in any way other than as prescribed by the Act.

It will protect tenants from lessors arbitrarily evicting without a tribunal order.

*Clause 220* prohibits a person from obstructing a person executing a warrant of possession, except with reasonable excuse.

*Clause 221* sets out a process for terminating the agreement if the premises are believed to be abandoned and allows a tenant to dispute a notice given under the clause.

*Clause 222* allows the lessor to apply for an order terminating the agreement when the lessor believes the premises are abandoned.

It also provides the tribunal with the power to make an order declaring that the premises are abandoned.

*Clause 223* provides a process for dealing with goods, other than personal documents, which are left on the premises after the termination of the agreement.

Lessors who follow the provisions of the clause obtain protection from any liability incurred in removing, selling and disposing of the goods.

It also provides the power for lessors to recover costs including outstanding amounts owed by the tenant under the agreement.

*Clause 224* provides for a tenant's personal documents left on the premises after the termination of the agreement to be given to the Public Trustee.

*Clause 225* clarifies the lessor's entitlement to compensation for losses incurred as a result of failure by the tenant to comply with an order for possession. Compensation includes the rent for the time of the occupation by the tenant after the termination of the agreement.

The clause empowers the tribunal to make orders for such compensation.



*Clause 226* gives the tribunal or the registrar the power to order compensation to the lessor for losses incurred when the premises become abandoned under clause 221.

*Clause 227* gives the tribunal or registrar the power to order compensation to the lessor when the premises are declared by the tribunal to be abandoned under clause 222.

*Clause 228* allows the tenant to seek a review of a tribunal or registrar's order declaring the premises to be abandoned.

It also enables the tribunal to grant compensation to the tenant for losses incurred by the termination of the agreement.

*Clause 229* allows the former tenant to apply to the tribunal on the grounds of dissatisfaction with the way abandoned goods have been dealt with by the lessor.

*Clause 230* requires the lessor and tenant to minimise any losses incurred in certain situations such as the abandonment of the premises.

*Clause 231* provides for urgent applications which will not require mediation if disputed prior to being heard by the tribunal.

*Clause 232* will require all non urgent matters to be mediated prior to an application to the tribunal unless there is no dispute or the matter has not been able to be mediated successfully.

*Clause 233* allows a lessor or a tenant to give a mediation notice to the Authority if a dispute is about an issue that requires mediation prior to a tribunal hearing.

*Clause 234* defines a reference to making a tribunal application to include the giving of a mediation notice.

*Clause 235* requires the Authority to organise a mediation conference between the parties within 7 days of receiving the mediation notice.

*Clause 236* specifies that a mediation conference can only proceed if the prescribed fee has been paid.

*Clause 237* restricts representation at a mediation conference to the parties involved in the dispute, unless the mediator permits it or if the person is representing a corporation.

*Clause 238* requires mediation conferences to be held in private.

*Clause 239* ensures that parties are not compelled to attend mediation and that a party can withdraw from mediation at any time. The mediator must record the attendance or withdrawal of parties and may terminate a conference at any time. The attendance at a mediation conference is not, however, recorded on the register compiled by the Authority under clause 243.

*Clause 240* allows a mediator to permit a person to take part in mediation if the mediator is satisfied that the person has sufficient interest in the resolution of the matter.

*Clause 241* requires that when a resolution is reached by mediation, an agreement is written up and signed. The agreement must not be inconsistent with the Act.

*Clause 242* allows for the mediator to take notes of the mediation conference but forbids any official record to be taken of discussion in the conference.

*Clause 243* requires the Authority to keep and maintain a disputes register that records details of each dispute including dates, names, subject and whether a resolution arose. The register is not to contain details on attendance or withdrawal from mediation. The clause also provides for extracts be given to the parties involved and to the tribunal.

*Clause 244* allows a person to withdraw a dispute. Such a notice may be given before or during mediation.

*Clause 245* requires mediators to maintain secrecy regarding information disclosed in a mediation conference, except in limited circumstances such as statistical purposes or where there is agreement between the parties.

*Clause 246* stipulates that a mediator, a party to mediation, and a document produced at mediation has the same immunity and protection as provided in the Supreme Court.

*Clause 247* prohibits the use of anything said in mediation from being used before the tribunal or any other court.

*Clause 248* provides for the tribunal to hear an application and make an order regarding the applicability of the Act to an agreement.

The Clause allows the Authority to intervene or support an application under this Clause.

*Clause 249* provides a general right for the lessor or tenant to apply to the tribunal if the other party is in breach of the agreement.

It requires the application to be made within one month of the person becoming aware of the breach.

*Clause 250* allows the tribunal to make orders restraining any action in breach, requiring an action in performance or requiring a party to perform work to remedy a breach of the agreement.

The Clause also provides for powers of the tribunal to award compensation to either party or to require that all or part of the rent be paid to the tribunal until compensation has been determined or the agreement has been performed.

*Clause 251* allows the tribunal the discretion to refuse to grant an order for termination if an Aboriginal organisation as a lessor ordinarily waives the breach because of Aboriginal tradition.

The tenant must be an Aboriginal person.

*Clause 252* allows the tribunal the discretion to refuse to grant an order for termination if an Islander organisation as a lessor ordinarily waives the breach because of Island custom.

The tenant must be an Islander person.

*Clause 253* makes provision for a lessor to dispute a notice to remedy or a notice of intention to leave by the tenant.

If the tenant fails to establish the grounds of the notice and subsequently leaves, the tribunal may make an order for the tenant to pay compensation for losses incurred by the lessor.

*Clause 254* is a general provision enabling the tribunal to hear any dispute about the residential tenancy agreement.

Further, it allows for a cotenant to make an application under this provision.

*Clause 255* provides the tribunal with jurisdiction to hear a dispute over the bond between cotenants.

*Clause 256* allows the tribunal to hear more than one application at a time as long as the matters relate to the same tenancy agreement.

*Clause 257* allows the tribunal to join an application by a sub-tenant with

an application by a lessor or tenant.

*Clause 258* limits the purpose of authorised persons and other enforcement provisions to ensuring compliance with the Act.

*Clause 259* provides for the Authority to nominate one of the Authority's own officers, or an employee of a department, or another person prescribed by regulation as an "authorised person".

*Clause 260* specifies that the powers of an authorised person may be set out in writing by the Authority, by regulation or as a condition of appointment.

*Clause 261* sets out that the conditions of appointment of an authorised person are to be specified in the instrument of appointment.

*Clause 262* requires the Authority to give an identify card to each authorised person and the information that the identify card must contain.

*Clause 263* stipulates that an authorised person who is exercising a power under the Act must produce or have displayed the identity card.

*Clause 264* provides for the entry of an authorised person to a place either by the consent of the occupier, or if permitted, by a warrant.

*Clause 265* allows an authorised person to apply to a Magistrate for a warrant. The application must be sworn and state the grounds on which the warrant is sought. The Magistrate needs to be satisfied that all relevant information has been provided before issuing the warrant, and that there are reasonable grounds for suspecting a breach of the Act. The warrant to enter and exercise the authorised person's powers must also state the evidence for which the warrant is issued, when entry may be made and the day (within 14 days) when the warrant ends.

*Clause 266* provides for an authorised person to apply for a warrant by phone, fax or other means in urgent or special circumstances. The Magistrate may fax the warrant to the authorised person. If the warrant cannot be faxed, the Magistrate must convey to the authorised person the terms of the warrant, the date and time of issue and the reasons why it was issued.

The authorised person must then complete a warrant form with the details provided by the Magistrate. The faxed warrant, or the form completed by the authorised person, has the same function as a warrant issued by a Magistrate.

As soon as practicable, the authorised person must send to the Magistrate the sworn application and the warrant form which are then attached by the Magistrate to the issued warrant. The warrant must be able to be produced as evidence in a Court to show that a power was exercised under that warrant.

*Clause 267* sets out what an authorised person may do once having entered a place. These powers include search; examine, inspect, film or photograph; copy documents; take another person or equipment into the place. The authorised person may require another person to assist in the exercise of a power, and that other person may not unreasonably refuse to do so, except if answering a question or producing a document might tend to incriminate that person.

*Clause 268* provides that a person must not knowingly give false or misleading information to an authorised person.

*Clause 269* provides that a person must not give a document to an authorised person knowing it to contain false or misleading information.

*Clause 270* requires an authorised person who damages anything while exercising a power under the Act to immediately notify the owner.

*Clause 271* provides for the payment of compensation for loss or expense incurred because of the exercise of a power under the Act.

*Clause 272* applies where an authorised person seeks the consent of an occupier of a place to enter that place. The occupier must be informed of the purpose of the search, that things or information found may be used in Court and that consent is not mandatory. If consent in writing is granted by the occupier, a copy of the signed consent with particulars must be given to the occupier.

*Clause 273* applies to a proceeding in a Court where it is material for the court to be satisfied that an occupier of a place granted consent to entry. Unless proven to the contrary, and if no acknowledgment of consent is produced, the court may assume the occupier did not consent.

*Clause 274* states that an authorised person must not be obstructed in the exercise of a power without reasonable excuse.

*Clause 275* provides a penalty for impersonating an authorised person.

*Clause 276* states that the executive officers of a corporation must ensure the corporation complies with the Act. Each executive officer is equally

guilty of an offence if the Corporation is guilty of an offence. In defence, an executive officer may prove that he/she took all reasonable steps to ensure compliance, or was not in a position to influence the corporation in relation to the offence.

*Clause 277* applies where a proceeding is brought under the Act. An authorised person's appointment or powers must be presumed unless a party, by reasonable notice, requires proof of the appointment or powers. If a document bears the signature of the chief executive officer, the chairperson of the Authority or an authorised person, the document is evidence of the matter. A document is any order, notice, direction, record, requirement or decision (or copy thereof) or other document issued pursuant to the Act, or anything else prescribed by regulation.

*Clause 278* states that a person causes a serious nuisance in a moveable dwelling park if that person causes serious nuisance to other tenants in the park. Some examples of a serious nuisance are provided.

*Clause 279* allows a police officer to enter with reasonable force and without warrant a moveable dwelling in a moveable dwelling park if the officer finds or suspects a person is causing a serious nuisance, or suspects a person of having recently caused a serious nuisance.

*Clause 280* allows a police officer who finds or suspects on reasonable grounds, a person causing a nuisance in a moveable dwelling park to instruct that person to stop doing so or not to cause another serious nuisance. This is called an initial nuisance direction.

*Clause 281* allows a police officer who reasonably suspects a person of having contravened an order not to cause a nuisance within the previous 24 hours, to direct that person to leave the park for a period not longer than 24 hours. The final nuisance direction can be written or oral.

*Clause 282* empowers a police officer to request a person who the police officer finds causing, or has caused a serious nuisance in a moveable dwelling park, or who has contravened a nuisance direction to state their name and address. The person must be warned that it is an offence to fail to provide the name and address when required. Evidence as to correctness of name and address may also be required. Failure to provide the correct name and address is not an offence if the person did not cause the nuisance or contravene the direction.

*Clause 283* allows the owner of a moveable dwelling park to apply at

any time to the tribunal for an order excluding a person from the park because of the person's behaviour in the park. If no proceedings are current for contravention of a nuisance order, the person must be given 21 days' notice before the application is heard.

*Clause 284* allows the tribunal, after hearing an application, to exclude a person from a moveable dwelling park for up to one year. The tribunal may have regard to the nature of the behaviour, previous directions given to the person, the person's domestic arrangements and health and welfare.

*Clause 285* gives a police officer the power of arrest if a person has failed to leave the park after a direction; failed to comply with an order of the tribunal not enter the park; or failed to provide a name and address. The power of arrest can only be exercised if a summons would be ineffective.

*Clause 286* establishes the Residential Tenancies Authority.

*Clause 287* states that the Authority is a body corporate, has a seal, and may sue and be sued.

*Clause 288* states that the Authority represents the State with all its privileges and immunities and is an exempt public authority under Corporations Law.

*Clause 289* sets out the Authority's functions to deal with rental bonds as provided in the Act; to provide information and educational services and collect data; to arrange mediation between parties to a residential tenancy agreement; to be a party to proceedings about the application of the Act; to advise the Minister about the operation of the Act including exemptions from provisions of the Act; to perform all incidental functions and other functions given to it by legislation.

*Clause 290* lists the powers of the Authority: to enter into contracts; to deal in property; to appoint agents and attorneys; to charge fees and other things incidental to its functions under this or another Act.

*Clause 291* allows the Minister to consult with and direct the Authority if it is in the public interest. A Ministerial Direction must be gazetted within 21 days.

*Clause 292* states that the Authority has a board of directors.

*Clause 293* places responsibility on the board for the Authority to operate in an appropriate, efficient and effective manner.

*Clause 294* states that the board consists of the chairperson and six other

directors appointed by the Governor in Council.

*Clause 295* limits a director's term to 3 years. A director may resign by writing to the Minister. A director's position is vacant if the director commits an offence or becomes an employee or contractor of the Authority. The Governor in Council may end the appointment of a director at any time without cause.

*Clause 296* states that a director's position is part time with remuneration fixed by the Governor in Council.

*Clause 297* allows the board to meet when and where it chooses, but it must meet at least once every 3 months. The chairperson may at any time call a meeting or when asked by one quarter or more of the other directors.

*Clause 298* stipulates that the chairperson is the presiding officer at board meetings. The directors may choose one among them to preside in the absence of the chairperson. A quorum is at least half the directors appointed. Issues are decided by majority of those present, with the chairperson having a casting vote.

The board may conduct meetings as it sees fit, including using electronic or other means. Taking part in a meeting is evidence of presence, and resolutions are valid if approved by half the directors in writing whether in a meeting or otherwise, provided that procedures are complied with.

*Clause 299* requires a director to disclose direct or indirect financial interest (or that of a related person) in an issue before the board, and to be absent when the issue is being decided. A quorum may be less than stipulated in *Clause 298* in these circumstances.

*Clause 300* requires the board to keep minutes of the proceedings.

*Clause 301* states that the Authority is a body within the meaning of the *Financial Administration and Audit Act 1977*.

*Clause 302* requires the Authority to develop and submit to the Minister an annual budget, which the Minister must approve (including any subsequent amendments to the budget).

*Clause 303* requires judicial notice to be taken of the Authority's seal.

*Clause 304* states that the Authority is a unit of public administration under the *Criminal Justice Act 1989* and an agency under the *Equal Opportunity in Public Employment Act 1992*.



*Clause 305* allows the Authority to delegate its powers to a director or officer.

*Clause 306* requires the Authority to appoint a chief executive officer, answerable to the Board and appointed by the Governor in Council for a term of five years. A director may not be the chief executive. The *Public Service Management and Employment Act 1988* (“*PSM & E Act*”) does not apply.

*Clause 307* prohibits the chief executive officer from undertaking outside paid employment or engaging in business without the permission of the board.

*Clause 308* provides for the appointment of an acting chief executive officer in the latter’s absence.

*Clause 309* allows the Authority to engage employees outside of the *PSM & E Act*, but subject to relevant awards or agreements.

*Clause 310* allows the Authority to engage the services of an employee of a department or other State Authority.

*Clause 311* requires an officer of the Authority to disclose a conflict of interest as soon as possible after becoming aware of it.

*Clause 312* provides an offence to knowingly give the Authority false documentary evidence.

*Clause 313* stipulates that an attempt to commit an offence under the Act is an offence under the Criminal Code, with a maximum penalty of half the maximum penalty for the offence in question.

*Clause 314* states that an offence against the Act is a summary offence.

*Clause 315* allows for consideration of a person’s (or that person’s representative’s) state of mind in proceedings for an offence under the Act. An act or omission by a person’s representative has the same meaning as acts or omissions of the person, in the absence of evidence that reasonable steps were taken to prevent them.

*Clause 316* states that a condition report is evidence of the condition of the premises at the time the report was signed by the tenant or, if not signed, when the report was made. A report signed by the tenant may be marked to indicate the tenant’s disagreement with aspects of the report.

*Clause 317* provides for a statement from the Authority in relation to a

bond being evidence of the matter.

*Clause 318* allows applications to be made to a court of the relevant jurisdiction for an amount greater than prescribed under the *Small Claims Tribunal Act 1973*.

*Clause 319* protects officers of the Authority or authorised persons from civil liability for any act or omission carried out under the Act honestly and without negligence.

*Clause 320* allows the chief executive officer to approve forms for use under the Act.

*Clause 321* allows the Governor in Council to make regulations under the Act in relation to fees and offences and penalties.

*Clause 322* defines terms relevant to the transition from the former Rental Bond Authority to the Residential Tenancies Authority and other transitional arrangements.

*Clause 323* states that this Division of the Act applies with reference to existing Acts.

*Clause 324* states that a reference to the former *Rental Bond Act 1989* or *Residential Tenancies Act 1975* is a reference to this Act.

*Clause 325* states that a reference to the former Rental Bond Authority is a reference to the Residential Tenancies Authority.

*Clause 326* vests the assets and liabilities of the former Authority in the new Authority on commencement, subject to s20A of the *Acts Interpretation Act 1954*. The clause expires after 6 months.

*Clause 327* stipulates that proceedings by or against the former Authority may continue, subject to s20A of the *Acts Interpretation Act 1954*. The clause expires after 6 months.

*Clause 328* requires the Registrar of Titles and other relevant persons to record the vesting of property in the Authority, without fees or stamp duty being payable.

*Clause 329* stipulates that documentary references to the former Authority (except in legislation) will apply to and bind the Authority. The clause expires after 6 months.

*Clause 330* transfers employees of the former Authority to the new Authority with existing rights.

*Clause 331* voids appointments under the former Rental Bond Act as a member of the former Authority or as an authorised person.

*Clause 332* transfers rental bonds under the previous Act to the new Act.

*Clause 333* empowers the Authority to continue to deal for up to 6 months with an application for the payment of a rental bond current at the time of commencement.

*Clause 334* requires a person who was required to keep a receipt under the previous legislation to continue to keep the receipt for at least one year after commencement.

*Clause 335* allows a condition report completed under the previous Act to remain valid and admissible in proceedings.

*Clause 336* requires the Authority to close the former rental bond account and transfer all proceeds to a new rental bond account.

*Clause 337* requires the Authority to close the former rental bond interest account and transfer all proceeds to a new rental bond interest account.

*Clause 338* states that this Division of the Act expires after 1 year.

*Clause 339* states that the new Act does not apply to agreements in force at commencement, except to the extent prescribed by regulation. However, for unwritten periodic agreements the Act does apply but not until 6 months after commencement or, if the agreement is changed, 14 days after the change.

*Clause 340* provides for a reference to *the Building Units and Group Titles Act 1994* to be a reference to the *Building Units and Group Titles Act 1990*.

*Clause 341* allows regulations to be made to assist the transition from the *Residential Tenancies Act 1975* and the *Rental Bond Act 1989*.

*Clause 342* repeals the *Rental Bond Act 1989*, the *Residential Tenancies Act 1975* and the *Residential Tenancies Amendment Act 1991*.

*Clause 343* amends various sections of the *Small Claims Tribunal Act 1973* and the *State Housing Act 1945*. The amendments are listed in Schedule 2 of the Act. The amendments give power to the tribunal to hear applications made under this Act and covers other things incidental to that power.

## **Explanatory Notes**

### *Schedule 1*

Lists the Acts which are repealed.

### *Schedule 2*

Contains amendments to the *Small Claims Tribunal Act 1973* and the *State Housing Act 1945*.

### *Schedule 3*

Contains the Dictionary for the Residential Tenancies Act.