

RESIDENTIAL SERVICES (ACCOMMODATION) BILL 2002

EXPLANATORY NOTES

General Outline

Objectives of the Legislation

The principal policy objectives of the Bill are to:

- balance the rights and responsibilities of residents and service providers relating to the provision of accommodation in the residential services industry;
- regulate the making, context, operation and ending of residential service agreements;
- establish a process for resolving disputes about residential service agreements;
- establish administration and compliance processes for the legislation.

Reasons for Proposed Legislation

The proposed regulation of the residential services industry, comprising boarding houses, supported accommodation and aged rental accommodation, provides a response to concerns regarding the safety and wellbeing of residents.

There have been requests for some time to provide regulation of tenancy rights and responsibilities for residents. The 1992 Report, Residential Tenancies Law Reform in Queensland—Boarding Houses and Caravan Parks; a 2nd Report to the Hon. Glen Milliner, MLA, Minister for Consumer Affairs and Minister for Corrective Services, recommended regulation to protect the rights of parties through agreements in these forms of accommodation.

Most recently, the 1996 Report of the Board of the Residential Tenancies Authority that followed the review of the *Residential Tenancies Act 1994* also recommended tenancy regulation through the boarding house industry.

Many concerns have been raised by advocacy organisations for people with a disability concerning privately run services. For people with a disability there is a risk of abuse when there is whole of life control over residents.

The residential services industry is one of the few industries within the broader residential rental market that remains without consumer protection legislation. This Bill is one component of a reform package that has been developed by the Hostel Industry Taskforce (established in 2000) and other agencies in response to poor conditions and standards currently evidenced in the residential services industry. While modeled on the principles of general tenancy legislation, this Bill provides a regulatory framework tailored to the form of accommodation provided in the residential services sector. The *Residential Services (Accreditation) Bill 2002* is another component of the response to the problems in this area. It addresses concerns relating to standards by providing a system of mandatory standards and accreditation.

How the policy objectives will be achieved

The objectives of the legislation are primarily achieved through establishing standard contractual arrangements for the provision of accommodation and providing for standard house rules. The objectives of the legislation are further achieved through regulating the operation of agreements on issues such as entry to rooms and regulating the end of agreements. The legislation also establishes processes for resolving disputes about residential service agreements, for compliance and for the administration of the legislation

Estimated cost of implementation

The scheme proposed in the legislation will involve administrative costs in connection with the dispute resolution, compliance and administrative functions.

The legislation will be administered by the Residential Tenancies Authority. It is anticipated that the costs of implementation of the legislation will be:

2002/03	\$250,000
2003/04	\$160,000
2004/05	\$160,000

One-off funding is being sought in 2002/03 from Consolidated Revenue to offset costs in the first year. The RTA, which is self-funded through interest on rental bonds, will absorb operating costs in future years.

Consistency with Fundamental Legislative Principles

No fundamental legislative principle issues have been identified during the development of the legislation.

CONSULTATION

Community

The Hostel Industry Development Unit consulted extensively with all key stakeholder groups including residents/consumers, industry and community groups.

The Board of the Residential Tenancies Authority was consulted about the draft legislation. The Hostel Industry Development Unit Joint Advisory Council comprised representation from relevant government agencies, industry, peak disability organisations, Boarding House Action Group, Disability Housing Coalition, Commerce Queensland, Local Government Association of Queensland and Industry Training Council. The Joint Advisory Council was also consulted about the draft legislation.

Government

Through the Hostel Industry Task Force there have been extensive consultations with Government Agencies including:

- Department of Premier and Cabinet
- Department of Tourism, Racing and Fair Trading
- Department of Families
- Department of Health
- Department of Housing
- Department of Local Government and Planning
- Queensland Treasury
- Disability Services Queensland
- Residential Tenancies Authority
- Emergency Services
- Department of Justice and Attorney General
- Queensland Police Service

PART 1—PRELIMINARY

Division 1—Introduction

Clause 1 sets out the short title of the Act.

Clause 2 states that the Act will commence on proclamation.

Division 2—Interpretation

Clause 3 states that the Dictionary in the schedule defines particular words used in the Act.

Clause 4 specifies what a residential service agreement is and under what circumstances it applies.

Division 3—Application and object

Clause 5 states that this Act, the Accreditation Act and certain provisions of the *Residential Tenancies Act 1994* regulate various matters concerning residential services.

Subclause (2) states that the Accreditation Act defines what is a residential service for this Act and establishes systems for the registration and accreditation of residential services to ensure the services are conducted at an appropriate standard.

Subclause (3) states that the *Residential Tenancies Act 1994* mostly does not apply to residential services but includes provisions for keeping accounts for rental bonds paid to the authority, provisions for the appointment of conciliators who are given functions under this Act and provisions for the administration and enforcement of this Act.

Clause 6 provides that the Act applies to all persons including the State and as far as the legislative power of the Parliament permits, the Commonwealth and other State governments.

Clause 7 sets out the object of this Act, which is to balance the rights and responsibilities of residents and service providers in relation to the

provision of accommodation in the course of a residential service, and the way it is to be achieved.

Clause 8 provides that a right or remedy given to a person in this Act is in addition to a right or remedy a person has already provided the right or remedy is consistent with this Act.

PART 2—RIGHTS AND RESPONSIBILITIES OF RESIDENTS AND SERVICE PROVIDERS

Clause 9 sets out the responsibilities of a resident in a residential service.

Clause 10 sets out the responsibilities of a service provider in relation to each resident in the residential service.

PART 3—RESIDENTIAL SERVICE AGREEMENTS

Clause 11 provides that the terms of a residential service agreement are taken to include the responsibilities imposed on the resident under *Clause 9*, the responsibilities imposed on the service provider under *Clause 10*, the house rules for the rental premises, the terms of any conciliation agreement in force about the residential service agreement and other duties imposed on or entitlements given to the service provider or resident under this Act.

Clause 12 provides that a regulation may prescribe standard terms for residential service agreements.

Clause 13 defines special terms of the residential service agreement as terms, which are not standard terms or terms included in the agreement under *Clause 11*. Examples of special terms may include terms about the provision of a food service or a personal care service to the resident.

Clause 14 provides that an agreement does not apply and is void to the extent that there is an inconsistency between the agreement and the Act. Penalties apply to persons who intentionally enter into agreements inconsistent with the Act.

Clause 15 provides that if there is an inconsistency between a term of the residential service agreement and the Act, the Act applies and the inconsistent term is void.

Clause 16 provides that a residential service agreement must be in writing and penalties apply if it is not. The agreement must include the standard terms and any special terms. Subclause (4) specifies what information must be included in the agreement. Subclause (5) provides that the service provider is responsible for the costs of preparing the agreement.

Clause 17 provides that the service provider must give the resident a copy of the written agreement for signing. The service provider must return a copy of the agreement signed by both parties within 3 days of receiving the agreement signed by the proposed resident. A penalty applies if the service provider does not do so.

PART 4—RENT

Division 1—Records

Clause 18 sets out when a written receipt must be given for a rent payment. The clause also sets out what information must be included in a written receipt for a rent payment.

Clause 19 requires that a service provider must either make a copy of a receipt given for a rent payment or a written record for the payment. The copy or other written record made must be kept for at least 2 years after the end of the agreement.

Clause 20 prohibits any person from falsifying rent records by either including incorrect information or by omitting important information.

Division 2—Amount of rent

Clause 21 requires the service provider to increase the rent in a particular way. The service provider must give the resident at least 4 weeks written notice which includes the new rent and the effective date. A

service provider can only increase the rent in a fixed term agreement if the agreement provides for a rent increase, it states the amount of the increase or how the increase is to be worked out and the rent increase is in accordance with the provisions in the agreement. However these restrictions do not apply to an increase in rent where the parties amend the agreement to provide for an additional service to be provided by the service provider to the resident.

Clause 22 provides for rent to be reduced where the resident's room or common areas become wholly or partially unfit to live in or where their amenity substantially decreases, except where this is due to intentional or reckless damage caused by the resident or their guest. Rent may also be reduced where a service provided under the agreement is no longer provided or where the standard of the service substantially decreases other than because the resident has not met an obligation under the agreement.

Clause 23 provides that a service provider may require the resident to pay an amount of rent for a utility service if the resident's room is separately metered for the utility service and the amount the resident is required to pay is not more than the amount the service provider is required to pay for the metered service. Utility services are defined as electricity, gas, water or another service prescribed by regulation.

Division 3—Other provisions about rent

Clause 24 sets out how to pay rent and the way in which rent can be paid. These conditions may be stated in the agreement.

Clause 25 sets out where rent is to be paid. The service provider may change where the rent is to be paid by providing written notice and the new place for paying rent is reasonable.

Clause 26 limits the amount of rent required to be paid in advance.

Clause 27 prohibits a service provider from taking and selling a resident's property as security payment for rent or for a claim for loss or damage due to the resident's breach of the residential services agreement except in accordance with the provisions in Part 9, Division 5—Goods or money left behind in premises.

PART 5—RENTAL BONDS

Division 1—Payments to authority

Clause 28 defines a rental bond as an amount paid by or for the resident, which is intended to be available for the financial protection of the service provider where the resident breaches the agreement. A rental bond includes part of a rental bond but does not include rent paid in advance.

Clause 29 provides that a person is a rental bond contributor in the following circumstances:

- if the resident pays the bond and there are no co-residents
- if there are co-residents and the rental bond notice for the agreement shows the co-resident has paid or contributed to the rental bond
- if a co-resident is replaced by another co-resident and the authority is notified in writing of the change
- if the authority is otherwise satisfied that a co-resident has contributed to the rental bond.

Clause 30 requires a person who receives a rental bond to pay it within 10 days to the authority and use a particular form to do so.

Clause 31 defines rental bond instalments. It requires that all rental bond instalments must be paid to the authority within 10 days of receiving the final instalment. However if the final instalment has not been received at the end of 3 months, the service provider must pay all of the instalments received to the authority within ten days and pay further instalments to the authority within 10 days of their receipt. If the agreement ends before the final instalment is received the service provider must, within 10 days of the end of the agreement, pay to the authority the instalments received using a particular form to do so.

Clause 32 provides that where a service provider receives financial protection against a breach of the agreement by a resident, for example through a bond guarantee, the service provider must still pay a rental bond to the authority.

Clause 33 requires the authority to give separate written acknowledgements to the resident and service provider after receiving a rental bond.

Clause 34 ensures that only the authority has a right to monies earned by investing rental bonds.

Clause 35 allows for the continuation of a rental bond when a residential service agreement ends and a new agreement commences at the same rental premises.

Division 2—Payments by authority

Clause 36 states that this Division of the Act deals with payment of rental bonds by the authority.

Clause 37 allows the authority only to pay a bond if it is paid under this division.

Clause 38 requires an application to the authority for payment of a bond to be on the approved form.

Clause 39 provides that the authority must pay a rental bond as directed by an application:

- if it is jointly signed by the resident and service provider;
- or if the application is made by the resident directing that payment be made to the service provider only;
- or if there is only one bond contributor and the application is made by the service provider directing that payment be made to the contributor only.

Clause 40 covers applications for rental bonds made by the service provider and directing that the rental bond be paid to co-residents who contributed to a rental bond. The authority must pay the rental bond as directed, if the lessor has specified that the contributors are to be paid either in the proportions they contributed to the bond or in equal proportions.

If the lessor does not specify the proportions or does not specify the contributors be paid in the proportions they contributed or in equal proportions, the authority must notify all contributors to the bond. The authority may only pay out as directed by the service provider if a rental bond contributor does not respond to the authority's notice within the allowed time, or does respond by applying to the tribunal for an order but subsequently withdraws that application.

The clause authorises but does not require the authority to make payments as directed under certain conditions because in some rare

situations the authority may not pay as directed for example where the authority becomes aware of an application to a tribunal for an order about payment.

Clause 41 indicates how a bond may be paid out by the authority when the application is made by the service provider only.

The clause authorises but does not require the authority to make payments as directed under certain conditions because in some rare situations the authority may not pay as directed for example where the authority becomes aware of an application to a tribunal for an order about payment.

Clause 42 indicates how a bond may be paid out by the authority when the application is made by the resident only.

The clause authorises but does not require the authority to make payments as directed under certain conditions because in some rare situations the authority may not pay as directed for example where the authority becomes aware of an application to a tribunal for an order about payment.

Clause 43 provides how a rental bond may be paid out where an application for a rental bond has been made by one or more but not all of the bond contributors and directing the payment be made to the applicants.

The clause authorises but does not require the authority to make payments as directed under certain conditions because in some rare situations the authority may not pay as directed for example where the authority becomes aware of an application to a tribunal for an order about payment.

Clause 44 provides that the allowed period for a resident or service provider to dispute an application for payment of a bond under Clauses 40, 41, 42 and 43 is 14 days or as determined by regulation.

Clause 45 allows a bond to be paid by the authority at the tribunal's direction.

Clause 46 provides for where a bond is payable to a resident and the bond was paid by another party. For example if it was the Department of Housing under the bond loan program, then the authority is to pay the Department.

Clause 47 prevents the authority from paying the rental bond if there is a notice terminating the agreement and the handover day has not occurred.

However, the authority can make payment to either party without notice to the resident or service provider.

Clause 48 requires processing of the payment of the bond to cease if an application made by one party is withdrawn. However, if both parties apply and one party withdraws, the application proceeds as an application by one party only.

Clause 49 limits the way that the authority is required to make a payment to a person.

Division 3—Enforcement provisions

Clause 50 requires a service provider or service provider's agent who receives a rental bond to give a receipt that contains specific information and to keep a record of the receipt for at least 1 year after the agreement ends.

Clause 51 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 52 provides for a Court to impose a penalty on a person who fails in their duty to pay 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.

Division 4—Miscellaneous

Clause 53 describes the circumstances under which the resident can be required to pay additional bond money. The service provider must give written notice of the amount and date of the increase.

Clause 54 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 resident.

PART—HOUSE RULES

Division 1—General

Clause 55 provides that house rules are rules about the use, enjoyment, control or management of rental premises. Subclause (2) provides that house rules are the prescribed rules and any other rules made by the service provider under this part of the Act.

Clause 56 defines prescribed rules as rules prescribed by a regulation. A prescribed rule may state that it is subject to another house rule made by the service provider under this part of the Act. Subclause (3) provides that unless it provides otherwise, a prescribed rule applies to all rental premises.

Clause 57 provides that a service provider can make rules for rental premises about the use of shared facilities, parking of motor vehicles, drinking alcohol or unlawfully consuming other drugs, making noise, keeping pets or another matter prescribed by regulation. Such rules must be consistent with the prescribed rules and made in accordance with Division 2 of this part of the Act.

Division 2—Rule changes

Clause 58 defines a rule change as the making of a new rule or the amending, revoking or replacing of an existing house rule.

Clause 59 provides that before making a rule change the service provider must give a written notice to each resident setting out the proposed change, the proposed effective date, stating the resident may object and how the objection can be made. Clause 59(2) provides that the notice must be given 7 days before the proposed effective date, or where a person becomes a resident less than 7 days before the proposed effective date when they become a resident.

Clause 60 allows a service provider to withdraw a proposed change by giving written notice to each resident.

Clause 61 provides that a resident can object to a proposed rule change before the commencement date. The notice must be in writing, stating the resident's name and that the resident considers the change is unreasonable. Subclause (3) provides the rule change becomes effective on the proposed

date unless at least half of the residents object or the service provider withdraws the proposed changes. Subclause (4) provides that if at least half of the residents object to the proposed rule change, it does not take effect and the service provider must give a written notice accordingly.

Clause 62 provides that if a proposed rule change does not take effect under *Clause 61*, the service provider may apply to a tribunal within 7 days after the proposed commencement date of the rule change for an order declaring the proposed rule change to be reasonable. Subclauses (5) & (6) specifies orders that can be made by the tribunal regarding the service provider's application.

Division 3—Publication of house rules

Clause 63 provides that a service provider must give a prospective resident a copy of the house rules before entering into a residential services agreement.

Clause 64 provides that a service provider must ensure that a copy of the house rules are displayed at all times in a place in the rental premises likely to be seen by the residents.

PART 7—ENTRY TO RESIDENTS' ROOMS

Clause 65 prohibits the service provider from entering the resident's room unless the entry is in accordance with this part of the Act.

Clause 66 provides that the service provider can enter the resident's room for any reason if the resident agrees, or at a reasonable time to provide a service other than accommodation if the service provider has agreed to provide that service.

Clause 67 provides that a service provider can enter to inspect the resident's room at a reasonable time after giving 48 hours written notice, but no more than once each month.

Clause 68 limits the reasons that the service provider can enter the resident's room. The service provider must give the resident at least 24 hours written notice, but where the entry is to more than one room, notice

can be given by posting the notice of entry of a notice board or some other place in the rental premises where it is likely to be seen by affected residents.

Clause 69 provides that the service provider may enter a resident's room without notice in some circumstances.

Clause 70 provides some limitations on entry requiring the service provider to tell the resident about entry immediately before entry if the resident is nearby. It also provides that the service provider must preserve as far as possible the resident's privacy and not remain in the room for longer than reasonably necessary to carry out the purpose of the entry.

Clause 71 provides that a reference in this part of the Act to a service provider includes an agent of the service provider. It requires that written evidence of the agent's appointment must be produced if the resident requests it, if the agent is not accompanied by the service provider and is not the person to whom the resident normally pays rent.

PART 8—CONDITION REPORTS

Clause 72 provides that this part of the Act only applies if a rental bond is payable or has been paid under the residential service agreement.

Clause 73 provides that the service provider is responsible for preparing two signed copies of a property condition report to be given to a resident before providing accommodation. The resident must sign the report noting any disagreements with it and return a copy to the service provider or their agent within 3 days. The lessor must keep a copy of the signed or unsigned report for at least 2 years after the agreement ends.

Clause 74 provides that in a tribunal proceeding an entry condition report is evidence of the condition of the room at the time it is signed by a resident, to the extent it has not been qualified by the resident on the report, or otherwise, evidence of the condition of the room when the report was made.

PART 9—ENDING OF RESIDENTIAL SERVICE AGREEMENTS AND RELATED MATTERS

Division 1—General

Clause 75 prescribes how a service provider and resident can end a residential service agreement.

Clause 76 prohibits a service provider from purporting to end a residential service agreement in a way not authorised by this part of the Act.

Division 2—Action by service provider

Clause 77 provides for the service provider giving a written notice to remedy a breach within a defined period of time if the resident is in rent arrears or in breach of another term of the agreement. The written notice must contain specified information.

The notice requires the resident to remedy the breach by a due date that is within:

- 2 days if the breach is non-payment of rent and the resident has resided at the premises for less than 28 days.;
- 4 days if the breach is for non-payment of rent and the resident has resided at the premises for at least 28 days;
- 5 days for any other breach .

Subclause (6) provides that a notice for a breach for the non-payment of rent where the resident has resided at the premises for at least 28 days cannot be given unless the rent is overdue by 2 days.

Clause 78 enables a service provider to give a notice to leave to the resident if the service provider wishes to evict the resident for failing to remedy a breach as set out in a notice to remedy. The notice must be written and contain specific information.

The resident is required to leave the premises:

- immediately if the breach is non-payment of rent and at the time the rent was due, the resident had resided at the premises for less than 28 days
- in not less than 4 days if the breach is non-payment of rent and at the time the rent was due, the resident had resided at the premises for more than 28 days
- in not less than 2 days for any other breach.

Clause 79 provides that a service provider may give the resident a notice to leave the premises immediately without prior notice to remedy because of a defined serious breach of the residential services agreement which is:

- the resident has used their room or the common areas for an illegal purpose; or
- the resident or their guest has intentionally or recklessly destroyed or seriously damaged either a part of the rental premises, or endangered another person in the rental premises or significantly interfered with the reasonable peace, comfort and privacy of another resident or their appropriate use of their room and the common areas.

Clause 80 allows a service provider to give a resident a notice ending the agreement:

- if the premises have been destroyed or become unfit to live in other than because of a breach of the agreement by the service provider;
- because the premises may no longer be lawfully used as a residence; or
- because the premises have been appropriated or compulsorily acquired by law.

Subclause (2) requires written notice to be given within 1 month of the event. Subclauses (4) and (5) set out the times after the service of the notice, when a resident may be required to leave.

Clause 81 provides that a service provider can end a periodic agreement without grounds by giving at least 30 days notice to the resident, and a fixed term agreement at the end of the term, by giving at least 14 days notice. It also prohibits ending an agreement without grounds because the resident has or is taking action to enforce their rights.

Clause 82 provides that if a service provider has given a resident a notice to leave, the due date has passed and the resident refuses to leave, it is

lawful for the service provider to use necessary and reasonable force to remove the resident and their property from the premises, only if a police officer is present at the premises. However it is not lawful to use force that is likely to cause bodily harm to the resident.

Division 3—Action by resident

Clause 83 provides for the resident to give a notice to remedy breach to the service provider requiring the breach to be remedied within 5 days, where the service provider is in breach of the agreement.

Clause 84 allows a resident under a fixed term agreement to give the service provider a notice ending the agreement before the end of the term of the agreement on the grounds that the service provider has failed to remedy a breach set out in a notice to remedy.

Clause 85 allows a resident to give a service provider a notice ending the agreement, if the premises have been destroyed or made unfit to live in, other than because of a breach of the agreement by the resident.

Clause 86 provides that a resident may end a periodic agreement without grounds by giving at least 7 days notice.

Division 4—Continuation of fixed term agreements

Clause 87 provides that if a fixed term agreement does not provide for it to continue and neither party has given a notice ending the agreement before the end date, then the agreement continues as a periodic agreement after the end date on the same terms that previously applied except for the term about the fixed term.

Division 5—Goods or money left behind on premises

Clause 88 defines lost property as money, personal documents or other items left by a resident at the premises after the end of the agreement.

Clause 89 prohibits dealing with or disposing of this property, other than in accordance with this section of the Act.

Clause 90 provides that for money or personal documents, the service provider must make reasonable efforts to contact the former resident about the property and store it safely for at least 28 days, unless it is reclaimed before then. After at least 28 days, the service provider may deduct from any money held, payment of any outstanding amount owed under the residential service agreement and must then give the documents and the balance of the money to the public trustee.

Clause 91 sets out how the service provider must deal with other personal items. It provides that the service provider may sell or dispose of these items if they are perishable or valued at less than an amount prescribed in the regulations. Otherwise, the service provider must make reasonable efforts to contact the former resident about the property and store it safely for at least 28 days, unless it is reclaimed before then.

Subclause (4) provides that after 28 days the service provider must either continue to store the goods or may sell them after advertising in a local newspaper. If the goods are below a second amount prescribed in a regulation, they may also be donated to a charity.

Subclause (6) also requires the service provider to give the goods to a person entitled to the property, if the person claims them before they are sold and pays reasonable costs incurred by the service provider. Subclause (7) allows the proceeds of the sale of the goods to be applied to reasonable costs incurred under this section and the payment of any outstanding amount owed under the agreement, with the balance paid to either the former resident if located by the time of sale or to the public trustee.

Clause 92 requires the public trustee to keep a personal document given to it under *Clause 90* for at least 6 months, unless it is reclaimed.

Clause 93 requires the public trustee to pay any amount given to it under *Clause 90* or *91* into the unclaimed moneys fund kept under the *Public Trustee Act 1978*. This clause also specifies that the public trustee can make payments from money received to the service provider or at the tribunal's order in certain circumstances.

Clause 94 provides that a person entitled to the property left behind may apply to a tribunal if they are dissatisfied with how a service provider has dealt with or is dealing with property under this section of the Act. This clause provides that a tribunal can make an order for compensation or loss or any other order in determining an application under this section.

PART 10—CONCILIATION OF SERVICE DISPUTES

Division 1—Preliminary

Clause 95 provides that this part of the Act applies to service disputes, which are defined as a dispute relating to an agreement that has not been resolved through negotiation between the resident and service provider.

Division 2—Conciliation

Clause 96 defines a conciliation process as a means by which parties are helped and encouraged to resolve their dispute through steps such as telephone conferencing, joint sessions, private sessions or a step prescribed in regulations.

Clause 97 provides that the authority may refuse to provide a conciliation service to the parties if it considers the dispute is unsuitable for conciliation or if it is about the provision of a food or personal care service under the agreement.

Clause 98 sets out the functions of a conciliator under this Act.

Division 3—Starting the conciliation process

Clause 99 makes provision for a service provider or resident to make a dispute resolution request to the authority using an approved form.

Clause 100 requires the authority to start a conciliation process as soon as practicable after receiving a request, but allows it to give a notice to the parties that the dispute is not suitable for conciliation.

Division 4—Conduct of conciliation process

Clause 101 provides that if a conciliation fee is prescribed in a regulation, the conciliation process may start only if the fee is paid, unless it is waived by the authority.

Clause 102 provides that each party must conduct their own case in a conciliation process, but that the conciliator may allow a person to represent a party under certain circumstances.

Clause 103 provides that a party cannot be compelled to participate in a conciliation process and may withdraw from the process at any time. It also provides that the conciliator may end the process at any time.

Clause 104 provides that a person who is not a party to the dispute cannot take part in the conciliation process unless the conciliator or the authority agrees that they have a sufficient interest in the resolution of the dispute, but that such a person does not become a party to the dispute.

Clause 105 requires that an agreement reached in resolution of the dispute must be put in writing, signed by the parties and not be inconsistent with this Act.

Division 5—Withdrawal of dispute

Clause 106 provides that a person may withdraw a dispute resolution request they have made by giving a notice to the authority.

Division 6—Confidentiality, privilege and immunity

Clause 107 prohibits a conciliator from disclosing information gained during the conciliation process except in certain circumstances such as where the parties agree or for statistical purposes.

Clause 108 provides that a conciliator, a party to the conciliation process or their representative and a document produced during the process have the same protection and immunity as provided in the Supreme Court.

Clause 109 prohibits the use of any evidence of anything said or admissions made during the conciliation process being used before a tribunal or court.

PART 11—APPLICATIONS TO TRIBUNALS

Division 1—Preliminary

Clause 110 provides for a tribunal to hear an application about an issue under this Act only if the applicant has first made a dispute resolution request and the conciliation process has ended without reaching a conciliated agreement or the applicant believes a conciliated agreement has been breached. It also provides that this clause does not apply to applications made under Clause 112.

Clause 111 provides that where the question of whether an application to a tribunal has been made is at issue, a reference to making an application to a tribunal includes a reference to making a dispute resolution request.

Division 2—General powers of tribunals

Clause 112 provides for a 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 in or support an application under this Clause.

Clause 113 provides for the service provider or resident to apply to a tribunal for an order about a breach of the agreement and that the application must be made within 6 months of the applicant becoming aware of the breach.

Clause 114 allows a tribunal to make orders restraining any action in breach of the agreement, requiring a party to perform work to remedy a breach. It also provides for a tribunal to award compensation to either party, or to require all or part of the rent to be paid to the tribunal until compensation has been determined or the agreement has been performed.

Clause 115 makes provision for a service provider to dispute a resident's notice to remedy a breach or a notice to end the agreement, except for a notice to end the agreement without grounds. It also provides for orders a tribunal can make about such an application.

Clause 116 makes provision for a resident to dispute a service provider's notice to remedy a breach or notice ending an agreement, except for a

notice to end the agreement without grounds. It also provides for orders a tribunal can make about such an application.

Clause 117 provides for the resident to make an application to a tribunal about an unlawful entry to the resident's room or about the unlawful removal of the resident or their property from the premises. It provides for the tribunal to make any order it considers appropriate, including compensation, but requires any application to be made within 6 months of the event which is the subject of the application.

Clause 118 makes provision for the service provider or resident under a fixed term agreement to apply to a tribunal to make an order to end the agreement because the applicant would otherwise suffer excessive hardship. It provides for the tribunal to also make any other order, including compensation, it considers appropriate.

Clause 119 provides a general power for a tribunal to hear any dispute about a residential service agreement and make any order it considers appropriate to end the dispute.

Clause 120 provides for the tribunal to hear a dispute between co-residents about a rental bond for a residential service agreement and to make any orders it considers appropriate to resolve the dispute. The Clause prevents the tribunal from making an order without giving the service provider an opportunity to be heard on the application.

Clause 121 states that a tribunal also has the powers given by Clauses 22, 45, 54, 62, 93 and 94.

Clause 122 allows a tribunal to hear and decide more than one application at the same time, if they relate to the same residential service agreement.

PART 12—PROCEEDINGS

Division 1—Evidence

Clause 123 provides that a certificate from the authority about a rental bond for a residential service agreement is evidence of the matter.

Clause 124 provides that a certificate from the department administering the Accreditation Act about the registration of a residential service, a service provider or premises under that Act is evidence of the matter.

Clause 125 provides that a certificate signed by the chief executive officer, the chairperson or an authorised officer about certain matters is evidence of those matters. It also provides that a certificate signed by a registrar of a tribunal about certain matters is evidence of those matters.

Clause 126 sets out matters a tribunal may have regard to in deciding whether a service provider had a reasonable belief that a resident had abandoned a room or in deciding whether a room had been abandoned.

Division 2—Offence proceedings

Clause 127 provides that an offence against the Act is a summary offence under the *Justices Act 1886*, and proceedings must start within 1 year after the offence comes to the complainant's knowledge and within 2 years of the offence being committed. However if the offence relates to Clause 30 Duty to pay rental bond or Clause 31 Duty to pay rental bond instalments, a proceeding must start within 1 year of the offence coming to the complainant's knowledge either during the tenancy or within 1 year after the end of the agreement.

Clause 128 provides that a statement by the complainant about when the matter came to the complainant's knowledge is evidence of the matter.

Clause 129 provides that for an offence under Clause 20 or Clause 132 involving a false or misleading entry or document, it is sufficient to state that the entry or document was false or misleading without specifying whether it was false or misleading.

Clause 130 allow for a consideration of a person's or their representative's state of mind in proceedings for an offence under the Act. An act or an 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 the act or omission.

Clause 131 provides that the executive officers of a corporation must ensure that the corporation complies with the Act and that the executive officers also commit the offence of failing to ensure the corporation complies with the provision, if the corporation commits an offence against a provision of this Act. The Clause provides that evidence that the

corporation has committed an offence against a provision of this Act is evidence that each executive officer has committed the offence specified in this Clause. It is a defence for an executive officer to prove they exercised reasonable diligence to ensure the corporation complied with the provision or that they were not in a position to enforce the conduct of the corporation in relation to the offence.

Clause 132 provides that a person must not give the authority a false document containing information the person knows is false or misleading.

PART 13—MISCELLANEOUS

Clause 133 provides that a service provider must give a notice under this Act to an appointed person, if the service provider knows that a resident with impaired capacity has an administrator appointed under the *Guardianship and Administration Act 2000* or an attorney for a financial matter appointed under an enduring power of attorney under the *Powers of Attorney Act 1998*.

Clause 134 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 135 requires an officer of the authority who, while carrying out a function of this Act, becomes aware of a matter contravening the Accreditation Act or relevant to the registration or accreditation of a residential service to report the matter to the accreditation department unless the person knows or supposes that the department is aware of the matter or unless the matter is trivial.

Clause 136 prohibits employees, directors or authorised persons from disclosing confidential information gained in administering the Act except in specific circumstances, such as for a purpose of this Act, with the permission of the person to whom the information relates or in compliance with a lawful process or another Act.

Clause 137 allows the chief executive officer to approve forms for use under this Act.

Clause 138 provides for the Governor in Council to make regulations under this Act.

Clause 139 provides that Clause 16 relating to written residential service agreements does not apply to residential agreements in place at the commencement of this Act for 1 year for a written fixed term agreement or for 6 months for another agreement. It also provides for transitional arrangements for rental bonds.

PART 14—AMENDMENTS

Division 1—Amendment of Police Powers and Responsibilities Act 2000

Clause 140 states that this section amends the *Police Powers and Responsibilities Act 2000*.

Clause 141 inserts a new section into that Act which allows a police officer to enter and stay in a person's room in rental premises while a service provider or person helping them is exercising a power to remove the person or their property from the rental premises.

Division 2—Amendment of Property Agents' and Motor Dealers' Act 2000

Clause 142 states that this section amends the *Property Agents' and Motor Dealers' Act 2000*.

Clause 143 amends s 125 of that Act to provide a person does not act as a restricted letting agent only because the person collects rent in conducting the service, as an employee of the service provider.

Clause 144 amends s 160 of that Act to provide a person does not act as a real estate agent only because the person collects rent in conducting the service, as an employee of the service provider.

Clause 145 amends Schedule 3 (Dictionary) of that Act to include definitions for residential service and service provider used in the amendments in Clauses 142 and 143.

Division 3—Amendments of Residential Tenancies Act 1994

Clause 146 states that this section amends the *Residential Tenancies Act 1994*.

Clause 147 replaces s 22 of the Act to provide that it does not apply to a residential service agreement or a boarder or lodger except that the provisions of the *Residential Tenancies Act 1994* apply to boarders and lodgers not party to a residential service agreement.

Clause 148 amends s 55(2) to replace the term writ or warrant of execution issued by a court with the term an enforcement warrant, which is the term now used in legislation.

Clause 149 amends s 78 to correct a reference to sections relating to an order for payment if guilty of an offence.

Clause 150 amends s 80 of that Act to allow certain provisions about the rental bond account to apply to this Act.

Clause 151 amends s 81 of that Act to allow certain provisions about the rental bond interest account to apply to this Act.

Clause 152 amends s 82 of that Act to allow certain provisions about other payments from the rental bond interest account to apply to this Act.

Clause 153 amends s 258 of that Act to allow certain provisions about authorised persons to apply to this Act.

Clause 154 amends s 262 of that Act to allow certain provisions about an authorised person's identity card to apply to this Act.

Clause 155 amends s 265 of that Act to allow certain provisions about warrants for entry to apply to this Act.

Clause 156 amends s 267 of that Act to allow certain provisions about an authorised person's general powers for places to apply to this Act.

Clause 157 amends s 267B of that Act to allow certain provisions about the power to require information from certain persons to apply to this Act.

Clause 158 amends s 271 of that Act to allow certain provisions about compensation to apply to this Act.

Clause 159 amends s 277 of that Act to allow certain provisions about evidentiary provisions to apply to this Act.

Clause 160 amends s 289 of that Act to allow certain provisions about the authority's functions to apply to this Act.

Clause 161 amends s 319 (a) of that Act to allow certain provisions about protection from liability to apply to this Act.

Clause 162 amends the schedule 3 (Dictionary) of that Act to include definitions for new terms used in amendments to that Act.

Division 4—Amendments of Small Claims Tribunals Act 1973

Clause 163 states that this section amends the *Small Claims Tribunals Act 1973*.

Clause 164 amends the definition of tenancy application in Schedule 4 (Interpretation) to extend its application to this Act.

Clause 165 amends s 20 of that Act to provide a tribunal with a power under that Act to make orders as provided in the Accommodation Act.

Clause 166 amends s 24 of that Act to extend its application to this Act.

SCHEDULE

Contains the dictionary for this Act.