

RESIDENTIAL TENANCIES AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

General Outline

Short Title of Bill

Residential Tenancies and Other Legislation Amendment Bill 2003

Objectives of the Legislation

The objective of the Bill is to amend the *Residential Tenancies Act 1994* to:

- clarify a number of ambiguous policy provisions to ensure the policy intent of the legislation is achieved;
- correct minor technical inconsistencies;
- make provision for how unclaimed bonds over seven years old are dealt with; and
- introduce provisions for the listing of personal information on a tenancy database and related disputes.

The Bill also amends the *Residential Services (Accommodation) Act 2002* to mirror changes in the rental bond provisions of the *Residential Tenancies Act 1994*.

The objective of the Bill is also to amend the *Architects Act 2002* to enable an architectural company to use the title “architect” in the company name.

The Bill amends the *Queensland Building Services Authority Act 1991* to implement the National Competition Policy review outcomes for that Act, to reinforce the independence of the statutory insurance fund and to enable prudential requirements to be prescribed by regulation.

Reasons for Proposed Legislation

Monitoring of the operation of the *Residential Tenancies Act 1994* since 1998, when the last major amendments were made to the Act, has identified a number of policy ambiguities and minor technical issues where amendment is required to ensure the intent of the legislation is achieved.

At the same time, a need has been established for new provisions about the use of bond monies unclaimed for over seven years after the end of a tenancy. These monies accumulate in the rental bond account as non-current liabilities and can never be paid out.

Regulation of the listing of personal information on tenancy databases has also become necessary because of public concerns about the databases' operation such as unfair and inaccurate listings, the lack of any controls about what information is listed and the lack of any dispute resolution procedures. Tenants listed on tenancy databases can experience significant difficulty in accessing housing due to inaccurate or unjust listings on a tenancy database.

The Architects Act 2002 which commenced on 1 January 2003 provides that only individuals who are registered as architects may use the title "Architect" with the result that the use of the word "Architect" as part of a company name or title involves a risk that the company will be in breach of the legislation. This would be an unsuitable and unintended affect of the legislation. Approximately 230 companies have the word "Architect" in their names. A change of name may result in loss of recognition of the services provided by the company quite apart from the loss of the capital value of the good will in the name and the costs of effecting name change.

While it is important to minimise the possibility that members of the public are misled in relation to the nature and identity of persons providing architectural services, it also important to minimise the impact on businesses from the provisions of the Act.

This amendment will complement the free-market approach of the legislation while protecting the interests of consumers.

The legislative amendments to the *Queensland Building Services Authority Act 1991* are by way of implementation of the National Competition Policy review of that Act, to reinforce the independence of the statutory insurance fund and enable prudential requirements to be prescribed by regulation.

How the policy objectives will be achieved

The *Residential Tenancies and Other Legislation Amendment Bill 2003* clarifies a number of policy inconsistencies and corrects minor technical inconsistencies to ensure the policy intention of the legislation is achieved.

The Bill provides that, at the Minister's direction, unclaimed bond moneys over seven years old can be used for rental advisory services; supplying residential accommodation; improving relationships between lessors and tenants; facilitating the resolution of disputes about agreements by tribunals; or the provision of housing or support for the clients of housing or other residential accommodation or related purposes as directed by the Minister.

The Bill sets out the circumstances under which personal information can be listed on a tenancy database. It also provides a power to make regulations specifying criteria for listing information about a tenant on a tenancy database. It also provides that the Small Claims Tribunal can make orders about existing and proposed listings on a tenancy database by a lessor or agent.

The Bill amends the *Residential Services (Accommodation) Act 2002* to mirror changes in the rental bond provisions of the *Residential Tenancies Act 1994* since any changes must be reflected for consistency of purpose.

The policy objective is achieved by amending the *Architects Act 2002* to enable the listing by the Board of Architects of Queensland of companies using the title "architect" in the company name, where the company has nominated to the Board an architect taking responsibility for provision of architectural services for the company. The Act will then provide that "listed" companies using the title "architect" in their company name will not infringe the provisions of the legislation.

The legislative amendments to the *Queensland Building Services Authority Act 1991* will reinforce the independence of the statutory insurance fund from the other activities of the Queensland Building Services Authority and enable a regulation to prescribe the prudential requirements which the Authority must observe in administering the insurance fund.

Administrative cost to government of the implementation

The costs to government of implementing the legislation are not expected to be significant.

A public information campaign will be conducted on the amendments to the *Residential Tenancies Act 1994*. The cost of the campaign will be met from the normal operating budget of the Residential Tenancies Authority, which administers the legislation

There will be no cost to Government arising out of amendments to the *Architects Acts 2002*.

Consistency with Fundamental Legislative Principles

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

CONSULTATION

Public consultation on the draft Bill was undertaken between December 2002 and 3 February 2003. The draft Bill was developed in consultation with key residential rental sector stakeholders over the last three years.

Key government agencies have been consulted including the Department of Premier and Cabinet, Queensland Treasury, the Department of Housing, the Department of Tourism, Racing and Fair Trading, the Department of Justice and Attorney-General, the Office of Youth Affairs and the Department of Families.

In respect of amendments to the *Architects Act 2002*, consultation has occurred with the Board of Architects of Queensland and the Royal Australian Institute of Architects – Queensland Chapter, together with key government agencies including Department of the Premier and Cabinet, Queensland Treasury, Department of State Development, Department of Tourism, Racing and Fair Trading and the Department of Justice and Attorney-General.

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 states that the Act will commence on proclamation.

PART 2—AMENDMENT OF RESIDENTIAL TENANCIES ACT 1994

Clause 3 states that this part and the Schedule amend the *Residential Tenancies Act 1994*.

Clause 4 removes the current section 3B which defines a “conciliator”. Refer also to Clause 24.

Clause 5 inserts two new section, 14A and 14B. Section 14A states where the Act requires a lessor or the lessor’s agent to do something; if the required act is done then both are considered to have complied with the requirement. If the required act isn’t done, then both lessor and lessor’s agent are considered to have contravened the requirement and this part of the clause should be read in conjunction with current section 315 *Responsibility for acts or omissions of representatives*.

Section 14B provides that where the Act only mentions a requirement for a lessor to do something, it does not exclude an agent of a lessor performing those obligations.

Clause 6 amends section 27 *Approved supported accommodation*. It provides that the Act does not apply to a headlease, where the headlease is created to allow an entity to provide approved supported accommodation. It also provides that the Act would apply to any subsequent tenancy agreement entered into between the headlease organization and a tenant.

Clause 7 amends section 40 *Giving and signing written agreement* to provide the obligations to provide the tenant with a copy of a written agreement for signing, and returning to the tenant a copy of the agreement signed by both parties also extends to agents of lessors. It also provides that a tenant is required to return the signed agreement to the lessor or lessor’s agent.

Clause 8 amends section 43(2)(b) to change a reference to “mediation” to become “conciliation”.

Clause 9 amends section 53 *Rent Increases* to provide that the only State agency exempted from the provisions for rent increases, including notice periods, is the Queensland Housing commission where the lease is given under the *State Housing Act 1945*.

Clause 10 replaces section 58 *Meaning of “rental bond contributor”*. It provides that a person is taken to have contributed to a rental bond if they

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

are a tenant or a cotenant, and the authority has been advised they are, or were, contributors to the bond. Section 58A provides that the authority can pay out amounts of rental bonds, where there is more than one contributor, in equal shares unless otherwise advised about bond contribution amounts.

Clause 11 inserts a new Part 3, Division 2, Subdivision 1 heading “Subdivision 1 – Preliminary”.

Clause 12 amends section 65 *Application for payment* by providing that an application for refund of rental bond may only direct a payment to be made to the lessor or a contributor to the bond.

Clause 13 replaces existing sections 66 through to 69 and inserts a new *Subdivision 2 – Payment of bond if only 1 contributor*. Section 66 provides the new subdivision only applies where there is more than one contributor to the rental bond and there has been an application to the authority for a refund of bond.

Section 67 provides that the authority must pay as directed by the application for refund of rental bond if it is a joint application by the lessor and the contributor.

Section 68 provides that if the application is made by the lessor only, the authority must make a payment to a contributor if it is directed to. Any directions to pay money to the lessor must be subject to a notice process outlined in new section 69G to ensure the contributor is aware of the claim against the bond before the authority can process the refund.

Section 69 provides that if the application is made by the contributor only, the authority must make a payment to the lessor if it is directed to. Any direction to pay money to the contributor must be subject to a notice process outlined in new section 69G to ensure the lessor is aware of the claim against the bond before the authority can process the refund.

Section 69A provides that the subdivision *Subdivision 3—Payment of bond if more than 1 contributor* applies to applications of refund of rental bonds where there is more than 1 contributor for the bond.

Section 69B provides that the authority must pay as directed by the application for refund of rental bond if it is a joint application by the lessor and every contributor.

Section 69C provides for situations where an application for refund of rental bond is made by the lessor and some, but not all, of the contributors to the bond. It requires that the authority must pay out amounts of rental bond where the application states that every contributor is to receive an

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

amount representing either the entire amount of their share or an equal proportion of their share of the bond. Otherwise, section 69G applies, requiring a notice process to ensure the non-applicant contributors are aware of the claims against their proportion of bonds before the authority can process the refund.

Section 69D provides for situations where the application for refund of rental bond is made by the lessor only. The authority must pay out the rental bond in accordance with the application for refund if it directs payment be made to all of the contributors in the same proportions as their shares of the bond. Otherwise, section 69G applies, requiring a notice process to ensure the non-applicant contributors are aware of the claims against their proportion of bonds before the authority can process the refund.

Section 69E provides for situations where the application for refund of rental bond is made by every contributor, but not by the lessor. The authority must pay out the rental bond in accordance with the application for refund if it directs a payment to be made to the lessor. Otherwise, section 69G applies, requiring a notice process to ensure the lessor is aware of the claims against the bond before the authority can process the refund.

Section 69F provides for situations where the application for refund of rental bond is made by some, but not all, of the contributors and not by the lessor. Section 69G applies, requiring a notice process to ensure the lessor and the non-applicant contributors are aware of the claims against the bond before the authority can process the refund.

Section 69G provides for situations where there has been an application for a refund of rental bond and not all of the parties to the bond have authorised the payment. The authority must give written notice of the application to the parties who did not sign the refund application. The notice must allow them 14 days to contact the authority to request assistance with dispute resolution. The authority can only make the directed payment:

- if the interested person doesn't apply for dispute resolution within the 14 day timeframe; or
- if dispute resolution was requested, but subsequently withdrawn, or
- if the conciliation process ends without a resolution and either of the parties has not applied to the tribunal about an order for the payment within seven days of receiving the authority's notice, or

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

the tribunal application has been withdrawn, or the interested person has advised the authority of non-application to the tribunal.

Clause 14 amends section 72 *Payment to rental bond supplier* by changing references to tenant to refer to “rental bond contributor”.

Clause 15 amends section 73 to provide that the authority cannot pay a rental bond if it knows an *Abandonment Termination Notice* has been given to the tenant and the agreement has not yet terminated.

Clause 16 replaces the existing section 74 *Discontinuance of application for payment*, and provides that the authority must stop dealing with an application for refund of rental bond if either of the parties withdraws their application (if only one bond contributor). If there are two or more applicants and all applicants withdraw, then the authority must stop dealing with the application. If at least one applicant withdraws before the refund process is completed, the authority must deal with that application as a non-agreed application.

Clause 17 amends section 80 to provide an additional ground for payments that may be made out of the rental bond interest account, where they are directed under section 80A.

Clause 18 inserts a new section 80A. It provides that rental bond money which has been claimed by the parties to the bond and released by the authority, but which has not been collected by presenting the cheque within seven years of their drawing, can be used for housing and related schemes on the approval of the Minister.

Clause 19 amends section 106 *Tenant’s obligations generally* by removing the penalty for subsection (2) “The tenant must not maliciously damage, or allow someone else to maliciously damage, the premises or inclusions.”

Clause 20 replaces section 120 *Supply of locks and keys* with a new requirement for the provision of locks and keys at the commencement of a tenancy. It provides that a full set of keys to each lockable device on the rental property must be provided for each tenancy, and that a copy of those keys which are necessary to gain access to, or leave, the rental premises are given to each named tenant on the tenancy agreement.

Clause 21 amends section 136 *Park liaison committee* removes the ability for an external member of a park liaison committee to be a mediator.

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

Clause 22 amends section 219 *Way of recovering possession of premises* to provide that a person must not recover possession of the premises other than in a way authorised under this Act.

Clause 23 amends section 231 *Meaning of “urgent application”* by changing the wording of “abandoned goods” to “goods left on premises”. It also provides that applications to the tribunal about Chapter 7A *Tenancy Databases* would be considered an “urgent application” and would not require dispute resolution prior to the application.

Clause 24 amends section 232C *Functions of conciliators* to provide for the appointment of conciliators by the chief executive officer for the purposes of this Act and *the Residential Services (Accommodation) Act 2002*, if they are considered to be appropriately qualified or experienced.

Clause 25 amends section 245 *Conciliators to maintain secrecy* to provide that a person who gives information to the Residential Tenancies Authority during a conciliation process can authorise the conciliation to give the information to an authorised person as defined in the Act.

Clause 26 amends section 246 *Ordinary protection and immunity allowed* to replace the words “mediation conference” with “process”.

Clause 27 inserts a new chapter *Chapter 7A – Tenancy Databases*, with the following provisions.

Section 284A *Definitions for ch 7A* defines the terms used in the chapter, specifically “list”, “personal information” and “tenancy database”. Listing personal information on a tenancy database refers to entering or giving an individual’s name or an opinion about that person into a database or to a person to enter into the database. Personal information means an individual’s name or information or an opinion about a person, whether true or not. A tenancy database refers to records containing personal information relating to the occupation of residential premises under a residential tenancies agreement or entered into the database for reasons relating to the occupation of residential premises under a residential tenancies agreement.

Section 284B *Non-application to internal databases* provides that the chapter does not apply to internal tenancy databases, such as one kept by an entity such as a State Government department, which is only for the use of its employees or agents.

Section 284C *Restriction on listing* requires that the listing person can only list persons who are named as the tenant on the tenancy agreement, after the agreement has ended, in line with reasons outlined in the

regulation as “approved reasons”. The listing person is also required to take reasonable steps to disclose to the person what information is proposed to be entered in the database, except where the person cannot be located after reasonable attempts to do so by the listing person. The listing person must also give the other person a reasonable opportunity to review the information prior to listing, except if the personal information is publicly available information such as court listings of debt.

Section 284D *Application to tribunal about breach* provides that a person who believes there has been a breach of the tenancy database listing provisions under s284C may apply to the Small Claims Tribunal about the breach within six months after the person becomes aware of the breach. The Tribunal may order a person to take stated steps to remedy the breach, or any order it considers appropriate.

Section 284E *Application to tribunal about incorrect or unjust listing* allows a person who has been listed on a tenancy database to apply to the Small Claims Tribunal about a listing which they consider to be incorrect or unjust. The Tribunal may order a person to take stated steps to have the person’s name or personal information omitted from the database, or have stated changes made to the information included about the person in the database. In making the order, the Tribunal must determine that the personal information is incorrect or misleading or that the inclusion of the personal information about the tenant is unjust in the circumstances considering the reason for the listing, the tenant’s involvement in the acts warranting the listing, and the adverse consequences suffered, or likely to be suffered, by the tenant because of the listing, or any other relevant information.

Section 284F *Application to tribunal about proposed listing* provides that a person who is aware of a proposed listing about themselves may apply to the Tribunal. The Tribunal may order a person not to make the listing, or for the listing to be made with stated changes or conditions, or any other order it considers appropriate. This applies if the proposed listing would be in breach of sections 284D and 284E about unlawful, incorrect or unjust listings.

Section 284G *Offence of contravening tribunal order* provides that a person must comply with an order of a tribunal made about tenancy databases under this Act with a penalty of 50 penalty units. Subsection 2 provides that an offence against subsection 1 is a continuing offence and may be charged in 1 or more complaints for the period of the offence with a maximum penalty of 5 penalty units.

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

Section 284H *Order for compensation* applies where a court convicts a person of an offence against section 284G. It provides that a court may order the convicted person to pay to a person within a required time an amount for compensation for loss or damage. The person awarded the compensation may enforce the order by filing with a court of competent jurisdiction a certified copy of the order and an affidavit stating the amount remaining unpaid. The order would then become enforceable as if it was an order of the court in which the order and affidavit are filed.

Clause 28 inserts a new section 308A in Chapter 8, part 7, division 1 titled “*Delegation*”. This section provides for the chief executive officer to delegate their powers under this Act to another appropriately qualified officer of the Authority.

Clause 29 inserts a new section 322 in relation to the non-application of long-term leases on Hamilton Island.

Clause 30 inserts a new part 3 into Chapter 11 *Transitional provisions for Residential Tenancies and Other Legislation Amendment Act 2003* with new sections.

Section 344 *Meaning of “amendment” Act* defines the “amendment Act” as the *Residential Tenancies and Other Legislation Amendment Act 2003*.

Section 345 *Application for payment of rental bond* provides that the Authority must deal with applications for payments of a rental bond received but not yet dealt with before the commencement date of this amendment Act in accordance with the provisions of the prior Act.

Section 346 *Supply of locks and keys* does not apply to existing agreements in force at the time of commencement of this Act, but will apply to new tenancy agreements.

Section 347 *Conciliators* provides that conciliators appointed prior to commencement of this Act will be considered conciliators under this Act until their appointment ends.

Section 348 states that references in sections 284A, 284B or 284G in chapter 7A includes this division.

Section 349 *Tenancy databases* provides that a person may apply to a Tribunal for an order if the listing was made prior to the commencement of this Act, but within 12 months after section 284D *Application to tribunal about breach* commences. The application can be that the listing did not relate to a residential tenancy agreement where the person was named as a tenant or the listing was about a tenant in a residential tenancy agreement

but the agreement had not ended, or the listing was not made for a reason prescribed under section 284C *Restriction on listing*, and the Tribunal can make an order requiring a person to take stated steps to remove the information about the person from the database, or any other order it considers appropriate.

Section 350 provides that any references made to a person under section 284E *Application to tribunal about incorrect or unjust listing* includes a person listed on a tenancy database prior to that section commencing.

Clause 31 amends the dictionary by removing definitions for “allowed period”, “conciliator”, “rental bond contributor” and “replacement cotenant”, and inserting definitions for “conciliator”, “contributor”, “list”, “personal information”, “share” and “tenancy database”.

PART 3—AMENDMENT OF ARCHITECTS ACT 2002

Clause 32 states that Part 3 amends the *Architects Act 2002*.

Clause 33 inserts a new section 114A “Exemption for corporations”.

ss(1) provides that this section applies to a corporation.

ss(2) provides that a corporation does not commit an offence against section 113(1) merely because the corporation uses a title or name referred to in section 114(1) if the corporation has given the board a notice under section 141A(2).

ss(3) provides that a corporation does not commit an offence against section 114(1) if the corporation has given the board a notice under section 141A(2).

Clause 34 amends section 140 (Performance and carrying out of architectural services by particular entities) by inserting a new subsection (3).

ss(3) provides that a person mentioned in section 140(1)(a) does not commit an offence against section 113(1) merely because the person uses a title or name referred to in section 114(1) if the person has given the board a notice under section 141A(2).

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

Clause 35 inserts a new section 141A “Notice and record for corporations”

ss(1) provides that this section applies if a corporation provides architectural services at one or more places using an architect.

ss(2) provides that the corporation may give the board a notice in the approved form.

ss(3) provides that the approved form must include for matters listed in this sub section.

ss(4) provides that the notice is taken not to have been given unless the notice includes the information mentioned in ss (3) and is accompanied by the fee prescribed under a regulation.

ss(5) provides that the corporation must give the board a notice in the approved form of any change of details mentioned in subsection (3) within 21 days of the change occurring.

ss(6) provides that if the change is in an architect responsible for carrying out architectural services then the notice under ss(5) is not given unless the notice states the architect’s name.

ss(7) provides that if the board receives a notice, then the board must keep a record of the information, keep this record open for inspection by members of the public, and give a person a copy of the record upon payment of a fee prescribed by regulation.

ss(8) provides that if the board receives information which leads the board to reasonably suspect that information kept on the record is incorrect, the board may note the received information on the record.

ss(9) provides that the board may make the record available for inspection on its website.

Clause 36 amends Schedule 2 (Dictionary) by inserting a meaning for the term “current notice”.

PART 4—AMENDMENT OF QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991

Clause 37 states that Part 4 amends the *Queensland Building Services Authority Act 1991*.

Clause 38 inserts a new subsection (2A) in section 18 (Role of the general manager) which provides that the general manager must not have regard to the implications for the insurance scheme when deciding the action to be taken in relation to a licensee's licence. This provision is intended to reinforce the need for independence in the general manager's decision making concerning licensing matters irrespective of any implications for the insurance scheme.

Clause 39 inserts a new subsection (4) in section 26 (Insurance Fund) which provides that a regulation may require the fund to be managed either in a way prescribed by the regulation or in accordance with an external standard of fund administration, as prescribed by regulation.

Clause 40 inserts a new section 26A (Management of insurance scheme) which provides that the authority must ensure that the statutory insurance scheme is managed in accordance with actuarially sustainable principles so that the amounts paid into the Insurance Fund under section 26(2) will be sufficient to satisfy the amounts to be paid from that fund under section 26(3).

PART 5—AMENDMENT OF RESIDENTIAL SERVICES (ACCOMMODATION) ACT 2002

Clause 41 states that Part 5 amends the *Residential Services (Accommodation) Act 2002*.

Clause 42 amends s17(2) to state a service provider does not commit an offence if they do not return a copy of the residential services agreement signed by both parties to the resident, if both parties have not signed the agreement.

Clause 43 replaces existing section 29 Meaning of “rental bond contributor” with new sections 29 and 29A. Section 29 states a person is a

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

contributor for a rental bond if the person is the sole resident or, if the person is a coresident, if they are the only one responsible for payment of the bond or part of the bond. An indication of a person being responsible for the bond would include an indication on the rental bond notice forms, or the authority has been given a written notice naming a coresident as a contributor for the bond, or because the authority has been given a written notice indicating a person had contributed to the bond in place of the former coresident.

Section 29A provides for where there is more than one contributor to the bond, the authority can assume the contributors had contributed equally if it has not been notified in writing of differing amounts.

Clause 44 inserts a new part 5, division 2, subdivision 1 heading “Subdivision 1—Preliminary”.

Clause 45 inserts an additional provision that an application for refund of a bond can only direct payment to the service provider or a contributor to the bond.

Clause 46 replaces existing sections 39 to 44 and inserts a new subdivision heading “Subdivision 2—Payment of bond if only 1 contributor”.

Section 39 states the subdivision applies where there is more than one contributor to the rental bond and there has been an application to the authority for a refund of bond.

Section 40 provides that the authority must pay as directed by the application for refund of rental bond if it is a joint application by the service provider and the contributor.

Section 41 provides that if the application is made by the service provider only, the authority must make a payment to a contributor if it is directed to. Any directions to pay money to the service provider must be subject to a notice process outlined in new section 44E to ensure the contributor is aware of the claim against the bond before the authority can process the refund.

Section 42 provides that if the application is made by the contributor only, the authority must make a payment to the service provider if it is directed to. Any direction to pay money to the contributor must be subject to a notice process outlined in new section 44E to ensure the service provider is aware of the claim against the bond before the authority can process the refund.

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

Section 43 provides that the subdivision *Subdivision 3—Payment of bond if more than 1 contributor* applies to applications of refund of rental bonds where there is more than 1 contributor for the bond.

Section 44 provides that the authority must pay as directed by the application for refund of rental bond if it is a joint application by the service provider and every contributor.

Section 44A provides for situations where an application for refund of rental bond is made by the service provider and some, but not all, of the contributors to the bond. If there is only one contributor who hasn't signed the form but it is indicated that person is to receive at least a part of the bond, the authority must pay that amount. The authority must pay out amounts of rental bond where the application states that every contributor is to receive an amount representing either the entire amount of their share or an equal proportion of their share of the bond. Otherwise, section 44E applies, requiring a notice process to ensure the non-applicant contributors are aware of the claims against their proportion of bonds before the authority can process the refund.

Section 44B provides for situations where the application for refund of rental bond is made by the service provider only. The authority must pay out the rental bond in accordance with the application for refund if it directs payment be made to all of the contributors in the same proportions as their shares of the bond. Otherwise, section 44E applies, requiring a notice process to ensure the non-applicant contributors are aware of the claims against their proportion of bonds before the authority can process the refund.

Section 44C provides for situations where the application for refund of rental bond is made by every contributor, but not jointly with the service provider. The authority must pay out the rental bond in accordance with the application for refund if it directs a payment to be made to the service provider. Otherwise, section 44E applies, requiring a notice process to ensure the service provider is aware of the claims against the bond before the authority can process the refund.

Section 44D provides for situations where the application for refund of rental bond is made by some, but not all, of the contributors and not by the service provider. Section 44E applies, requiring a notice process to ensure the service provider and the non-applicant contributors are aware of the claims against the bond before the authority can process the refund.

Section 44E provides for situations where there has been an application for a refund of rental bond and not all of the parties to the bond have

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

authorised the payment. The authority must give written notice of the application to the parties (interested persons) who didn't sign the refund application. The notice must allow them 14 days to contact the authority to request assistance with dispute resolution. The authority can only make the directed payment:

- if the interested persons don't apply for dispute resolution within the 14 day timeframe; or
- if dispute resolution was requested, but subsequently withdrawn, or
- if the conciliation process ends without a resolution and either of the parties has not applied to the tribunal about an order for the payment within seven days of receiving the authority's notice, or the tribunal application has been withdrawn, or the interested person has advised the authority of non-application to the tribunal.

Clause 47 alters the wording of section 46 and replaces references to "resident" with "contributor to the bond".

Clause 48 replaces the existing section 48 *Discontinuance of application for payment* with a new section titled *Withdrawal of application*. This section provides that the authority must stop dealing with an application for refund of bond where there is only 1 applicant for the refund and the application is withdrawn before a payment is made. Where there are more than 2 applicants, the authority must stop dealing with the application if all of the applicants withdraw before a payment is made. If 1 but not all applicants withdraw the application before a payment is made by the authority, the authority must deal with it as an application made by the remaining applicants.

Clause 49 replaces the term "tenancy dispute" with "service dispute".

Clause 50 inserts a new section 140 *Transitional provision for Residential Tenancies and Other Legislation Amendment Act 2003* which provides that the authority must deal with applications for payments of a rental bond received but not yet dealt with before the commencement date of this amendment Act in accordance with the provisions in force before the commencement date.

Clause 51 amends the dictionary by deleting references to allowed period, rental bond contributor and replacement coresident and inserts definitions for contributor and share.

SCHEDULE

AMENDMENTS OF RESIDENTIAL TENANCIES ACT 1994

Clause 1 amends section 38A(1) to extend the obligation also to an agent of a lessor to ensure a tenant is given a written copy of the proposed standard terms and special terms before entering into the residential tenancy agreement.

Clause 2 amends section 39(1) to provide the obligation to ensure the tenancy agreement is in writing also extends to agents of lessors.

Clause 3 amends section 42(1), (2) and (3A) to provide that any obligations for completing and providing copies of a Condition report at the beginning of a tenancy to tenants extend also to agents of lessors, and that tenants can return copies of the Condition report to the agent of the lessor.

Clause 4 amends section 42(3) to provide that the obligations for giving copies of the condition report to the tenant extend also to agents of lessors.

Clause 5 amends section 42(3)(b) to provide that the delivery day period includes when an agent of a lessor gives written agreement to the tenant.

Clause 6 amends section 42(6) to provide that the obligations to keep copies of condition reports for at least six months after the tenancy ends extends also to lessors of agents.

Clause 7 amends section 42(6)(a) by omitting “lessor’s” in front of the reference to an agent.

Clause 8 amends section 42A(2) by including the obligations to sign copies of the exit condition report, marking copies if there is a disagreement, returning a copy to the tenant or keeping copies, extends also to an agent of a lessor.

Clause 9 amends section 42A(2)(b) by including the obligations for a lessor to mark the copies of an exit condition report if they disagree, extends also to agents of lessors.

Clause 10 amends section 42A(2)(c)(i) by omitting “lessor’s” in front of the reference to agent.

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

Clause 11 amends section 42A(3) by extending the obligation of a lessor to keep a copy of the exit condition report signed by both parties for at least six months after the agreement ends extends also to agents of lessors.

Clause 12 amends section 43(1) by extending the obligation of a lessor to provide a copy of an information statement to apply also to agents of lessors.

Clause 13 amends section 44(2) by extending the obligation of a lessor to provide a copy of park rules, or changed park rules, to a tenant extends also to agents of lessors.

Clause 14 amends section 45 by extending the obligation of a lessor to provide a copy of any by-laws relating to the premises to the tenant at the time of providing a written agreement, also extends to agents of lessors.

Clause 15 amends section 49(1) and (2) by extending the obligation of a lessor not to require rent in advance above identified limits, or require a payment of rent under an agreement in a period for which rent has already been paid, extends also to agents of lessors.

Clause 16 amends section 50(5) by extending the obligation of a lessor to make written records of rent payments and provide copies to tenants on request, extends also to agents of lessors.

Clause 17 amends section 51(1) by extending the obligation of a lessor to keep receipts for rent payments or rent payment records for required periods extends also to agents of lessors.

Clause 18 amends section 51 by omitting subsection (2) as the obligations for agents is now included in 51(1).

Clause 19 amends section 51 by renumbering 51(3) as 51(2).

Clause 20 amends section 76(1) by replacing “lessor or lessor’s agent” with “person” to widen the obligations to give a receipt for a rental bond to capture anyone who may accept the bond money.

Clause 21 amends section 87(4) by extending the obligation of a prospective lessor to take all necessary and reasonable steps to enter into the agreement extends also to prospective lessor’s agents.

Clause 22 amends section 87(4) by replacing “enter” with “ensure the prospective lessor enters”.

Clause 23 amends section 87 by including an additional section subsection (6) which indicates that new sections *14A Provision stating that lessor or lessor’s agent must do something* and *14B Lessor’s agent* apply to

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

this section to ensure any references to prospective lessors are taken to mean references to lessors.

Clause 24 amends section 95A by extending the requirement not to allow lessors to require or receive incentive amounts for allowing a tenant to enter into, extending or continuing the tenancy agreement extends also to agents of lessors.

Clause 25 amends section 96(2) extending the requirement that a lessor must not require a tenant to enter into an agreement containing a term in breach of the conditions about penalties and other payments, extends also to agents of lessors.

Clause 26 amends section 116(1) to extend to the agent of a lessor the obligation for a lessor to give written notice to the tenant advising of the lessor's name and address for service and details of any agent acting on the lessor's behalf.

Clause 27 amends section 116(2) and extends the obligations of a lessor to advise tenants of any changes to the details of a lessor's name, address for service or changes to the agent acting on behalf of the lessor, extends also to agents of lessors.

Clause 28 amends section 116(3) to clarify who would be considered the agent who can stand in the lessor's place for a prescribed proceeding.

Clause 29 amends section 130A to require that an agent of a lessor must also not take any action to enforce a tenant's relocation under a notice to relocate unless the tenant agrees or the tribunal orders the tenant to relocate to the site mentioned in the notice.

Clause 30 amends section 142(1) by deleting the current section and replacing it with a section that includes obligations for both lessors and agents of lessors not to require tenants to buy goods or services from them or a nominated supplier.

Clause 31 amends the first mention of lessor in section 142(2) to clarify that the restrictions under 142(1) do not apply to reticulated gas suppliers if an agent of a lessor or a lessor applies to the Tribunal about the supply.

Clause 32 amends the third mention of lessor in section 142(2) to clarify that the restrictions under 142(1) do not apply to reticulated gas suppliers if the Tribunal authorises a lessor, and agent of a lessor or a nominated supplier to supply the gas to the tenant.

Clause 33 amends section 146 to clarify the obligation for not requiring a tenant to pay, or accept from the tenant, an amount for agreement to

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

transfer or subletting the rental premises, other than reasonable expenses, extends also to agents of lessors.

Clause 34 amends section 147(3) and (4) by ensuring the obligations extend also to agents of lessors to not require the tenant to pay or accept from the tenant, a fee associated with the sale of a caravan in contravention of subsection (2); and to allow agents of lessors to charge, in addition to the prescribed feed, an amount for GST payable for the supply of the service.

Clause 35 amends section 230A(6) provides that agents of lessors must not sell or dispose of goods left on premises except as provided in the Act, unless they have a reasonable excuse.

Clause 36 amends section 230A(6) to provide that goods left on premises must not be sold or disposed of except as provided in the Act, unless the agent of the lessor or lessor has a reasonable excuse.

Clause 37 amends section 230A(7) provides that owners of goods left behind are entitled to reclaim their goods prior to them being disposed of, by giving a written notice to the former lessor or lessor's agent.

Clause 38 amends section 230A(7) provides that agents of lessors must also let the owner of goods left behind reclaim possession of the goods after paying the reasonable removal and storage costs to the former lessor or former agent where the owners of goods left behind have given written notice to the former lessor or lessor's agent prior to the goods being disposed of.

Clause 38 amends section 230A(7) provides that the requirement to let the owner of the goods claim possession by written notice extends to the agents of lessors to allow the owner to reclaim the goods on paying the reasonable removal and storage costs to the former agent of the lessor or former lessor.

Clause 39 amends the first mention of lessor in section 230A(11) to extend protection to a former agent of the lessor so they do not incur any liability for removing, selling or disposing of goods left behind where they have acted in accordance with the provisions.

Clause 40 amends the second mention of lessor in section 230A(11) to extend protection to a former agent of the lessor so they do not incur any liability for removing, selling or disposing of goods left behind where the former lessor or agent have acted in accordance with the provisions.

*Residential Tenancies and Other Legislation
Amendment Bill 2003*

Clause 41 amends section 230B(2) to include a reference to the person being the former lessor or the former lessor's agent in setting out obligations for handling documents left on premises.

Clause 42 amends section 230B(2)(a) and (b) by changing "person" to "former lessor or agent" to clarify obligations for returning documents left behind on premises to the former tenant or owner of the document.

Clause 43 amends section 230B(3) by changing "person" to "former lessor or the former lessor's agent" to clarify obligations for them to give documents left behind on premises to the public trustee within a required period if they cannot locate the former tenant or owner of the documents.

Clause 44 amends section 230B(3) by changing "person" to "former lessor or the former lessor's agent" to clarify obligations for them to give documents left behind on premises to the public trustee within a required period if they cannot locate the former tenant or owner of the documents.