



# **Residential Tenancies and Rooming Accommodation Act 2008**

**Current as at 1 July 2013**

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Queensland

# Residential Tenancies and Rooming Accommodation Act 2008

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# Residential Tenancies and Rooming Accommodation Act 2008

[as amended by all amendments that commenced on or before 1 July 2013]

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

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *Residential Tenancies and Rooming Accommodation Act 2008*.

#### 2 Commencement

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

#### 3 Act binds all persons

- (1) This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, some provisions of this Act do not apply to the State.

*Examples of provisions not applying to State—*

- 1 section 91 (Rent increases)

[s 4]

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- 2 section 92 (Tenant's application to tribunal about rent increase)
  - 3 section 163 (Outgoings other than service charges)
- (3) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.

#### **4 Rights and remedies of persons**

- (1) A right or remedy given to a person under this Act is in addition to, and not in substitution for, a right or remedy the person would have apart from this Act.
- (2) Without limiting subsection (1), this Act does not operate to reduce the effect of a right or remedy a person would have apart from this Act.
- (3) In subsections (1) and (2), a reference to a right or remedy a person would have apart from this Act is a reference to a right or remedy that is not inconsistent with this Act.

## **Part 2 Objects of Act**

### **5 Objects of Act**

- (1) The main objects of this Act are to state the rights and obligations of—
  - (a) tenants, lessors and agents for residential tenancies; and
  - (b) residents, providers and agents for rooming accommodation.
- (2) The objects are mainly achieved by—
  - (a) regulating the making, content, operation and ending of residential tenancy agreements and rooming accommodation agreements; and

- (b) providing for the resolution of disputes about residential tenancy agreements and rooming accommodation agreements; and
- (c) providing for the authority to receive, hold and pay rental bonds; and
- (d) providing for compliance with this Act to be monitored and enforced; and
- (e) providing for the establishment, functions and powers of the authority.

## **Part 3 Interpretation**

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

#### **6 Definitions and dictionary**

- (1) The dictionary in schedule 2 defines particular words used in this Act.
- (2) The key terms and definitions found elsewhere in the Act are signposted in the dictionary.

### **Division 2 Meaning of key terms for residential tenancies**

#### **7 Caravan**

- (1) A *caravan* is a trailer—
  - (a) designed principally for residential purposes; and
  - (b) designed to be attached to and towed by a self-propelled vehicle; and

[s 8]

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

## 8 Lessor

- (1) A *lessor* is the person who gives the right to occupy residential premises under a residential tenancy agreement.

*Note—*

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

- (2) A *lessor* also includes—
  - (a) the person who is to give the right to occupy residential premises under a proposed residential tenancy agreement; and

- 
- (b) a tenant who has given, or is to give, the right to occupy residential premises to a subtenant.

## 9 Premises

- (1) *Premises*, for a residential tenancy, include a part of premises and land occupied with premises.
- (2) *Premises*, for a residential tenancy, also include—
  - (a) a caravan or its site, or both the caravan and site; and
  - (b) a manufactured home in, or intended to be situated in, a moveable dwelling park or its site, or both the manufactured home and site; and
  - (c) a houseboat.

## 10 Residential premises

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

## 11 Residential tenancy

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

## 12 Residential tenancy agreement

- (1) A *residential tenancy agreement* is an agreement under which a person gives to someone else a right to occupy residential premises as a residence.
- (2) Subsection (1) applies whether or not the right is a right of exclusive occupation.
- (3) Subsection (1) also applies whether the agreement is—
  - (a) wholly in writing, wholly oral or wholly implied; or
  - (b) partly in a form mentioned in paragraph (a) and partly in 1 or both of the other forms.

[s 13]

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- (4) An agreement is not a residential tenancy agreement if it is a rooming accommodation agreement.
- (5) However, an agreement is a residential tenancy agreement if it is taken to be a residential tenancy agreement under section 18.

### 13 Tenant

- (1) A *tenant* is the person to whom the right to occupy residential premises under a residential tenancy agreement is given.

*Note—*

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

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

## Division 3                      Meaning of key terms for rooming accommodation

### 14 Resident

*Resident* means a person—

- (a) who, in rental premises, occupies 1 or more rooms as the person's only or main residence; and
- (b) who is not—
  - (i) the provider; or
  - (ii) a relative of the provider.



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## 15 Rooming accommodation

- (1) **Rooming accommodation** is accommodation occupied or available for occupation by residents, in return for the payment of rent, if each of the residents—
  - (a) has a right to occupy 1 or more rooms; and
  - (b) does not have a right to occupy the whole of the premises in which the rooms are situated; and
  - (c) does not occupy a self-contained unit; and
  - (d) shares other rooms, or facilities outside of the resident's room, with 1 or more of the other residents.

*Example for paragraph (d)—*

a boarding house in which each of the residents occupies a room and shares a bathroom, kitchen, dining room and common room with the other residents

- (2) For subsection (1), it is immaterial whether or not—
  - (a) the rooms are in the same premises; or
  - (b) the resident is provided with a food service, personal care service or other service.

## 16 Rooming accommodation agreement

- (1) A **rooming accommodation agreement** is an agreement under which a provider provides rooming accommodation to a resident in rental premises.
- (2) Subsection (1) applies whether the agreement is—
  - (a) entirely in writing, entirely oral or entirely implied; or
  - (b) partly in a form mentioned in paragraph (a) and partly in 1 or both of the other forms.
- (3) However, an agreement is not a rooming accommodation agreement if it is taken to be a residential tenancy agreement under section 18.

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## **17 Provider**

A *provider* is a person who provides rooming accommodation to residents.

# **Part 4 Application and operation of Act**

## **Division 1 Matters relating to residential tenancies and rooming accommodation**

### **18 Opting in as residential tenancy agreement**

- (1) This section applies to rooming accommodation to which this Act applies.
- (2) If the parties to an agreement for the accommodation sign the agreement stating that it is a residential tenancy agreement, the agreement is taken to be a residential tenancy agreement.
- (3) This Act applies to the agreement despite section 32(1).
- (4) A person does not contract out of the provisions of this Act merely because the person signs an agreement under subsection (2).

### **19 References to agreements**

In this Act, unless a contrary intention appears, a reference to an agreement is—

- (a) for a residential tenancy, a reference to a residential tenancy agreement to which this Act applies; or
- (b) for rooming accommodation, a reference to a rooming accommodation agreement to which this Act applies.

**20 Reference to lessors and tenants**

In this Act, unless a contrary intention appears, a reference to a lessor or tenant is a reference to a lessor or tenant under a residential tenancy agreement to which this Act applies.

**21 Reference to providers and residents**

In this Act, unless a contrary intention appears, a reference to a provider or resident is a reference to a provider or resident under a rooming accommodation agreement to which this Act applies.

**22 References to premises**

In this Act, unless a contrary intention appears, a reference to premises is a reference to a residential premises under a residential tenancy agreement to which this Act applies.

**23 References to tenancies**

In this Act, unless a contrary intention appears, a reference to a tenancy or residential tenancy is a reference to a residential tenancy under a residential tenancy agreement to which this Act applies.

**24 Provision stating that lessor or lessor's agent or provider or provider's agent must do something**

- (1) This section applies to a provision of this Act stating that the lessor or lessor's agent must do something (the *required act*).
- (2) The reference in the provision to the lessor's agent is a reference to a person who is the agent of the lessor to do the required act.
- (3) If the required act is done, whether by the agent or personally by the lessor, both the lessor and the agent are taken to have complied with the provision.

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- (4) If the required act is omitted to be done, both the lessor and the agent are taken to have contravened the provision and, if the contravention is an offence—
  - (a) each of them may be dealt with for the offence; and
  - (b) section 512(3) applies to a proceeding for the offence.
- (5) In this section—
  - (a) a reference to the lessor is taken to include a reference to the provider; and
  - (b) a reference to the lessor's agent is taken to be a reference to the provider's agent.

## **25 Lessor's or provider's agent**

A reference in a provision of this Act to something being done by a lessor or provider, without mentioning an agent of the lessor or provider, does not, by implication, limit the extent to which the thing may be done by an agent of the lessor or provider.

## **26 State as lessor**

- (1) This Act does not apply to a lease, even if the lease is for, or for purposes that include, residential purposes, if—
  - (a) the lease is granted under the authority of an authorising law; and
  - (b) the State is the lessor.
- (2) Also, this Act does not apply to a lease if the lease is for, or for purposes that include, residential purposes if—
  - (a) the lease is entered into by the parties to a contract of sale under a term of the contract; and
  - (b) the lease relates to land for a project the subject of a direction under the *State Development and Public Works Organisation Act 1971*, section 100; and

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- (c) the lessor is the entity the subject of the direction, or the entity's successor in title; and
  - (d) the lessee is a seller under the contract of sale.
- (3) However, if the lessee sublets the land or a part of the land, under the authorising law, this Act applies to the sublease to the extent to which this Act is not inconsistent with the authorising law.
  - (4) To remove any doubt, it is declared that this Act does not apply to a long-term lease entered into or granted by the South Bank Corporation in relation to premises within the South Bank corporation area even if the lease is for, or for purposes that include, residential purposes.
  - (5) However, if the lessee of a lease mentioned in subsection (4) sublets the land or a part of the land for, or for purposes that include, residential purposes, this Act applies to the sublease.
  - (6) In this section—

*authorising law* means an Act other than this Act, the repealed *State Housing Act 1945* or the *Housing Act 2003*.

*long-term lease* means—

- (a) a lease for a term, including renewal options, of at least 100 years; or
- (b) a perpetual lease as defined under the *South Bank Corporation Act 1989*.

*South Bank corporation area* means the corporation area as defined under the *South Bank Corporation Act 1989*.

## 27 Application of Property Law Act to agreements

- (1) The *Property Law Act 1974* does not apply to residential tenancy agreements.
- (2) Nothing in subsection (1) affects the application of the *Property Law Act 1974* to an agreement about a tenancy if the agreement is not a residential tenancy agreement.

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## **28 Minor has capacity to enter into agreements**

- (1) A minor has the capacity to enter into a residential tenancy agreement or rooming accommodation agreement.
- (2) An agreement entered into by a minor is enforceable in the same way as if the agreement had been entered into by an adult.

## **Division 2 Residential tenancy agreements to which this Act applies and does not apply**

### **29 Act applies to certain residential tenancy agreements etc.**

- (1) This Act applies to residential tenancy agreements and to—
  - (a) lessors, tenants and their respective rights and obligations under residential tenancy agreements; and
  - (b) premises under residential tenancy agreements; and
  - (c) a tenancy under a residential tenancy agreement.
- (2) However, this Act does not apply to all residential tenancy agreements.

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

- 1 Under section 26, this Act does not apply to a lease given by the State under certain other Acts.
- 2 Under section 31, this Act does not apply to an agreement giving a right of occupancy for holiday purposes.
- 3 Under section 32, this Act generally does not apply to an agreement if the tenant is a boarder or lodger.
- 4 Under sections 33 and 34, this Act generally does not apply to an agreement for premises that are part of an educational institution, hospital, nursing home or retirement village.
- 5 Under section 36, this Act does not apply to certain agreements under which the tenant is being supplied with temporary refuge accommodation.

- 6 Under section 37, this Act does not apply to agreements under the *Manufactured Homes (Residential Parks) Act 2003*.
- 7 Under sections 521, 522, 523 and 524, this Act does not apply to certain long-term leases.

### **30 Contracts of sale and mortgages**

This Act does not apply to an agreement for a tenancy if the tenancy is created or arises—

- (a) between the parties to a contract of sale of residential premises under a term of the contract and the tenancy is for a period of 28 days or less; or
- (b) between the parties to a mortgage of residential premises under a term of the mortgage.

### **31 Premises used for holidays**

- (1) This Act does not apply to a residential tenancy agreement if the right of occupancy of the premises is given for holiday purposes.
- (2) For subsection (1), a right to occupy premises given for 6 weeks or longer is taken not to be given for holiday purposes unless the contrary is proved.

### **32 Boarders and lodgers**

- (1) This Act does not apply to a residential tenancy agreement if the tenant is a boarder or lodger.
- (2) However, if a rental bond is paid for a residential tenancy agreement under which the tenant is a boarder or lodger, the provisions of this Act about rental bonds apply to the agreement.

*Editor's note—*

See section 433 for the matters to which the tribunal must have regard in deciding whether a person is a boarder or lodger.

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### **33 Educational institutions**

- (1) This Act does not apply to a residential tenancy agreement for premises used for—
  - (a) accommodation for school students—
    - (i) provided as part of, or under an agreement with, a school; or
    - (ii) arranged by a school for students of another school; or
    - (iii) provided with financial assistance from the education department; or
  - (b) accommodation for students within the external boundary of a university's campus provided—
    - (i) by the university; or
    - (ii) by an entity, other than the university, if the accommodation is provided other than for the purpose of making a profit.
- (2) Subsection (1)(b)(ii) applies even if the accommodation is provided on land owned by the entity within the external boundaries of a university campus.
- (3) Despite subsection (1), if a rental bond is paid for a residential tenancy within the external boundary of a university's campus, the provisions of this Act about rental bonds apply to the agreement.

### **34 Hospitals, nursing homes and retirement villages**

- (1) This Act does not apply to a residential tenancy agreement for premises that are part of a hospital, nursing home or retirement village.
- (2) However, this Act applies to a residential tenancy agreement for premises mentioned in subsection (1) if—



- (a) the premises are used as a person's place of residence under the person's employment at the hospital, nursing home or retirement village; or
- (b) the premises are used as a person's place of residence at the retirement village and the person resides in the premises other than under—
  - (i) a residence contract under the *Retirement Villages Act 1999*; or
  - (ii) section 70B of the *Retirement Villages Act 1999*.

### **35 Rental purchase plan agreements**

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

### **36 Temporary refuge accommodation**

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

### **37 Agreements under Manufactured Homes (Residential Parks) Act 2003**

- (1) This Act does not apply to a residential tenancy agreement if the agreement is a site agreement.
- (2) However, subsection (1) does not prevent this Act from applying to a subsequent agreement.
- (3) In this section—

*subsequent agreement* means an agreement under which a home owner becomes a lessor under this Act.

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### **38 Headleases for employee housing**

- (1) This Act does not apply to an agreement relating to the letting of premises (the *headlease*) entered into by the Commonwealth, the State, a local government or a corporation as tenant for the purpose of subletting the premises to an employee of the tenant.
- (2) Subsection (1) does not prevent this Act from applying to a residential tenancy agreement under which the tenant under the headlease lets the premises to an employee of the tenant.
- (3) This section applies only to a headlease entered into after the commencement of this section.

### **39 Headleases for affordable housing agreements**

- (1) This Act does not apply to an agreement relating to the letting of premises (the *headlease*) entered into by the Commonwealth, the State, a local government or a non-profit corporation as tenant for the purpose of subletting the premises to a person under an affordable housing scheme.
- (2) Subsection (1) does not prevent this Act from applying to a residential tenancy agreement under which the tenant under the headlease lets the premises to a person whose right of occupancy arises under an affordable housing scheme.

### **40 Hotels and motels**

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

### **41 Headleases for approved supported accommodation**

- (1) This Act does not apply to an agreement relating to the letting of premises (the *headlease*) entered into by an entity as tenant for the purpose of using the premises to provide approved supported accommodation.

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- (2) Subsection (1) does not prevent this Act from applying to a residential tenancy agreement under which the tenant under the headlease lets the premises to a person to provide the person with approved supported accommodation.
  - (3) Despite subsection (2), this Act does not apply to an agreement under which the tenant's right of occupancy arises out of approved supported accommodation if the tenant has occupied the premises under the agreement for a continuous period of not more than 13 weeks.
  - (4) If the tenant under an agreement about approved supported accommodation has occupied the premises under the agreement for a continuous period of more than 13 weeks, the Act applies to the agreement as if the tenant's occupancy started on the day after the 13 week period ended.

### **Division 3                      Rooming accommodation    agreements to which this Act    applies and does not apply**

#### **43            Act applies to certain rooming accommodation                  agreements etc.**

- (1) This Act applies to rooming accommodation agreements and to—
  - (a) providers, residents and their respective rights and obligations under rooming accommodation agreements; and
  - (b) rental premises under rooming accommodation agreements.
- (2) However, this Act does not apply to all rooming accommodation agreements.

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#### **44 Rooming accommodation agreements to which Act does not apply**

- (1) The Act does not apply to rooming accommodation agreements relating to the following rooming accommodation—
- (a) accommodation provided by a person in premises if—
    - (i) the premises are the person’s only or main place of residence; and
    - (ii) not more than 3 rooms in the premises are occupied, or available for occupation, by residents;
  - (b) aged care accommodation provided by an approved provider under the *Aged Care Act 1997* (Cwlth);
  - (ba) accommodation provided at the forensic disability service under the *Forensic Disability Act 2011*;
  - (c) accommodation provided at an authorised mental health service under the *Mental Health Act 2000*;
  - (d) accommodation provided in a private hospital under a licence in force under the *Private Health Facilities Act 1999*;
  - (e) accommodation for school students—
    - (i) provided as part of, or under an agreement with, a school; or
    - (ii) arranged by a school for students of another school; or
    - (iii) provided with financial assistance from the education department;
  - (f) accommodation for students within the external boundaries of a university’s campus provided—
    - (i) by the university; or
    - (ii) by an entity, other than the university, if the accommodation is provided other than for the purpose of making a profit;

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- (g) accommodation provided to holiday makers or travellers;
- Examples—*
- motel, bed and breakfast facility, backpackers' hostel
- (h) accommodation provided under the program known as the Supported Accommodation Assistance Program;
- (i) accommodation provided under funding given by, or in premises owned by, Aboriginal Hostels Limited ACN 008 504 587;
- (j) accommodation for a person at a retirement village if the person resides in the accommodation under—
- (i) a residence contract under the *Retirement Villages Act 1999*; or
- (ii) section 70B of the *Retirement Villages Act 1999*;
- (k) other accommodation prescribed under a regulation not to be rooming accommodation.
- (2) Subsection (1)(f)(ii) applies even if the accommodation is provided on land owned by the entity within the external boundaries of a university's campus.
- (3) Despite subsection (1)(f), if a rental bond is paid for rooming accommodation within the external boundary of a university's campus, the provisions of this Act about rental bonds apply to the agreement.
- (4) For subsection (1)(g), a right to occupy given for 6 weeks or longer is taken not to be given for holiday or travel purposes unless the contrary is proved.

## **Division 4                      Moveable dwelling premises**

### **45            Application of div 4**

This division applies only to agreements for moveable dwelling premises.

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## 46 Purpose of division

- (1) This division provides for the classifying of tenancies of moveable dwelling premises as either short or long tenancies.
- (2) For some matters, the way this Act applies to a residential tenancy of moveable dwelling premises depends on whether the tenancy is a short or long tenancy.

*Examples—*

- 1 Section 61 (which requires written agreements) applies to a long tenancy (moveable dwelling), but does not apply to a short tenancy (moveable dwelling).
- 2 Section 68 requires a copy of park rules to be given to the tenant at different times depending on whether the tenancy is a long tenancy (moveable dwelling) or short tenancy (moveable dwelling).

## 47 Short tenancy statements

- (1) If the lessor and tenant intend that the tenant's occupation of the premises is not to continue for more than 42 days (the ***base period***), they may make a written statement to that effect (the ***short tenancy statement***).
- (2) The short tenancy statement must be made before, or when, the tenancy starts.

## 48 Extending short tenancy statements

- (1) If the parties make a short tenancy statement, they may make another written statement (the ***short tenancy (extension) statement***) agreeing that this Act should continue to apply to the tenancy for another period stated in the statement (the ***extended period***) in the same way it applies during the base period.
- (2) A short tenancy (extension) statement may only be made in the base period.
- (3) Only 1 short tenancy (extension) statement may be made about the tenancy.

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

**49 Setting aside short tenancy (extension) statements**

- (1) If the parties made a short tenancy (extension) statement, the tenant may apply to a tribunal for an order setting aside the statement because the lessor exerted undue influence on the tenant to make the statement.
- (2) The tribunal may make the order if it is satisfied the tenant has established the ground of the application.

**50 Short tenancies**

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

**51 Long tenancies**

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

## **Chapter 2 Residential tenancy agreements and rooming accommodation agreements**

### **Part 1 Agreements**

#### **Division 1 Residential tenancy agreements**

##### **Subdivision 1 General provisions**

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

- (1) If, under this Act, a duty is imposed on, or an entitlement is given to, a lessor or tenant, the duty or entitlement is taken to be included as a term of the residential tenancy agreement.
- (2) For premises, other than moveable dwelling premises, the by-laws under the *Body Corporate and Community Management Act 1997* or *Building Units and Group Titles Act 1980* for the time being in force, that apply to the occupation of the premises by the tenant, are also taken to be included as terms of the agreement.
- (3) If the premises are moveable dwelling premises in a moveable dwelling park, any park rules for the time being in force are also taken to be included as terms of the agreement.
- (4) If there is a conciliation agreement in force about the residential tenancy agreement, the terms of the conciliation agreement are also taken to be included as terms of the residential tenancy agreement.
- (5) This section applies even if the duty, entitlement or rule is not included as a term of a written agreement.



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### 53 Contracting out prohibited

- (1) An agreement or arrangement is void to the extent to which it purports to exclude, change or restrict the application or operation of a provision of this Act about the terms of a residential tenancy agreement.
- (2) A person must not enter into an agreement or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.

Maximum penalty—50 penalty units.

- (3) In this section—

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

### 54 Inconsistency

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

### 55 Standard terms

- (1) A regulation may prescribe terms for inclusion in a residential tenancy agreement.
- (2) The terms prescribed for this section are the *standard terms* of a residential tenancy agreement.

### 56 Special terms

The *special terms*, of a residential tenancy agreement, are the terms of the agreement that are not—

- (a) standard terms; or

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(b) terms included in the agreement under section 52(1).

## **57 Premises must be offered for rent at a fixed amount**

- (1) A lessor or lessor's agent must not advertise or otherwise offer a residential tenancy for premises unless a fixed amount is stated in the advertisement or offer as the amount of rent for the premises.

Maximum penalty—20 penalty units.

- (2) A lessor or lessor's agent must not accept a rental bond from the tenant of premises if the residential tenancy for the premises was advertised or offered without stating a fixed amount of rent for the premises.

Maximum penalty—20 penalty units.

- (3) A person does not contravene this section merely by placing a sign on or near premises advertising or offering a residential tenancy for the premises without stating the amount of rent for the premises on the sign.

## **58 Lessor must give documents to prospective tenant**

- (1) The lessor or lessor's agent must give a prospective tenant for a residential tenancy the document prepared for section 61 before doing any of the following—

(a) accepting a document from the prospective tenant that commits the tenant—

(i) to enter into the tenancy; or

(ii) to pay an amount in relation to the tenancy;

(b) accepting an amount in relation to the tenancy;

(c) entering into a residential tenancy agreement for the tenancy.

Maximum penalty—20 penalty units.

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- (2) For subsection (1)(b), a person is not taken to accept an amount in relation to a tenancy if the only amount the person accepts is a key deposit.
  - (3) This section does not apply to an agreement for a short tenancy (moveable dwelling).

**59 Restriction on amounts that may be taken from prospective tenant**

The lessor or lessor's agent must not take an amount from a prospective tenant for a residential tenancy other than the following—

- (a) a key deposit;
- (b) a holding deposit;
- (c) a rental bond;
- (d) rent.

Maximum penalty—20 penalty units.

**60 Orders of tribunal relating to noncompliance with s 58 or 59**

- (1) Subsection (2) applies if a tenant or prospective tenant believes that the lessor or lessor's agent has contravened or failed to comply with section 58 or 59.
- (2) The tenant or prospective tenant may apply to the tribunal for an order about the contravention or failure to comply.
- (3) The tribunal may make 1 or more of the following orders—
  - (a) that the lessor or lessor's agent pay an amount to the tenant or prospective tenant;
  - (b) that a residential tenancy agreement entered into is of no effect;
  - (c) an order varying the terms of the residential tenancy agreement;

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- (d) any other order the tribunal considers appropriate.

## **61 Written agreements required**

- (1) The lessor or lessor's agent must ensure the agreement is in writing to the extent, and in the way, required by this section.  
Maximum penalty—20 penalty units.
- (2) The written agreement must—
  - (a) include the standard terms for the agreement; and
  - (b) include any special terms of the agreement.
- (3) If, for a standard term to be effective, the term requires stated information to be included in it (including, for example, the names of the parties and a description of the premises) the agreement is taken to include the standard term only if the information is properly included.
- (4) The agreement must be written in a clear and precise way.
- (5) The costs of preparing the agreement are payable by the lessor.
- (6) Nothing in this section—
  - (a) requires the tenant to prepare the written agreement; or
  - (b) affects the enforceability of an agreement that is not in writing.
- (7) This section does not apply to—
  - (a) an agreement for a short tenancy (moveable dwelling);  
or
  - (b) a periodic agreement mentioned in section 70(2).

## **62 Giving, signing and keeping written agreement**

- (1) The lessor or lessor's agent must give the document prepared for section 61 to the tenant for signing on or before the day the tenant occupies the premises under the agreement.

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Maximum penalty—20 penalty units.

- (2) Within 5 days after receiving the document, the tenant must sign the document and return it to the lessor or lessor's agent.
- (3) Within 14 days after receiving the document signed by the tenant, the lessor or lessor's agent must sign the document and return a copy signed by both parties to the tenant.

Maximum penalty—10 penalty units.

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

### **63 Period lessor or lessor's agent must keep agreement**

- (1) The lessor or lessor's agent must keep a copy of the agreement prepared for section 61 for a period of 1 year after the term of agreement ends.

Maximum penalty—20 penalty units.

- (2) Subsection (1) applies whether or not the agreement has been signed by all the parties to the agreement.

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

- (1) If the tenant reasonably believes the lessor has contravened section 62(1), the tenant may apply to a tribunal for an order that the lessor give the relevant document to the tenant for signing by a stated day.
- (2) If the tenant reasonably believes the lessor has contravened section 62(3), the tenant may apply to a tribunal for an order that the lessor sign the relevant document and return a copy of it to the tenant by a stated day.
- (3) If the lessor reasonably believes the tenant has contravened section 62(2), the lessor may apply to a tribunal for an order that the tenant sign the relevant document and return it to the lessor by a stated day.

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- (4) If, on an application made to a tribunal by the tenant, the lessor fails to satisfy the tribunal that the lessor acted reasonably in failing to comply with section 62(1) or (3), the tribunal may make the order sought.
- (5) If, on an application made to a tribunal by the lessor, the tenant fails to satisfy the tribunal that the tenant acted reasonably in failing to comply with section 62(2), the tribunal may order the tenant to sign and return the relevant document to the lessor by a stated day.

## **Subdivision 2      Associated documents**

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

- (1) This section applies to a lessor or lessor's agent if the terms of the agreement are required to be in writing.
- (2) The lessor or agent must on or before the day the tenant occupies the premises under the agreement—
  - (a) prepare, in the approved form, a condition report for the premises and any inclusions; and
  - (b) sign the report; and
  - (c) give a copy of the report to the tenant.

Maximum penalty—20 penalty units.

- (3) The tenant must, within 3 days after the tenant occupies the premises under the agreement—
  - (a) sign the copy; and
  - (b) if the tenant does not agree with the report—show the parts of the report the tenant disagrees with by marking the copy in an appropriate way; and
  - (c) return the copy to the lessor or agent.

Maximum penalty—20 penalty units.

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(4) However, if the lessor or agent has not given a copy of the report to the tenant before the tenant occupies the premises, subsection (3) applies to the tenant as if a reference to occupying the premises were a reference to receiving the copy.

(5) If the tenant returns the copy of the report to the lessor or agent under subsection (3), the lessor or agent must make a copy of the report and return it to the tenant within 14 days.

Maximum penalty—20 penalty units.

(6) The lessor or agent must keep, at least until 1 year after the agreement ends—

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

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

Maximum penalty—20 penalty units.

## **66 Condition report at end of tenancy**

(1) The tenant must—

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

(b) sign the report; and

(c) as soon as practicable after the agreement ends, give a copy of the report to the lessor or lessor's agent.

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

(a) sign the copy; and

(b) if the lessor or agent does not agree with the report—show the parts of the report the lessor or agent disagrees with by marking the copy in an appropriate way; and

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- (c) if the tenant has given a forwarding address to the lessor or agent—make a copy of the report and return it to the tenant at the address.
- (3) The lessor or agent must keep a copy of the condition report signed by both parties for at least 1 year after the agreement ends.

## **67 Information statement**

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

Maximum penalty—10 penalty units.

- (2) Without limiting subsection (1), the information may be about—
  - (a) the duties and entitlements of the lessor and tenant; and
  - (b) the procedures for resolving disputes under the agreement (including conciliation processes); and
  - (c) entities to which issues about the agreement may be referred.
- (3) For an agreement that is not an agreement for a short tenancy (moveable dwelling), the statement must be given to the tenant on the earlier of the following—
  - (a) when the written agreement is given to the tenant for signing;
  - (b) the day the tenant becomes entitled to occupy the premises under the agreement.
- (4) For an agreement that is an agreement for a short tenancy (moveable dwelling), the statement must be given to the tenant when the tenancy commences.



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## 68 Park rules

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) The lessor or lessor's agent must give to the tenant, as required by this section—
  - (a) a copy of the park rules; and
  - (b) if a park rule is changed—a copy of the rule as changed.Maximum penalty—20 penalty units.
- (3) The copy of the park rules must be given to the tenant—
  - (a) if the tenancy is a long tenancy (moveable dwelling)—when the agreement is given to the tenant for signing; or
  - (b) if the tenancy is a short tenancy (moveable dwelling)—at the start of the agreement.
- (4) The copy of a park rule as changed must be given to the tenant as soon as practicable after the change takes effect.

## 69 By-laws

If by-laws under the *Body Corporate and Community Management Act 1997* or *Building Units and Group Titles Act 1980* are to apply to the occupation of premises by a tenant, the lessor or lessor's agent must give the tenant a copy of the relevant by-laws, when giving the written agreement to the tenant for signing.

Maximum penalty—20 penalty units.

## Subdivision 3 Fixed term agreements

### 70 Continuation of fixed term agreements

- (1) This section applies to an agreement if—

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- (a) it creates a residential tenancy for a fixed term; and
- (b) none of the following notices is given, or agreements or applications made before the day the term ends (the *end day*)—
  - (i) a notice to leave;
  - (ii) a notice of intention to leave;
  - (iii) an abandonment termination notice;
  - (iv) a notice, agreement or application relating to the death of a sole tenant under section 277(7);
  - (v) a written agreement between the lessor and tenant to end the agreement.
- (2) After the end day, the agreement continues to apply—
  - (a) on the same terms on which it applied immediately before the end day (other than any term about the agreement's term); and
  - (b) on the basis the tenant is holding over under a periodic agreement.
- (3) This section does not stop the lessor and tenant under an agreement that creates a residential tenancy for a fixed term from entering into another agreement with each other for a tenancy of the premises starting at the end of the fixed term.
- (4) This section does not apply to an agreement if the tenancy is a short tenancy (moveable dwelling).

*Note—*

An agreement ends in the circumstances stated in section 277.

## **71 Tenant may apply to tribunal about significant change in subsequent agreement**

- (1) This section applies if—
  - (a) an agreement (the *existing agreement*) between a lessor and tenant creates a residential tenancy for premises; and

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- (b) the lessor of the premises enters into a new agreement with the tenant (the *new agreement*) for the premises that starts after the end of the existing agreement; and
  - (c) the new agreement contains 1 or more significant changes to the terms of the existing agreement; and
  - (d) at least 1 of the tenants mentioned in the existing agreement is a tenant for the new agreement.
- (2) Also, this section applies whether or not the lessor for the existing agreement and the lessor for the new agreement are the same person.
  - (3) If the tenant considers the significant change is unreasonable, the tenant may apply to a tribunal for an order under this section.
  - (4) The application must be made within 30 days after the tenant enters into the new agreement.
  - (5) If the significant change relates to an increase in rent, the tribunal may reduce the rent payable under the agreement.
  - (6) In deciding an application that relates to an increase in rent, the tribunal must have regard to the following—
    - (a) the range of market rents usually charged for comparable premises;
    - (b) the proposed increased rent compared to the current rent;
    - (c) the state of repair of the premises;
    - (d) the term of the tenancy;
    - (e) the period since the last rent increase (if any);
    - (f) anything else the tribunal considers relevant.
  - (7) If the significant change relates to a change other than an increase in rent, the tribunal may make any order the tribunal considers appropriate in the circumstances.

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- (8) In deciding an application that relates to a significant change other than an increase in rent, the tribunal must have regard to the following—
- (a) how long the tenant has occupied the relevant premises;
  - (b) the impact of the significant change on the tenant;
  - (c) the impact on the lessor of not allowing the significant change;
  - (d) anything else the tribunal considers relevant.
- (9) In addition to any order the tribunal may make under this section, the tribunal may order that the new agreement is taken to be altered as ordered by the tribunal.
- (10) Subject to any order of the tribunal to the contrary, the terms of the new agreement apply from the day it is entered into.
- (11) This section does not apply to an increase in rent if—
- (a) the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) the lessor is the State and the tenant is an officer or employee of the State.
- (12) In this section—
- significant change***, to the terms of an existing agreement, means a change to any of the following —
- (a) the special terms for the tenancy agreement for the tenancy;
  - (b) the rent amount, and whether it must be paid weekly, fortnightly or monthly;
  - (c) the way the rent must be paid;
  - (d) any services supplied to the premises, other than water, for which the tenant must pay;
  - (e) whether the tenant must pay for water supplied to the premises;

- (f) the number of occupants allowed to reside in the premises, if there is a limit on the number of occupants;
- (g) whether pets are allowed;
- (h) another matter prescribed under a regulation.

## **Division 2                      Rooming accommodation agreements**

### **Subdivision 1                General provisions**

#### **72        Terms of agreement include obligations under Act etc.**

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

- (a) the obligations imposed on the provider and resident under chapter 4, part 1;
- (b) the house rules for the rental premises;
- (c) the terms of any conciliation agreement in force about the rooming accommodation agreement;
- (d) other duties imposed on, or entitlements given to, the provider or resident under this Act.

#### **73        Standard terms**

- (1) A regulation may prescribe terms for inclusion in a rooming accommodation agreement.
- (2) The terms prescribed for this section are the *standard terms* of a rooming accommodation agreement.

*Editor's note—*

Under section 77(2), every rooming accommodation agreement must include the standard terms.

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## 74 Special terms

- (1) The *special terms* of a rooming accommodation agreement are the terms of the agreement that are not—
  - (a) standard terms; or
  - (b) terms included in the agreement under section 72.
- (2) The special terms may include, for example, terms about the provision of a food service or a personal care service to the resident.

## 75 Contracting out prohibited

- (1) An agreement or arrangement is void to the extent to which it purports to exclude, change or restrict the application or operation of a provision of this Act about the terms of a rooming accommodation agreement.
- (2) A person must not enter into an agreement or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.  
Maximum penalty—50 penalty units.
- (3) In this section—  
*agreement* includes an agreement that is not a rooming accommodation agreement.

## 76 Inconsistency

- (1) If a provision of this Act is inconsistent with a term of a rooming accommodation agreement, the provision prevails and the term is void to the extent of the inconsistency.
- (2) If a standard term of a rooming accommodation agreement is inconsistent with a special term of the agreement, the standard term prevails and the special term is void to the extent of the inconsistency.

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**77 Written agreement required**

- (1) A provider or provider's agent must ensure a rooming accommodation agreement entered into with a resident is in writing to the extent, and in the way, required by this section.

Maximum penalty—20 penalty units.

- (2) The written agreement must include the standard terms, and any special terms, for the agreement.
- (3) If, for a standard term to be effective, the term requires stated information to be included in it (including, for example, the names of the parties and a description of the rental premises), the agreement is taken to include the standard term only if the information is properly included.
- (4) The agreement must—
- (a) be written in a clear and precise way; and
  - (b) state the provider's name, address and any telephone number and the resident's name and any telephone number; and
  - (c) fully describe the services to be provided under the agreement; and
  - (d) state the amount of rent payable, when it is payable and how it must be paid; and
  - (e) state the components of the rent attributable to accommodation, a food service, a personal care service or another service; and
  - (f) state the amount of any rental bond payable; and
  - (g) for a fixed term agreement, state the term for which it applies; and
  - (h) be signed by the parties; and
  - (i) comply with any other requirement prescribed under a regulation.
- (5) The costs of preparing the agreement are payable by the provider.

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## **78 Resident's copy of agreement**

- (1) The provider or provider's agent must give the document prepared for section 77 to the resident for signing on or before the day the resident occupies the room in rental premises under the agreement.

Maximum penalty—20 penalty units.

- (2) Within 3 days after receiving the document signed by the resident, the provider or provider's agent must sign the document and return a copy signed by both parties to the resident.

Maximum penalty—10 penalty units.

## **79 Period provider or provider's agent must keep agreement**

- (1) The provider or provider's agent must keep a copy of the agreement prepared for section 77 for a period of 1 year after the term of agreement ends.

Maximum penalty—20 penalty units.

- (2) Subsection (1) applies whether or not the agreement has been signed by all the parties to the agreement.

## **Subdivision 2 Associated documents**

### **80 Application of sdiv 2**

This subdivision applies to the provider and resident under a rooming accommodation agreement only if a rental bond is payable, or has been paid, under the agreement.

### **81 Condition report at start of rooming accommodation**

- (1) The provider or provider's agent must on or before the day the resident occupies a room in rental premises under the agreement—



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

Maximum penalty—20 penalty units.

- (2) The resident must, within 3 days after the resident occupies the room under the agreement—
  - (a) sign the copy; and
  - (b) if the resident does not agree with the report—show the parts of the report the resident disagrees with by marking the copy in an appropriate way; and
  - (c) return the copy to the provider or provider’s agent.

Maximum penalty—20 penalty units.

- (3) However, if the provider or agent has not given a copy of the report to the resident before the resident occupies the room, subsection (2) applies to the resident as if a reference to starting to occupy the room were a reference to receiving the copy.
- (4) If the resident returns the copy of the report to the provider or agent under subsection (2), the provider or agent must make a copy of the report and return it to the resident within 14 days.

Maximum penalty—20 penalty units.

- (5) The provider or agent must keep, until at least 1 year after the rooming accommodation agreement ends—
  - (a) the signed copy of the report returned to the provider or agent by the resident; or
  - (b) if the resident does not return a signed copy—another copy of the report.

Maximum penalty—20 penalty units.

- (6) In this section—

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

## **Subdivision 3      Fixed term agreements**

### **82      Continuation of fixed term agreement**

- (1) This section applies to a rooming accommodation agreement if—
  - (a) under the agreement, accommodation is provided to the resident for a fixed term; and
  - (b) neither the provider nor the resident gives the other party a notice under chapter 5, part 2 ending the agreement or agrees in writing with the other party to end the agreement.
- (2) The agreement continues to apply after the last day of the term, as a periodic agreement, on the same terms on which it applied immediately before the last day of the term, other than the term about the fixed term.
- (3) This section does not stop the provider and resident from entering into another rooming accommodation agreement starting at the end of the fixed term.

## **Part 2                      Rent**

### **Division 1                  Residential tenancy agreements**

#### **83      How rent to be paid**

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

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- (2) If an approved way for payment of rent is stated in the agreement, the tenant must pay the rent in the way stated.
- (3) However, if, after signing the agreement—
- (a) the lessor or tenant gives to the other party a written notice stating an approved way, or a different approved way, as the way in which rent is required, or is proposed, to be paid; and
  - (b) the other party agrees in writing (the *rent agreement*) to payments of rent being made in the way stated;
- the tenant must pay the rent in the way stated while the rent agreement remains in force.
- (4) Rent is paid in an *approved way* if it is paid by—
- (a) cash; or
  - (b) cheque; or
  - (c) deposit to a financial institution account nominated by the lessor; or
  - (d) credit card; or
  - (e) an EFTPOS system; or
  - (f) deduction from pay, or a pension or other benefit, payable to the tenant; or
  - (g) another way agreed on by the lessor and tenant.

**84 Tenant must be given choices of approved ways for payment of rent and be advised about associated costs**

- (1) This section applies to a lessor or lessor's agent that intends to—
- (a) enter into an agreement with a tenant that provides for the payment of rent by an approved way under section 83(4)(g); or
  - (b) change an approved way to a different approved way under section 83(4)(g).

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- (2) The lessor or lessor's agent must first give the tenant a written notice that—
  - (a) gives the tenant a choice of at least 2 other approved ways for the payment of rent under section 83(4)(a) to (f); and
  - (b) advises the tenant of the costs associated with the approved way offered under section 83(4)(g)—
    - (i) of which the tenant would not reasonably be aware; and
    - (ii) that the lessor or lessor's agent knows or could reasonably be expected to ascertain.

Maximum penalty—20 penalty units.

## **85 Where rent to be paid**

- (1) If the place for payment of rent is stated in an agreement, the tenant must pay the rent at the place stated.
- (2) However, if, after signing the agreement, the lessor gives the tenant a written notice stating a place, or a different place, as the place at which rent is required to be paid and the place is reasonable, the tenant must pay the rent at the place stated in the notice while the notice is in force.
- (3) If the place for payment of rent is not stated, the tenant must pay the rent at an appropriate place.

## **86 Payment of rent by electronic transaction**

- (1) This section applies—
  - (a) if a tenant effects an electronic transaction to pay rent to the account of the lessor or lessor's agent on a day; and
  - (b) does not take any action to defer the payment to the lessor's or lessors agent's account to a later day.
- (2) Payment is taken to be received by the lessor or lessor's agent on the day the tenant effects the electronic transaction.

- (3) Subsection (2) applies even if, because of circumstances beyond the tenant's control, the payment to the lessor's or lessors agent's account happens on a later day.

*Example—*

The tenant uses *BPay* to authorise payment of rent to be debited to the tenant's account on a Wednesday. However, the financial institution, because of its internal arrangements, does not actually debit the tenant's account and credit the lessor's or lessors agent's account until the next day. The rent payment is taken to have been received by the lessor or lessor's agent on the Wednesday.

## **87 Rent in advance**

- (1) A lessor or lessor's agent must not require, as payment of rent in advance under an agreement, more than—
- (a) for a periodic agreement or an agreement for moveable dwelling premises—2 weeks rent; or
  - (b) for another agreement—1 month rent.

Maximum penalty—20 penalty units.

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

Maximum penalty—10 penalty units.

## **88 Receipts and other records**

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

Maximum penalty—10 penalty units.

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

Maximum penalty—10 penalty units.

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- (3) A receipt must be signed by the person receiving the payment.
- (4) A receipt must be given to the person making the payment—
  - (a) if the payment is made by the person personally and in cash—when the payment is made; or
  - (b) if the payment is made by the person in cash but not personally—before the end of the next business day after the day the payment is received; or
  - (c) if the payment is made by cheque—within 3 business days after the day the payment is received.
- (5) The lessor or lessor’s agent must, for a payment of rent under an agreement—
  - (a) make a written record of the payment (the ***rent payment record***) as required by this section; and
  - (b) give a copy of the record to the tenant as required by this section, if the tenant asks for it.

Maximum penalty—10 penalty units.

- (6) Subsection (5) does not apply if the rent payment—
  - (a) is made in cash; or
  - (b) is made by cheque and a receipt is given for the payment.
- (7) A copy of a rent payment record asked for by a tenant must be given within 7 days after the request is made.
- (8) A receipt or rent payment record must state—
  - (a) the tenant’s name; and
  - (b) the address of the premises; and
  - (c) the date the payment is received; and
  - (d) the period for which the payment is made; and
  - (e) the amount of the payment; and
  - (f) that the payment is a payment of rent.

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## 89 Keeping of records

- (1) The lessor or lessor's agent must keep, for at least the required period, for each payment of rent under the agreement—
  - (a) if a receipt was required to be given for the payment—a copy of the receipt, or another appropriate written record of the payment; or
  - (b) if a receipt was not required to be given for the payment—the rent payment record for the payment.

Maximum penalty—15 penalty units.

- (2) For subsection (1), the *required period* is—
  - (a) the period fixed under a regulation and ending more than 1 year after the agreement ends; or
  - (b) if a period is not fixed under a regulation—the period ending 1 year after the agreement ends.

## 90 False, misleading or incomplete rent records

- (1) In this section—

*rent record* means a receipt, rent payment record or another record of a rent payment.
- (2) A person must not—
  - (a) in a rent record, make an entry the person knows is false or misleading in a material particular; or
  - (b) fail to enter a material particular in a rent record, unless the person does not know, and can not reasonably obtain, the necessary information.

Maximum penalty—20 penalty units.

## 91 Rent increases

- (1) This section applies to increases in rent for the following—
  - (a) a periodic agreement;

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- (b) a fixed term agreement, during the term of the agreement.
- (2) If the lessor proposes to increase the rent, the lessor must give written notice of the proposal to the tenant in the way required by this section.
- (3) The notice must state—
  - (a) the amount of the increased rent; and
  - (b) the day from when the increased rent is payable.
- (4) The day stated must not be earlier than 2 months after the notice is given.
- (5) Subject to an order of a tribunal under section 92, the increased rent is payable from the day stated in the notice, and the agreement is taken to be amended accordingly.
- (6) However, if the agreement is a fixed term agreement, the rent may be increased before the term ends only if the agreement—
  - (a) provides for a rent increase; and
  - (b) states the amount of the increase or how the amount of the increase is to be worked out.
- (7) A rent increase is payable by the tenant only if the rent is increased under this section.
- (8) This section applies subject to section 93.
- (9) This section does not apply if—
  - (a) the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) the lessor is the State and the tenant is an officer or employee of the State.

*Note—*

This section does not apply to an increase in rent from one fixed term agreement to the next.



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## **92 Tenant's application to tribunal about rent increase**

- (1) If the lessor gives the tenant notice of a proposed rent increase under section 91 and the tenant considers the increase is excessive, the tenant may apply to a tribunal for an order under this section.
- (2) The application must be made—
  - (a) within 30 days after the tenant receives the notice; and
  - (b) if the agreement is a fixed term agreement—before the term of the agreement ends.
- (3) The tribunal may make either of the following orders on an application under this section—
  - (a) an order reducing the amount of the proposed increase of rent by a stated amount;
  - (b) an order setting aside the amount of the proposed increase of rent.
- (4) In deciding the application, the tribunal must have regard to the following—
  - (a) the range of market rents usually charged for comparable premises;
  - (b) the proposed increased rent compared to the current rent;
  - (c) the state of repair of the premises;
  - (d) the term of the tenancy;
  - (e) the period since the last rent increase (if any);
  - (f) anything else the tribunal considers relevant.
- (5) Without limiting the tribunal's powers, the tribunal may make an interim order about payment of the rent increase pending its final decision on the application.
- (6) This section does not apply if—

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- (a) the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
- (b) the lessor is the State and the tenant is an officer or employee of the State.

### **93 Minimum period before rent can be increased**

- (1) This section applies to rent (the *existing rent*) payable to a lessor or lessor's agent by the tenant of premises under a residential tenancy agreement.
- (2) The lessor or lessor's agent must not increase the existing rent less than 6 months since the date the existing rent became payable by the tenant.  
Maximum penalty—20 penalty units.
- (3) Nothing prevents a lessor or lessor's agent from giving notice of an increase in rent within 6 months since the last increase provided the increase does not take effect until 6 months or more since the last increase.
- (4) This section applies whether the increase in the existing rent is to take effect during an existing agreement or from one agreement to the next.
- (5) This section also applies—
  - (a) if at least 1 of the tenants responsible for the existing rent will be subject to the increase in rent; and
  - (b) whether or not the lessor who increases the rent is the same person as the lessor who last increased the rent.
- (6) This section does not apply if—
  - (a) the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) the lessor is the State and the tenant is an officer or employee of the State.

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## **94 Rent decreases**

- (1) This section applies if the premises—
  - (a) are destroyed, or made completely or partly unfit to live in, in a way that does not result from a breach of the agreement; or
  - (b) no longer may be used lawfully as a residence; or
  - (c) are appropriated or acquired compulsorily by an authority.
- (2) This section also applies if—
  - (a) services, facilities or goods to be provided to the tenant under the agreement are no longer available or are withdrawn other than because the tenant failed to meet the tenant's obligations under the agreement; or
  - (b) the amenity or standard of the premises decreases substantially other than because of malicious damage caused by the tenant.
- (3) The rent payable under the agreement decreases accordingly or, if an order for a decrease in the rent is made by a tribunal, to the extent stated in the order.
- (4) A tribunal may make an order for a rent decrease only if—
  - (a) the tenant applies to the tribunal for the order; and
  - (b) if this section applies because of subsection (1)—the premises are partly unfit to live in.

## **95 Seizure of tenant's goods for rent etc.**

- (1) A person must not seize or dispose of a tenant's goods as security for, or in payment of any of the following—
  - (a) rent payable under an agreement;
  - (b) an amount payable to the lessor, or at the lessor's direction, by way of reimbursement for an amount payable by the tenant under the agreement but paid by the lessor for the tenant;

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- (c) a claim for loss or damage caused by the tenant's breach of the agreement.

Maximum penalty—40 penalty units.

- (2) However, subsection (1) does not apply to the seizure or disposal of goods under section 363 or an enforcement warrant.

## **96 Rent payment must not be applied for any other purpose**

- (1) This section applies if the tenant pays an amount for rent to the lessor or lessor's agent.
- (2) The lessor or lessor's agent must not apply the amount to, or use the amount for, any other purpose.

Maximum penalty—40 penalty units.

- (3) An amount paid by the tenant for rent is taken to be payment of rent even if the lessor or lessor's agent applies it to, or uses it for, another purpose.

## **97 Apportionment**

- (1) The rent payable under an agreement accumulates from day to day.
- (2) On the ending of the agreement—
  - (a) the rent is to be appropriately apportioned; and
  - (b) the appropriate amount is payable by or to the tenant.
- (3) If there is a dispute between the lessor and tenant about the amount payable, either party may apply to a tribunal and the tribunal may make any order it considers appropriate about the payment of an amount by or to the tenant.

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## Division 2                      Rooming accommodation agreements

### 98      How rent is to be paid

- (1) The resident must pay the rent in an approved way.
- (2) If an approved way for payment of rent is stated in the agreement, the resident must pay the rent in the way stated.
- (3) However, if, after signing the agreement—
  - (a) the provider or resident gives to the other party a written notice stating an approved way, or a different approved way, as the way in which rent is required, or is proposed, to be paid; and
  - (b) the other party agrees in writing (the *rent agreement*) to payments of rent being made in the way stated;the resident must pay the rent in the way stated while the rent agreement remains in force.
- (4) Rent is paid in an *approved way* if it is paid by—
  - (a) cash; or
  - (b) cheque; or
  - (c) deposit to a financial institution account nominated by the provider; or
  - (d) credit card; or
  - (e) an EFTPOS system; or
  - (f) deduction from pay, or a pension or other benefit, payable to the resident; or
  - (g) another way agreed on by the provider and resident.

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**99 Resident must be given choices of approved ways for payment of rent and be advised about associated costs**

- (1) This section applies to a provider or provider's agent that intends to—
  - (a) enter into an agreement with a resident that provides for the payment of rent by an approved way under section 98(4)(g); or
  - (b) change an approved way to a different approved way under section 98(4)(g).
- (2) The provider or provider's agent must first give the resident a written notice that—
  - (a) gives the resident a choice of at least 2 other approved ways for the payment of rent under section 98(4)(a) to (f); and
  - (b) advises the resident of the costs associated with the approved way offered under section 98(4)(g)—
    - (i) of which the resident would not reasonably be aware; and
    - (ii) that the provider or provider's agent knows or could reasonably be expected to ascertain.

Maximum penalty—20 penalty units.

**100 Where rent is to be paid**

- (1) If the place for payment of rent is stated in the agreement, the resident must pay the rent at the place stated.
- (2) However, if, after signing the agreement, the provider gives the resident a written notice stating a place, or a different place, as the place where rent is required to be paid and the place is reasonable, the resident must pay the rent at the place stated in the notice while the notice is in force.
- (3) If the place for payment of rent is not stated, the resident must pay the rent at an appropriate place.

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## 101 Rent in advance

- (1) A provider or provider's agent must not require a resident to pay more than 2 weeks rent in advance.

Maximum penalty—20 penalty units.

- (2) A provider or provider's agent must not require a payment of rent under an agreement in a period for which rent has already been paid.

Maximum penalty—10 penalty units.

## 102 Receipts and other records

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

Maximum penalty—10 penalty units.

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

Maximum penalty—10 penalty units.

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

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

- (5) The provider or provider's agent must, for a payment of rent under an agreement—

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

Maximum penalty—10 penalty units.

- (6) Subsection (5) does not apply if the rent payment—
  - (a) is made in cash; or
  - (b) is made by cheque and a receipt is given for the payment.
- (7) A copy of a rent payment record asked for by a resident must be given within 7 days after the request is made.
- (8) The receipt or rent payment record must state the following—
  - (a) the resident's name;
  - (b) the address of the rental premises;
  - (c) the number of the resident's room or, if the room does not have a number, another identifier for the room;
  - (d) the date the payment is received;
  - (e) the period for which the payment is made;
  - (f) the amount of the payment;
  - (g) that the payment is a payment of rent;
  - (h) the individual amounts for each of the following—
    - (i) accommodation;
    - (ii) any food service;
    - (iii) any personal care service.

### **103 Keeping of records**

- (1) The provider or provider's agent must keep, for at least the required period, for each payment of rent under the agreement—



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

Maximum penalty—15 penalty units.

- (2) For subsection (1), the *required period* is—
  - (a) the period fixed under a regulation and ending more than 1 year after the agreement ends; or
  - (b) if a period is not fixed under a regulation—the period ending 1 year after the agreement ends.

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

- (1) In this section—

*rent record* means a receipt, rent payment record or another record of a rent payment.
- (2) A person must not—
  - (a) in a rent record, make an entry the person knows is false or misleading in a material particular; or
  - (b) fail to enter a material particular in a rent record, unless the person does not know, and can not reasonably obtain, the necessary information.

Maximum penalty—20 penalty units.

#### **105 Rent increases**

- (1) This section applies if a provider proposes to increase the rent payable by a resident under a rooming accommodation agreement.
- (2) The resident is not required to pay the increase unless it is made under this section.
- (3) The provider must give the resident a written notice stating—

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- (a) the amount of the increased rent; and
  - (b) the day, not earlier than 4 weeks after the day the notice is given, from which the increased rent is payable.
- (4) Also, if the rooming accommodation agreement is for a fixed term, the rent may not be increased before the term ends unless—
- (a) the agreement provides for a rent increase; and
  - (b) the agreement states the amount of the increase or how the amount of the increase is to be worked out; and
  - (c) the increase is made under the agreement.
- (5) Subsections (2) to (4) do not apply if the parties amend the rooming accommodation agreement to provide for another service to be provided by the provider to the resident and for an increase in the rent in payment of the service.

## **106 Rent decreases for matters including loss of amenity or service**

- (1) This section applies to a rooming accommodation agreement if—
- (a) a resident's room or common areas become partly unfit to live in, or their amenity or standard substantially decreases, other than because of intentional or reckless damage caused by the resident or a guest of the resident; or
  - (b) a service provided to the resident under the agreement is no longer available or is withdrawn, or the standard of the service substantially decreases, other than because the resident has not met the resident's obligations under the agreement.
- (2) The rent payable under the agreement decreases by the amount, and from the time, agreed between the provider and the resident.

- (3) If the provider and the resident can not agree on the amount or time for the decrease, either of them may apply to a tribunal for an order decreasing the rent by a stated amount from a stated time.
- (4) On an application under this section a tribunal may make the order it considers appropriate.

### **107 Rent decreases because of resident's absence**

- (1) This section applies to a rooming accommodation agreement if either of the following is not provided to the resident because of the resident's absence—
  - (a) a personal care service;
  - (b) a food service, but only if the resident is absent from the rental premises for a continuous period of more than 2 weeks.
- (2) The provider and the resident may agree to a reduction in rent for the period of the absence.
- (3) If the provider and the resident can not agree on a reduction in rent for the period of the absence, the resident may apply to a tribunal for an order decreasing the rent by a stated amount for the period.
- (4) On an application under this section a tribunal may make the order it considers appropriate.
- (5) Before making an order the tribunal must have regard to the following—
  - (a) any special term of the agreement in relation the matter;
  - (b) the reason for the absence;
  - (c) the length of the absence;
  - (d) whether the resident gave the provider notice of the absence;
  - (e) whether the resident was able to give the provider notice of the absence;

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- (f) if the resident gave the provider notice of the absence—the length of the notice;
- (g) the impact of any reduction of rent on the provider or other residents.

### **108 Seizure of resident's goods for rent etc.**

- (1) A person must not seize or dispose of a resident's property as security for, or in payment of, any of the following—
  - (a) rent payable under the rooming accommodation agreement;
  - (b) an amount payable to the provider, or at the provider's direction, in reimbursement of an amount that was payable by the resident under the rooming accommodation agreement but was paid by the provider for the resident;
  - (c) a claim for loss or damage caused by the resident's breach of the rooming accommodation agreement.

Maximum penalty—40 penalty units.

- (2) However, subsection (1) does not apply to the deduction of an amount under section 392(4) or the seizure or disposal of property under section 393 or an enforcement warrant.

### **109 Apportionment**

- (1) The rent payable under an agreement accumulates from day to day.
- (2) On the ending of the agreement—
  - (a) the rent is to be appropriately apportioned; and
  - (b) the appropriate amount is payable by or to the resident.
- (3) If there is a dispute between the provider and resident about the amount payable, either party may apply to a tribunal and the tribunal may make any order it considers appropriate about the payment of an amount by or to the resident.

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## Part 3                      Rental bonds

### Division 1                      Application of part

#### 110      Application of pt 3

- (1) This part applies to rental bonds paid under residential tenancy agreements and rooming accommodation agreements.
- (2) In this part—
  - (a) a reference to a lessor is taken to include a reference to a provider; and
  - (b) a reference to a tenant is taken to include a reference to a resident; and
  - (c) a reference to a cotenant is taken to include a reference to a coresident; and
  - (d) a reference to an agreement is taken to include a reference to a rooming accommodation agreement.
- (3) However, subsection (2) does not apply to sections 112, 117, 118, 122, 139 and 148.

### Division 2                      Payments to authority

#### 111      Meaning of *rental bond*

- (1) A *rental bond*, for an agreement, is an amount—
  - (a) paid by or for the tenant under the agreement; and
  - (b) intended to be available for the financial protection of the lessor against the tenant breaching the agreement.
- (2) However, a *rental bond* does not include rent paid in advance.
- (3) In deciding whether an amount is a rental bond, it does not matter—

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- (a) when the amount is paid; or
  - (b) if the amount is paid directly to the authority; or
  - (c) to or by whom the amount is paid; or
  - (d) how the amount is described in the agreement or arrangement about the payment of the amount.
- (4) A *rental bond* includes a part of a rental bond.

### 112 Meaning of *maximum rental bond*

- (1) A *maximum rental bond*, for a residential tenancy agreement, is an amount equal to the rent payable under the agreement for the period of—
- (a) for moveable dwelling premises—
    - (i) if the tenancy is a long tenancy (moveable dwelling) and electricity supplied to the premises is supplied in the lessor's name and individually metered—3 weeks; or
    - (ii) otherwise—2 weeks; or
  - (b) for other premises—4 weeks.
- (2) A *maximum rental bond*, for a rooming accommodation agreement, is an amount equal to the rent payable under the agreement for the period of 4 weeks.

*Editor's note—*

See section 146 for an offence of requiring or accepting more than the maximum amount for a rental bond.

### 113 Contributor for a rental bond

- (1) A person is a *contributor* for a rental bond—
- (a) if the person is the tenant and there are no cotenants; or
  - (b) if—
    - (i) the person is a cotenant; and

- 
- (ii) the authority is satisfied the person is responsible for payment of the bond or part of the bond.
- (2) Without limiting subsection (1)(b)(ii), the authority may be satisfied a person is responsible for payment of a rental bond or part of a rental bond—
- (a) because the rental bond notice for the agreement indicates the person paid the bond or contributed to payment of the bond; or
  - (b) because a cotenant—
    - (i) is shown on the rental bond notice for the agreement to have paid the bond; and
    - (ii) has given the authority a written notice naming the person as a contributor for the bond; or
  - (c) because a former cotenant—
    - (i) is shown on the rental bond notice for the agreement to have contributed to payment of the bond; and
    - (ii) has given the authority a written notice naming the person as a contributor for the bond in place of the former cotenant.

#### **114 Bond loan contributor**

A person is a *bond loan contributor* if—

- (a) the person is a contributor for a rental bond; and
- (b) the person is a cotenant; and
- (c) the person's share of the bond was provided, in whole or in part, by way of loan, by the department in which the *Housing Act 2003* is administered.

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### **115 Share of a rental bond**

- (1) This section applies if there is more than 1 contributor for a rental bond.
- (2) If the authority is satisfied a contributor for a rental bond is responsible for payment of a certain amount of the bond, that amount is the contributor's *share* of the bond.
- (3) The authority may assume 2 or more contributors for a rental bond are responsible for payment of the bond, or part of the bond, in equal shares if the authority—
  - (a) is satisfied the contributors are responsible for payment of the bond or that part of the bond; but
  - (b) has not been notified, by a rental bond notice or a written notice from the contributors, of the amount for which each of the contributors is responsible.

### **116 Duty to pay rental bond**

- (1) A person receiving a rental bond must, within 10 days of receiving it—
  - (a) pay it to the authority; and
  - (b) give the authority a notice, in the approved form, about the rental bond.

Maximum penalty—40 penalty units.

- (2) Subsection (1) does not apply to a person to whom section 117 or 118 applies.

### **117 Duty to pay rental bond instalments under residential tenancy agreement**

- (1) This section applies to a lessor who—
  - (a) receives financial or other assistance from the State to supply rented accommodation to persons; and
  - (b) enters into a residential tenancy agreement using the assistance; and



- 
- (c) receives from the tenant a number of rental bonds for the agreement (the *rental bond instalments*).
- (2) If the lessor or lessor's agent has received all the rental bond instalments, the lessor or agent must, within 10 days after receiving the last instalment—
- (a) pay the instalments to the authority; and
  - (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty—40 penalty units.

- (3) If the agreement ends before the lessor or agent receives all the rental bond instalments, the lessor or agent must, within 10 days after the ending of the agreement—
- (a) pay the instalments received by the lessor or agent to the authority; and
  - (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty—40 penalty units.

## **118 Duty to pay rental bond instalments under rooming accommodation agreement**

- (1) This section applies if the provider under a rooming accommodation agreement receives from the resident a number of rental bonds for the agreement (the *rental bond instalments*).
- (2) If the provider or provider's agent has received all the rental bond instalments, the provider or agent must, within 10 days after receiving the last instalment—
- (a) pay the instalments to the authority; and
  - (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty—40 penalty units.

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- (3) If the agreement is ended before the provider or provider's agent receives all the rental bond instalments, the provider or agent must, within 10 days after the ending of the agreement—
- (a) pay to the authority the instalments received by the provider or agent; and
  - (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty—40 penalty units.

- (4) If, on the day that is 3 months after the provider or provider's agent receives the first rental bond instalment, the agreement has not ended and the provider or agent has not received all the rental bond instalments, the provider or agent must—
- (a) within 10 days after that day—
    - (i) pay to the authority the instalments received by the provider or agent; and
    - (ii) give the authority a notice, in the approved form, about the instalments; and
  - (b) for each instalment received after that day—
    - (i) pay the instalment to the authority within 10 days after receiving it; and
    - (ii) give the authority a notice, in the approved form, about the instalment.

Maximum penalty—40 penalty units.

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

- (1) This section applies to a lessor under an agreement if—
- (a) financial protection against a breach of the agreement by the tenant is given to the lessor (whether by a guarantee or undertaking given by a financial institution or in another way); and

- 
- (b) the financial protection is not given in the form of a rental bond; and
  - (c) the maximum rental bond for the agreement is not paid.
- (2) Within 10 days after the financial protection is given, the lessor or lessor's agent must pay to the authority an amount equal to—
- (a) the maximum rental bond for the agreement; or
  - (b) if a rental bond less than the maximum rental bond has been paid—the difference between the maximum rental bond and the amount of rental bond actually paid.
- Maximum penalty—40 penalty units.
- (3) An amount paid, or required to be paid, by the lessor or lessor's agent under subsection (2) is taken to be a rental bond.

## **120 Acknowledging receipt of rental bond**

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

## **121 No entitlement to interest**

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

## **122 Continuance of rental bond**

- (1) This section applies if—
- (a) the authority holds a rental bond for a residential tenancy agreement or a rooming accommodation agreement; and
  - (b) the agreement ends; and

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- (c) either—
    - (i) the tenant continues occupying the premises under another agreement (the *new agreement*) with the lessor; or
    - (ii) the resident continues occupying a room in the rental premises under another agreement (also the *new agreement*) with the provider; and
  - (d) the authority does not receive an application for payment of the rental bond.
- (2) The rental bond is taken to be a rental bond for the new agreement.

## **Division 3                  Payments by authority**

### **Subdivision 1          Preliminary**

#### **123      Purpose of division**

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

#### **124      Making payment**

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

#### **125      Application for payment**

- (1) An application to the authority for payment of a rental bond must be made in the approved form.
- (2) An application may only direct a payment to be made to the lessor or a contributor for the bond.

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## **Subdivision 2      Payment of bond if only 1 contributor**

### **126      Application of sdiv 2**

This subdivision applies to an application to the authority for payment of a rental bond if there is only 1 contributor for the bond.

### **127      Joint application by lessor and contributor**

If the application is made jointly by the lessor and the contributor, the authority must make each payment directed by the application.

### **128      Application by lessor**

- (1) This section applies if the application is made by the lessor only.
- (2) If the application directs that a payment be made to the contributor, the authority must make the payment.
- (3) If the application directs that a payment be made to the lessor—
  - (a) section 136 applies to the directed payment; and
  - (b) the contributor is the interested person for the payment.

### **129      Application by contributor**

- (1) This section applies if the application is made by the contributor only.
- (2) If the application directs that a payment be made to the lessor, the authority must make the payment.
- (3) If the application directs that a payment be made to the contributor—

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- (a) section 136 applies to the directed payment; and
- (b) the lessor is the interested person for the payment.

### **Subdivision 3      Payment of bond if more than 1 contributor**

#### **130      Application of sdiv 3**

This subdivision applies to an application to the authority for payment of a rental bond if there is more than 1 contributor for the bond.

#### **131      Joint application by lessor and every contributor**

If the application is made jointly by the lessor and every contributor, the authority must make each payment directed by the application.

#### **132      Joint application by lessor and some contributors**

- (1) This section applies if the application is made jointly by the lessor and some, but not all, of the contributors.
- (2) If there is only 1 non-applicant contributor and the application directs that a payment be made to the non-applicant contributor, the authority must make the payment.
- (3) If the application directs that payments be made to all of the contributors in the same proportions as their shares of the bond, the authority must make the payments.
- (4) If the application directs that each non-applicant contributor be paid his or her entire share of the bond, the authority must make those payments and any other payments directed by the application.
- (5) Otherwise—

- (a) section 136 applies to a payment directed by the application; and
  - (b) each non-applicant contributor is an interested person for the payment.
- (6) In this section—
- non-applicant contributor* means a contributor who is not an applicant.

### **133 Application by lessor**

- (1) This section applies if the application is made by the lessor only.
- (2) If the application directs that payments be made to all of the contributors in the same proportions as their shares of the bond, the authority must make the payments.
- (3) Otherwise—
  - (a) section 136 applies to a payment directed by the application; and
  - (b) each contributor is an interested person for the payment.

### **134 Application by every contributor**

- (1) This section applies if the application is made by every contributor but not jointly with the lessor.
- (2) If the application directs that a payment be made to the lessor, the authority must make the payment.
- (3) If the application directs that a payment be made to a contributor—
  - (a) section 136 applies to the directed payment; and
  - (b) the lessor is the interested person for the payment.

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### **135 Application by some contributors**

- (1) This section applies if the application is made by some, but not all, of the contributors and not jointly with the lessor.
- (2) If the application directs that a payment be made to the lessor—
  - (a) section 136 applies to the directed payment; and
  - (b) each non-applicant contributor is an interested person for the payment.
- (3) If the application directs that a payment be made to a contributor—
  - (a) section 136 applies to the directed payment; and
  - (b) the lessor and each non-applicant contributor are interested persons for the payment.
- (4) In this section—

*non-applicant contributor* means a contributor who is not an applicant.

## **Subdivision 4 Other matters about payment**

### **136 Payment for which notice must be given**

- (1) This section concerns a payment, directed by an application for payment of a rental bond, mentioned in any of the following provisions—
  - (a) section 128(3);
  - (b) section 129(3);
  - (c) section 132(5);
  - (d) section 133(3);
  - (e) section 134(3);
  - (f) section 135(2) or (3).



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- (2) The authority must give written notice of the application to the interested person or, if there is more than 1 interested person, to each of them.
  - (3) If there is only 1 interested person, the authority must make the directed payment—
    - (a) if the interested person does not make a dispute resolution request to the authority about the payment within 14 days after notice is given under subsection (2); or
    - (b) if a dispute resolution request under paragraph (a) is made but is withdrawn; or
    - (c) if—
      - (i) a dispute resolution request under paragraph (a) is made; and
      - (ii) the conciliation process ends without a conciliated resolution having been reached; and
      - (iii) the authority gives the interested person a written notice about the ending of the conciliation process; and
      - (iv) either—
        - (A) the interested person does not apply to a tribunal for an order about the payment, and give the authority a written notice informing it of the application, within 7 days after the notice under subparagraph (iii) is given; or
        - (B) an application to a tribunal under sub-subparagraph (A) is made but is withdrawn.
  - (4) If there is more than 1 interested person, the authority must make the directed payment—
    - (a) if none of the interested persons makes a dispute resolution request to the authority about the payment

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- within 14 days after notice is given under subsection (2);  
or
- (b) if 1 or more dispute resolution requests under paragraph (a) are made but all are withdrawn; or
  - (c) if—
    - (i) 1 or more dispute resolution requests under paragraph (a) are made; and
    - (ii) the conciliation process ends without a conciliated resolution having been reached; and
    - (iii) the authority gives the interested person or persons who made the dispute resolution request a written notice about the ending of the conciliation process; and
    - (iv) either—
      - (A) none of the interested persons applies to a tribunal for an order about the payment, and gives the authority a written notice informing it of the application, within 7 days after the notice under subparagraph (iii) is given; or
      - (B) 1 or more applications to a tribunal under sub-subparagraph (A) are made but all are withdrawn.
- (5) An interested person may, within the 7 day period mentioned in subsection (3)(c)(iv)(A) or (4)(c)(iv)(A), give the authority a written application requesting it to extend the period by not more than 3 days.
- (6) The authority may grant an application under subsection (5) if the authority considers there is a sufficient reason to extend the period.

*Examples of a sufficient reason—*

- 1 The interested person was ill during the 7 day period.
- 2 The interested person did not receive the written notice because the mail was affected by a natural disaster.

(7) In this section—

*interested person*, for a payment mentioned in a notice provision, means a person stated in the provision to be an interested person for the payment.

*notice provision* means a provision mentioned in subsection (1).

### **137 Payment under tribunal order**

(1) This section applies if—

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

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

### **138 Payment to rental bond supplier**

(1) This section applies if—

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

(2) The authority must pay the rental bond to the person instead of the contributor.

### **139 Limitation affecting payment**

(1) The authority must not pay a rental bond for a residential tenancy agreement if it knows—

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

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- (b) the lessor has given an abandonment termination notice to the tenant and the agreement has not ended.
- (2) Also, the authority must not pay a rental bond for a rooming accommodation agreement if it knows—
  - (a) the provider or resident has given a notice terminating the rooming accommodation agreement on a stated day and the stated day has not arrived; or
  - (b) the provider has given the resident a notice requiring the resident to leave the rental premises by a stated day and the stated day has not arrived.
- (3) However, subsections (1) and (2) do not prevent the authority making a payment it may make without giving notice to—
  - (a) the lessor or tenant; or
  - (b) the provider or resident.

#### **140 Withdrawal of application**

- (1) This section applies to an application to the authority for the payment of a rental bond.
- (2) If there is only 1 applicant and the application is withdrawn before the authority makes a payment directed by it, the authority must stop dealing with it.
- (3) For an application with 2 or more applicants—
  - (a) if all of the applicants withdraw before the authority makes a payment directed by the application, the authority must stop dealing with it; or
  - (b) if 1 or more, but not all, of the applicants withdraw before the authority makes a payment directed by the application, the authority must deal with it as an application made by the remaining applicants.

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**141 Payment under person's direction**

- (1) This section applies if the authority is required to pay a rental bond to a person.
- (2) If payment is required to be made to the tenant, the authority may make the payment to a person other than the tenant only if, under a regulation, the person is taken to have contributed to the rental bond.
- (3) Subsection (2) is subject to section 138.
- (4) Also, if the payment is required to be made to the lessor, the authority may make the payment only to the lessor or the lessor's agent.

**Subdivision 5 Payment by authority in stated circumstances if bond loan contributor**

**142 Application of sdiv 5**

This subdivision applies to an application to the authority for payment of a rental bond if—

- (a) there is more than 1 contributor for the bond; and
- (b) at least 1 of the contributors is a bond loan contributor; and
- (c) not all contributors are bond loan contributors; and
- (d) the bond loan contributor's share is proportionally less than the share of the other contributors having regard to the initial contribution of each contributor; and
- (e) the amount of the bond loan contributor's share is less than the balance owing for the bond loan to the department in which the *Housing Act 2003* is administered.

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### **143 Chief executive taken to be interested person**

If this subdivision applies, the chief executive of the department in which the *Housing Act 2003* is administered is taken to be an interested person for payment of the rental bond.

### **144 Sdivs 3 and 4 apply subject to this subdivision**

- (1) Subdivisions 3 and 4 apply subject to this subdivision.
- (2) Without limiting subsection (1), if this subdivision applies—
  - (a) the chief executive is taken to be an interested person for subdivision 3, including section 131; and
  - (b) the application of section 136 is extended to include an application for which the chief executive is taken to be an interested person; and
  - (c) subdivision 4 applies with any modifications necessary because the chief executive is taken to be an interested person.

## **Division 4 Enforcement provisions**

### **145 Receipt**

- (1) A person receiving a rental bond must give a receipt for the rental bond as required by this section.  
Maximum penalty—10 penalty units.
- (2) The receipt must—
  - (a) be given to the person paying the rental bond when the rental bond is received; and
  - (b) be signed by the person receiving the rental bond.
- (3) The receipt must state the following—
  - (a) the name of the person receiving the rental bond;

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- (b) the tenant's name and, if the person receiving the bond is not the lessor, the lessor's name;
  - (c) the address of the residential premises or rental premises for which the bond is paid;
  - (d) the date the bond is received;
  - (e) the amount of the bond;
  - (f) if there are cotenants and the cotenants tell the person receiving the bond the proportions in which the bond is paid—the amount paid by each cotenant.
- (4) The person giving the receipt must keep a copy of it for at least 1 year after the agreement ends.

Maximum penalty—10 penalty units.

#### **146 Payments above maximum amount**

- (1) A person must not require payment of, or accept, a rental bond more than, or amounts as rental bond totalling more than—
- (a) if the lessor is the tenant's employer and gives the tenant a rental subsidy—the amount fixed under subsection (2); or
  - (b) otherwise—the maximum rental bond for the agreement.
- Maximum penalty—20 penalty units.
- (2) For subsection (1)(a), the amount is the greater of the following amounts—
- (a) \$400;
  - (b) the maximum rental bond for the agreement.
- (3) Subsection (1) does not apply if the weekly rent under the agreement is more than the amount prescribed under a regulation.

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- (4) For subsection (3), different amounts may be prescribed for residential tenancy agreements and rooming accommodation agreements.

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

- (1) If a person is found guilty of an offence against section 116, 117, 118 or 119, the court making the finding may order the person to pay to the authority, within a stated time, an amount equal to the rental bond.
- (2) The court may make the order as well as imposing a penalty for the offence.
- (3) An amount ordered to be paid by a person may be recovered by the authority as a debt owing to it by the person.
- (4) Subsection (1) does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

#### **148 Order for return of bond if bond wrongfully taken**

- (1) This section applies if a lessor or lessor's agent is found guilty of an offence against section 57(2).
- (2) If the authority holds the bond, the authority must refund it—
  - (a) if there is only 1 contributor—to that contributor; or
  - (b) if there is more than 1 contributor—to the contributors in the shares in which they contributed.
- (3) No part of the rental bond may be paid to, or claimed by, the lessor or agent.

### **Division 5 Accounts and investments**

#### **149 Accounts**

- (1) The authority must keep—
  - (a) a rental bond account; and



- (b) a rental bond interest account.
- (2) The accounts are in addition to other accounts the authority is required or permitted to keep under this or another Act.

### **150 Rental bond account**

- (1) The authority must pay into the rental bond account all rental bonds it receives under this Act.
- (2) The authority may pay only the following amounts out of the rental bond account—
  - (a) amounts payable under division 3;
  - (b) amounts invested under the *Statutory Bodies Financial Arrangements Act 1982*;
  - (c) amounts paid under section 151.

### **151 Unclaimed amounts in rental bond account**

- (1) This section applies if—
  - (a) in order to make a payment out of the rental bond account under section 150(2)(a), the authority draws a cheque and gives it to the person entitled to the payment; and
  - (b) the cheque is not presented for payment within 15 months after it is drawn; and
  - (c) it is at least 7 years since the cheque was drawn; and
  - (d) since the end of the time mentioned in paragraph (b), the person has not received the amount and has not asked the authority to be paid the amount.
- (2) With the Minister's agreement, the authority may pay the amount out of the rental bond account for—
  - (a) a purpose mentioned in section 153(1)(a) to (d); or

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- (b) conducting a scheme, or helping another entity to conduct a scheme, to provide housing or a related service.
- (3) This section does not affect the person's entitlement to be paid the amount.

### **152 Rental bond interest account**

- (1) The authority must pay into the rental bond interest account all amounts earned on investments or loans made by it.
- (2) The authority may pay only the following amounts out of the rental bond interest account—
  - (a) amounts to meet the cost of performing its functions under this Act;
  - (b) amounts invested under the *Statutory Bodies Financial Arrangements Act 1982*;
  - (c) amounts paid out under another provision of this Act.

### **153 Other payments from rental bond interest account**

- (1) The authority may make payments from its rental bond interest account (whether by way of grant or loan) for—
  - (a) establishing or administering rental advisory services; or
  - (b) establishing schemes for supplying residential accommodation; or
  - (c) researching, or setting up projects about improving, relationships between lessors and tenants; or
  - (d) facilitating the resolution of disputes about agreements by tribunals.
- (2) However, the authority may make a payment under subsection (1) only with the Minister's agreement.

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## **Division 6                      Miscellaneous**

### **154      Increase in rental bond**

The tenant must increase a rental bond if—

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

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

- (1) This section applies if, in the first 6 months of the term of an agreement, the rent payable under the agreement decreases or is decreased.
- (2) The amount paid as rent in the 6 month period above the amount that would have been payable if the lower, or lowest, amount of rent payable in the period had applied for the full period is, subject to an order of a tribunal, taken to be a payment of a rental bond.
- (3) If the lessor disputes the amount being treated as a rental bond, the lessor may, within 7 days after the end of the 6 month period, apply to a tribunal and the tribunal may make an order declaring the amount, or a part of the amount, is, or is not, a rental bond.

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

## **Part 4                      Key and holding deposits for residential tenancies**

### **Division 1                Key deposits**

#### **156      Payment of key deposits**

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

#### **157      Receipts for key deposits**

- (1) A person receiving a key deposit must give a receipt for the deposit as required by this section.  
Maximum penalty—10 penalty units.
- (2) The receipt must—
- (a) be given to the person paying the deposit when the deposit is received; and
  - (b) be signed by the person receiving the deposit.
- (3) The receipt must state the following—
- (a) the name of the person receiving the deposit;
  - (b) the name of the person paying the deposit;
  - (c) the address of the premises for which the key is given;
  - (d) the date the deposit is received;

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

### **158 Refunding key deposit**

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

Maximum penalty—10 penalty units.

## **Division 2 Holding deposits**

### **159 Payment of holding deposits**

- (1) A person may require a prospective tenant to pay, or accept from a prospective tenant, a holding deposit for a tenancy of premises.
- (2) However, a person must not do either of the following during the option period relating to the payment of a holding deposit by a prospective tenant for the same premises—
  - (a) require another prospective tenant to pay a holding deposit;
  - (b) accept a holding deposit from another prospective tenant.

Maximum penalty—20 penalty units.

- (3) In this section—

*option period*, for an option created by the payment of a holding deposit, means—

  - (a) the period stated in the receipt for the payment as the period in which the option may be exercised; or

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- (b) if a period is not stated—the period ending 48 hours after the receipt is given.

## **160 Receipts for holding deposits**

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

Maximum penalty—10 penalty units.

- (2) The receipt must—
  - (a) be given to the person paying the deposit when the deposit is received; and
  - (b) be signed by the person receiving the deposit.
- (3) The receipt must state the following—
  - (a) the name of the person receiving the deposit;
  - (b) the tenant's name and, if the person receiving the deposit is not the lessor, the lessor's name;
  - (c) the address of the premises for which the deposit is paid;
  - (d) the date the deposit is received;
  - (e) the amount of the deposit;
  - (f) that the payment is a holding deposit;
  - (g) when the option to enter into an agreement may be exercised.

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

- (1) A holding deposit paid to or for a prospective lessor of residential premises is forfeited to the prospective lessor if—
  - (a) the prospective tenant does not, within the option period—
    - (i) exercise the option to enter into an agreement for the premises; or

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- (ii) notify the prospective lessor of the intention not to exercise the option; or
    - (b) having exercised the option, the prospective tenant fails to take all necessary and reasonable steps to enter into the agreement.
  - (2) If the holding deposit is not forfeited but the agreement is not entered into, the prospective lessor must refund the deposit to the prospective tenant within 3 days after the prospective tenant notifies the prospective lessor of the intention not to exercise the option.
  - (3) If the holding deposit is not refunded, it may be recovered by the prospective tenant as a debt owing by the prospective lessor to the tenant.
  - (4) If the prospective tenant exercises the option, the prospective lessor or prospective lessor's agent must take all necessary and reasonable steps to ensure the prospective lessor enters into the agreement.  
Maximum penalty—20 penalty units.
  - (5) If the agreement is entered into—
    - (a) the holding deposit must be applied in full or part payment of the rental bond for the agreement; and
    - (b) if an amount remains from the deposit after payment of the rental bond—the amount must be applied in payment of rent.
  - (6) Sections 24 and 25 apply to this section as if a reference in the sections to the lessor were a reference to the prospective lessor.

## 162 Orders of tribunal

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

## **Part 5                      Outgoings of lessor or provider**

### **Division 1                Residential tenancy agreements**

#### **Subdivision 1        Outgoings other than service charges**

##### **163    Outgoings other than service charges**

- (1) The lessor must pay all charges, levies, premiums, rates or taxes payable for the premises.
- (2) This section does not apply if—
  - (a) the lessor is the State; and
  - (b) rent is not payable under the agreement; and
  - (c) the tenant is an entity receiving financial or other assistance from the State to supply rented accommodation to persons.

#### **Subdivision 2        Service charges**

##### **164    Meaning of *service charge***

- (1) For premises that are not moveable dwelling premises in a moveable dwelling park, a ***service charge*** is a charge payable by a person as owner or occupier of premises for—
  - (a) electricity, gas or water supplied to the premises; or
  - (b) another service or facility, prescribed under a regulation, supplied to, or used at, the premises.
- (2) For premises that are not moveable dwelling premises in a moveable dwelling park, a ***service charge*** also includes an amount payable by a person for water fit for human



consumption supplied to the premises by delivery by means of a vehicle.

- (3) For premises that are moveable dwelling premises in a moveable dwelling park, a *service charge* is a charge payable by a person as owner or occupier of premises for—
  - (a) electricity, gas or water, or a sewerage service, supplied to, or used at, the premises or park; or
  - (b) another service or facility, prescribed under a regulation, supplied to, or used at, the premises or park.

## **165 General service charges for premises other than moveable dwelling premises**

- (1) This section applies to premises that are not moveable dwelling premises if the tenant is required to pay an amount for the lessor's outgoings for a general service charge for the premises because the tenant is enjoying or sharing the benefit of the relevant service or facility.
- (2) If the premises are not individually metered for the service or facility, the tenant may be required to pay an amount for the outgoings only if the agreement states—
  - (a) the service or facility for which the outgoings are payable; and
  - (b) how the apportionment of the outgoings to the tenant will be worked out; and
  - (c) how the outgoings may be recovered by the lessor from the tenant.
- (3) The tenant may not be required to pay an amount for the outgoings that is more than—
  - (a) if the premises are not individually metered—the amount worked out under the agreement; or
  - (b) if the premises are individually metered and—

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

**166 Water service charges for premises other than moveable dwelling premises**

- (1) This section applies to premises that are not moveable dwelling premises.
- (2) The tenant may be required to pay an amount for the water consumption charges for the premises only if—
  - (a) the tenant is enjoying or sharing the benefit of a water service to the premises; and
  - (b) the premises are individually metered for the supply of water or water is supplied to the premises by delivery by means of a vehicle; and
  - (c) the agreement states that an amount for the water consumption charges for the premises is payable by the tenant.
- (3) The tenant may be required to pay an amount for all of the water consumption charges payable for the premises for a period only if, during the period, the premises are water efficient.
- (4) If during a period the premises are not water efficient, the tenant may only be required to pay an amount for the water consumption charges payable for the premises for the period that is more than an amount payable for a reasonable quantity of water supplied to the premises.
- (5) Without limiting subsection (4), in deciding what is a reasonable quantity of water for subsection (4), regard must be had to the matters mentioned in section 169(4)(a) to (e).

- (6) Despite subsections (2) to (5), the tenant may not, for a period, be required to pay an amount for water consumption charges for the premises that is more than the amount of the water consumption charges payable to the relevant water supplier.
- (7) Also, the tenant may not be required to pay an amount of the water service charges payable for the premises for a fixed charge for the water service to the premises.
- (8) For this section, premises are water efficient only if they comply with the water efficiency requirements prescribed under a regulation.
- (9) In this section—  
*water consumption charge*, for premises, means the variable part of a water service charge assessed on the volume of water supplied to the premises.

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

- (1) This section applies to moveable dwelling premises if the tenant is required to pay an amount for the lessor's outgoings for a service charge for the premises because the tenant is enjoying or sharing the benefit of the relevant service or facility.
- (2) The tenant may be required to pay an amount for the outgoings only if the premises are individually metered for the service or facility.
- (3) The tenant must not be required to pay an amount for the outgoings that is more than—
  - (a) if a way for working out the amount payable by the tenant is prescribed under a regulation—the amount worked out in the way prescribed; or
  - (b) if a way is not prescribed—the amount charged by the relevant supply authority for the quantity of the thing, or

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the service or facility, supplied to, or used at, the premises.

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

- (1) This section applies to moveable dwelling premises if the tenant is not required to pay an amount for the lessor's outgoings for a service charge for the premises, even though the tenant is enjoying or sharing the benefit of the relevant service or facility.
- (2) If—
  - (a) a service or facility becomes unavailable for use by the tenant because of action taken by the lessor; and
  - (b) it is a service or facility for which an amount of rent is attributable;reduced rent is payable under the agreement from the day the service or facility ceases to be available, and the agreement is taken to be amended accordingly.
- (3) The reduced rent is the amount of rent payable under the agreement immediately before the service or facility became unavailable, reduced by—
  - (a) the amount agreed on by the lessor and tenant as reflecting the amount of rent attributable to the service or facility; or
  - (b) if they do not agree on an amount—the amount decided by a tribunal as reflecting the amount of rent attributable to the service or facility.
- (4) If the tenant asks the lessor for details of the amount of the rent attributable to service charges for the premises, the lessor must give the tenant a written statement showing—
  - (a) each service or facility for which an amount of rent is attributable; and
  - (b) the amount attributed to the service or facility.

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**169 Orders of tribunal**

- (1) This section applies if the lessor and tenant do not agree about—
  - (a) the amount of the lessor’s outgoings for a service charge payable by the tenant; or
  - (b) the amount of the reduced rent payable under the agreement because a service or facility ceases to be available for use by the tenant.
- (2) Either party may apply to a tribunal for a decision about the amount payable.
- (3) For an application about outgoings, the tribunal may, in addition to deciding the amount of the outgoings payable by the tenant, make an order requiring payment of the amount by the tenant.
- (4) In deciding an amount payable by a tenant for outgoings for a water service charge, the tribunal must have regard to the following—
  - (a) relevant available information about water usage and charges for premises in the local government area in which the relevant premises are situated;
  - (b) the area of the relevant land;
  - (c) any terms of the agreement affecting the amount of water used;
  - (d) the presence or absence of water saving devices in the premises;
  - (e) the number of persons occupying the premises;
  - (f) the quantity of water for which the lessor should reasonably be liable;
  - (g) anything else the tribunal considers relevant.
- (5) For an application about reduced rent, the tribunal may, as well as deciding the amount of the reduced rent payable under

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the agreement, make any order it considers appropriate about rent paid, or payable, under the agreement.

## **Division 2                      Rooming accommodation agreements**

### **170      Charge for utility service**

- (1) This section applies to the amounts payable by a provider, as the owner or occupier of rental premises, for utility services provided to the premises.
- (2) A provision of a rooming accommodation agreement requiring the resident to pay an amount for a utility service is of no effect unless—
  - (a) the resident's room is separately metered for the utility service by an appliance approved by the supplying entity; and
  - (b) the amount the resident is required to pay is not more than the amount that the provider is charged by the supplying entity for the utility service used by the resident.
- (3) In this section—

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

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

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## Part 6 Penalties and premiums for residential tenancy agreements and rooming accommodation agreements

### Division 1 Residential tenancy agreements

#### 171 Supply of goods and services

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

Maximum penalty—20 penalty units.

- (2) The lessor or lessor's agent must not require the tenant to buy goods or services from the lessor, the lessor's agent or a person nominated by the lessor or agent (the *nominated supplier*).

Maximum penalty—20 penalty units.

- (3) This section does not apply to a requirement about a service charge.

#### 172 Incentive amounts prohibited

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

Maximum penalty—40 penalty units.

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

- (1) A term of an agreement is void to the extent it provides that, if the tenant breaches the agreement or this or another Act, the tenant is liable to pay—
  - (a) all or a part of the rent remaining payable under the agreement; or
  - (b) increased rent; or
  - (c) an amount as a penalty; or
  - (d) an amount as liquidated damages.
- (2) Despite subsection (1), a term of a fixed term agreement is not void to the extent it provides that, if the tenant terminates the agreement other than in a way permitted under this Act, the tenant is liable to pay the reasonable costs incurred by the lessor in reletting the premises.
- (3) Subsection (2) applies to a term only if the only reference in the term to the amount payable by the tenant is a reference to the reasonable costs incurred by the lessor in reletting the premises.
- (4) A lessor or lessor's agent must not require a tenant to enter into an agreement containing a term that is void under subsection (1).

Maximum penalty for subsection (4)—20 penalty units.

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

- (1) This section applies to a term of an agreement providing that, if the tenant does not breach the agreement or this or another Act—
  - (a) the rent will, or may be, reduced; or
  - (b) the tenant will, or may be, given or paid a rebate or refund of rent or other benefit.



- (2) However, this section does not apply to a term of a residential tenancy agreement providing only that, if the tenant pays the rent before or when it is payable—
  - (a) the rent will, or may be, reduced; or
  - (b) the tenant will, or may be, given or paid a rebate or refund of rent or other benefit.
- (3) A term to which this section applies is taken to be varied so that the tenant is entitled immediately to the reduction, rebate, refund or other benefit.
- (4) A variation is taken to be made on the commencement of the agreement, or the application of this section to the agreement, whichever happens later.
- (5) In this section—

*term* includes part of a term.

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

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) A person must not require someone else to pay, or accept from someone else an amount—
  - (a) for accepting the other person as a tenant under a long tenancy (moveable dwelling); and
  - (b) for which the other person does not receive a benefit as tenant.

Maximum penalty—20 penalty units.

## **Division 2                      Rooming accommodation agreements**

### **176      Supply of goods and services**

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

Maximum penalty—20 penalty units.

- (2) The provider or provider's agent must not require the resident to buy goods or services from the provider, the provider's agent or a person nominated by the provider or agent (the *nominated supplier*).

Maximum penalty—20 penalty units.

- (3) This section does not apply to a requirement about a food service, personal care service or utility service.

- (4) In this section—

*utility service*, provided to premises, means—

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

### **177      Incentive amounts prohibited**

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

Maximum penalty—40 penalty units.

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**178 Certain terms about penalties and other payments void**

- (1) A term of an agreement is void to the extent it provides that, if the resident breaches the agreement or this or another Act, the resident is liable to pay—
  - (a) all or a part of the rent remaining payable under the agreement; or
  - (b) increased rent; or
  - (c) an amount as a penalty; or
  - (d) an amount as liquidated damages.
- (2) Despite subsection (1), a term of a fixed term agreement is not void to the extent it provides that, if the resident terminates the agreement other than in a way permitted under this Act, the resident is liable to pay the reasonable costs incurred by the provider in reletting the resident's room.
- (3) Subsection (2) applies to a term only if the only reference in the term to the amount payable by the resident is a reference to the reasonable costs incurred by the provider in reletting the resident's room.
- (4) A provider or provider's agent must not require a resident to enter into an agreement containing a term that is void under subsection (1).

Maximum penalty for subsection (4)—20 penalty units.

**179 Terms about rent reductions etc.**

- (1) This section applies to a term of an agreement providing that, if the resident does not breach the agreement or this or another Act—
  - (a) the rent will, or may be, reduced; or
  - (b) the resident will, or may be, given or paid a rebate or refund of rent or other benefit.

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- (2) However, this section does not apply to a term of a rooming accommodation agreement providing only that, if the resident pays the rent before or when it is payable—
  - (a) the rent will, or may be, reduced; or
  - (b) the resident will, or may be, given or paid a rebate or refund of rent or other benefit.
- (3) A term to which this section applies is taken to be varied so that the resident is entitled immediately to the reduction, rebate, refund or other benefit.
- (4) A variation is taken to be made on the commencement of the agreement, or the application of this section to the agreement, whichever happens later.
- (5) In this section—

*term* includes part of a term.

## Part 7 Tenancy guarantees

### 180 Tenancy guarantees

- (1) A *tenancy guarantee*, for a residential tenancy agreement between a lessor and tenant, is an undertaking by the department to pay up to a stated amount to the lessor if—
  - (a) loss or expense is incurred by the lessor because of a breach of the agreement by the tenant; and
  - (b) the amount of any rental bond provided by the tenant is not sufficient to cover the amount owing to the lessor for the breach.
- (2) A tenancy guarantee is not—
  - (a) a rental bond; or
  - (b) financial protection under section 119; or

- (c) an amount for entering into, extending or continuing an agreement under section 172.

## **Chapter 3      Rights and obligations of parties for residential tenancies**

### **Part 1            Occupation and use of the premises**

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

- (1) The lessor must ensure there is no legal impediment to occupation of the premises by the tenant as a residence for the term of the tenancy.
- (2) Subsection (1) applies only to legal impediments the lessor knew about, or ought reasonably to have known about, when entering into the agreement.

#### **182      Vacant possession**

- (1) The lessor must ensure the tenant has vacant possession of the premises on the day the tenant is entitled to occupy the premises under the agreement.
- (2) Subsection (1) does not apply to any part of the premises to which the tenant does not have a right of exclusive occupation.

#### **183      Quiet enjoyment**

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

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

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

## **184 Tenant's use of premises**

The tenant must not—

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

## **Part 2 General standard of the premises**

### **185 Lessor's obligations generally**

- (1) This section does not apply to an agreement if—
- (a) the premises are moveable dwelling premises consisting only of the site for the dwelling; and
  - (b) the tenancy is a long tenancy (moveable dwelling).
- (2) At the start of the tenancy, the lessor must ensure—
- (a) the premises and inclusions are clean; and
  - (b) the premises are fit for the tenant to live in; and
  - (c) the premises and inclusions are in good repair; and
  - (d) the lessor is not in breach of a law dealing with issues about the health or safety of persons using or entering the premises.
- (3) While the tenancy continues, the lessor—

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

*Editor's note—*

See section 217 (Notice of damage) for the tenant's obligations to notify the lessor about damage to premises and the need for repairs.

- (4) However, the lessor is not required to comply with subsection (2)(c) or (3)(a) for fixtures attached to premises, and inclusions supplied with premises, (the *non-standard items*) if—
  - (a) the lessor is the State; and
  - (b) the non-standard items are specified in the agreement and the agreement states the lessor is not responsible for their maintenance; and
  - (c) the non-standard items are not necessary and reasonable to make the premises a fit place in which to live; and
  - (d) the non-standard items are not a risk to health or safety; and
  - (e) for fixtures—the fixtures were not attached to the premises by the lessor.
- (5) In this section—

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

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**186 Lessor's obligations for facilities in moveable dwelling parks**

- (1) This section applies only to an agreement for moveable dwelling premises in a moveable dwelling park.
- (2) However, this section does not apply if the lessor is a home owner for the premises.
- (3) At the start of the tenancy, the lessor must ensure—
  - (a) the facilities in the park are clean; and
  - (b) the facilities are fit for the tenant to use; and
  - (c) the facilities are in good repair; and
  - (d) the lessor is not in breach of a law dealing with issues about the health and safety of persons using or entering the facilities.
- (4) While the tenancy continues, the lessor must—
  - (a) keep the facilities clean; and
  - (b) maintain the facilities in a way that the facilities remain fit for the tenant to use; and
  - (c) maintain the facilities in good repair; and
  - (d) ensure any law dealing with issues about the health or safety of persons using the facilities is complied with.

**187 Lessor's obligations for moveable dwelling site**

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



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- (a) must ensure the premises remain a fit site for a moveable dwelling; and
  - (b) may make any improvements to the premises the lessor considers appropriate.

### **188 Tenant's obligations generally**

- (1) This section does not apply to an agreement if—
  - (a) the premises are moveable dwelling premises consisting only of the site for the dwelling; and
  - (b) the tenancy is a long tenancy (moveable dwelling).
- (2) The tenant must keep the premises and inclusions clean, having regard to their condition at the start of the tenancy.
- (3) The tenant must not maliciously damage, or allow someone else to maliciously damage, the premises or inclusions.
- (4) At the end of the tenancy, the tenant must leave the premises and inclusions, as far as possible, in the same condition they were in at the start of the tenancy, fair wear and tear excepted.

*Editor's note—*

See section 217 (Notice of damage) for the tenant's obligations to notify the lessor about damage to premises and the need for repairs.

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

- (1) This section applies only to an agreement for moveable dwelling premises in a moveable dwelling park.
- (2) The tenant must not—
  - (a) do anything to a facility in the park that makes the facility unfit for use or detracts from its appearance; or
  - (b) intentionally or negligently damage a facility in the park.

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

- (1) This section applies—
  - (a) to an agreement for moveable dwelling premises consisting only of the site for the dwelling; and
  - (b) if the tenancy is a long tenancy (moveable dwelling).
- (2) The tenant must keep the premises in a way that does not detract from the general standards of the moveable dwelling park, or other general area, where the premises are situated.
- (3) The tenant's obligation applies having regard to the condition of the premises at the start of the tenancy and any improvements made later by the lessor.

### **191 Orders of tribunal**

- (1) This section applies if, on an application made to a tribunal by the tenant for an order under this section, the tribunal is satisfied—
  - (a) the lessor has failed to comply with the lessor's maintenance obligation under section 185(3) or 186(4); and
  - (b) the failure results in the health or safety of persons being endangered; and
  - (c) the failure is reasonably capable of being remedied.
- (2) The tribunal may order the lessor to remedy the failure within the time decided by the tribunal.

## **Part 3 Lessor's right of entry**

### **192 Grounds for entry**

- (1) The lessor or lessor's agent may enter the premises only—

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- (a) to inspect the premises; or
  - (b) to make routine repairs to, or carry out maintenance of, the premises; or
  - (c) if repairs or maintenance have been made or carried out under paragraph (b)—within 14 days after the completion of the repairs or maintenance, to inspect the repairs or maintenance; or
  - (d) to comply with the *Fire and Rescue Service Act 1990* in relation to smoke alarms; or
  - (e) to comply with the *Electrical Safety Act 2002* in relation to approved safety switches; or
  - (f) to show the premises to a prospective buyer or tenant; or
  - (g) to allow a valuation of the premises to be carried out; or
  - (h) if the lessor or agent believes, on reasonable grounds, the premises have been abandoned; or
  - (i) if the lessor or agent has given the tenant a notice to remedy a breach of the agreement that is a significant breach—within 14 days after the end of the allowed remedy period, to inspect to ascertain whether the tenant has remedied the breach; or
  - (j) if the tenant agrees; or
  - (k) in an emergency; or
  - (l) if the lessor or agent believes on reasonable grounds that the entry is necessary to protect the premises or inclusions from imminent or further damage.

*Example of entry in an emergency under paragraph (k)—*

to make emergency repairs to the roof of the premises

(2) In this section—

***significant breach***, for a notice to remedy breach, means a breach relating to any of the following—

- (a) using the premises for an illegal purpose;

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- (b) the number of occupants allowed to reside in the premises;
- (c) keeping a pet on the premises;
- (d) another matter, if the reasonable cost of rectifying the matter exceeds 1 week's rent for the premises.

### 193 Notice of entry

- (1) The lessor or lessor's agent may enter the premises under section 192(1)(a) to (i) only if—
  - (a) the lessor or agent has given notice of the proposed entry (the *entry notice*) to the tenant; and
  - (b) the entry notice is in the approved form; and
  - (c) the entry notice is given—
    - (i) for an entry under section 192(1)(a) if the tenancy is not a short tenancy (moveable dwelling)—at least 7 days before entering the premises; or
    - (ii) for another entry—at least 24 hours before entering the premises.

*Example for another entry under paragraph (c)(ii)—*

If the lessor or agent hands the tenant an entry notice at 2.30p.m. on a Tuesday, the lessor or agent may enter from 2.30p.m. on the Wednesday.

- (2) An entry under section 192(1)(k) or (l) may be made without giving the tenant notice of the proposed entry.
- (3) Despite subsection (1), the lessor or agent may enter the premises under section 192(1)(b), (d) or (e) without giving the entry notice if it is not practicable to give the notice because of—
  - (a) the remoteness of the premises; and
  - (b) the shortage in the general area of the premises of a suitably qualified tradesperson or other person needed to make the repairs or carry out the maintenance.

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- (4) Also, despite subsection (1), for premises that are a site only, or a site and a caravan, or a site and a manufactured home, in a moveable dwelling park, the lessor or agent may enter the site under section 192(1)(b) to carry out maintenance of the site without giving the entry notice if—
- (a) the agreement states—
    - (i) the frequency with which the entry is required for carrying out the maintenance; and
    - (ii) the conditions under which the entry may be made; and
  - (b) the entry is made under the agreement.

#### **194 Entry by lessor or lessor's agent with another person**

- (1) The lessor or lessor's agent may enter the premises with another person if it is necessary to achieve the purpose of entry under section 192.
- (2) Without limiting subsection (1), the lessor or agent may enter premises under section 192(1)(l) with a police officer.

#### **195 When lessor or lessor's agent may enter**

- (1) An entry under section 192(1)(a) to (i)—
  - (a) must be made at a reasonable time; and
  - (b) unless the tenant otherwise agrees, must not be made on—
    - (i) a Sunday or public holiday; or
    - (ii) another day after 6p.m. or before 8a.m.
- (2) However, for an entry under section 192(1)(b), (d) or (e), subsection (1)(b) does not apply if it is not practicable to comply with that provision because of—
  - (a) the remoteness of the premises; and

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- (b) the shortage in the general area of the premises of a suitably qualified tradesperson or other person needed to make the repairs or carry out the maintenance.
- (3) Unless the tenant otherwise agrees, an entry under section 192(1)(a) may not be made less than 3 months after a previous entry by the lessor, or the renting or a secondary agent, under section 192(1)(a).
- (4) The lessor or lessor's agent may enter the premises under section 192(1)(f) only if a reasonable time has elapsed since a previous entry by the lessor, or the renting or a secondary agent, under section 192(1)(f).
- (5) The lessor or lessor's agent may enter the premises under section 192(1)(j) only at a time agreed with the tenant.

**196 Period for entry must be stated for entry by lessor and lessor's agent without another person**

- (1) This section applies to entry under section 192 by—
  - (a) the lessor or lessor's renting or selling agent; or
  - (b) both the lessor and lessor's renting or selling agent.
- (2) The lessor or agent—
  - (a) must state a period of up to 2 hours within which entry will happen (the *entry period*), in the entry notice under section 193; and
  - (b) may only enter within the entry period.
- (3) Subsection (2) applies only to the initial entry and does not prevent the lessor or lessor's agent remaining on the premises after the end of the entry period.
- (4) This section does not apply if another person is to accompany the lessor or lessor's renting or selling agent to achieve the purpose of entry under section 192.

*Example of another person—*

a tradesperson

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- (5) Also, for an entry under section 192(1)(b), (d) or (e), subsection (2) does not apply if it is not practicable to comply with that provision because of—
- (a) the remoteness of the premises; and
  - (b) the shortage in the general area of the premises of a suitably qualified tradesperson or other person needed to make the repairs or carry out the maintenance.

### **197 Entry to show premises to a prospective tenant**

- (1) The lessor or lessor's agent may enter the premises under section 192(1)(f) to show the premises to a prospective tenant only if—
- (a) a notice to leave the premises is given to the tenant before, or when, the entry notice is given to the tenant; or
  - (b) a notice of intention to leave the premises has been given to the lessor by the tenant.
- (2) The lessor or agent must not allow a prospective tenant to enter the premises unless accompanied by the lessor or agent.
- (3) However, a lessor or agent may allow a prospective tenant to enter without being accompanied by the lessor or agent if the tenant agrees.

*Note—*

For an entry under section 192(1)(f), the lessor or agent is also required to give an entry notice to the tenant under section 193(1).

### **198 Entry to show premises to a prospective buyer**

- (1) The lessor or lessor's agent may enter the premises under section 192(1)(f) to show the premises to a prospective buyer only if—
- (a) the lessor or agent gives the tenant a notice in the approved form of the lessor's intention to sell the

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- premises before, or when, the entry notice for the first entry to the premises is given to the tenant; and
- (b) for entry by a secondary agent, the secondary agent gives the renting agent—
    - (i) a copy of the notice of intention to sell given under paragraph (a) before, or when, the entry notice for the first entry to the premises is given to the renting agent; and
    - (ii) unless otherwise agreed with the renting agent—an entry notice before each entry to show the premises to a prospective buyer.
  - (2) Subsection (1)(a) applies whether or not the tenant has agreed to the entry under section 192(1)(j).
  - (3) The lessor or agent must not allow a prospective buyer to enter the premises unless accompanied by the lessor or agent.
  - (4) However, a lessor or agent may allow a prospective buyer to enter without being accompanied by the lessor or agent if the tenant agrees.

*Note—*

For an entry under section 192(1)(f), the lessor or agent is also required to give an entry notice to the tenant under section 193(1).

## **199 Entry by secondary agents generally**

- (1) A secondary agent of the lessor may enter the premises under section 192(1)(a) to (e) and (g) to (i) only if—
  - (a) the tenant agrees; or
  - (b) the agent produces for the tenant's inspection written evidence of the agent's appointment; or
  - (c) for an entry under section 192(1)(h) the tenant does not respond to the entry notice within a reasonable time.
- (2) However, for an entry under section 192(1)(b), (d) or (e), subsection (1) does not apply if it is not practicable to comply with that provision because of—



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

## **200 Rules of entry**

The rights and obligations under sections 192 to 199 about the entry of premises are called the *rules of entry*.

## **201 Entry by lessor or lessor's agent under order of tribunal**

- (1) This section applies if, on an application made to a tribunal by the lessor or tenant, the tribunal is satisfied—
  - (a) the tenant has not allowed the lessor or lessor's agent to enter the premises under the rules of entry; or
  - (b) the lessor or lessor's agent has entered the premises in contravention of the rules of entry.
- (2) The tribunal may change the rules of entry in the way it considers appropriate.
- (3) If the tribunal changes the rules on the ground mentioned in subsection (1)(a), the lessor or agent may enter the premises under the rules of entry or the rules of entry as changed.
- (4) If the tribunal makes an order on the ground mentioned in subsection (1)(b), the lessor or agent may enter the premises only under the rules as changed.

## **202 Unlawful entry of premises**

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

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

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Maximum penalty—20 penalty units.

**203 Lessor or lessor's agent must not use photo or image showing tenant's possessions in advertisement**

Unless the lessor or lessor's agent has the tenant's written consent, the lessor or agent must not use a photo or other image of the premises in an advertisement if the photo or image shows something belonging to the tenant.

Maximum penalty—20 penalty units.

**204 Lessor or lessor's agent must not conduct open house or on-site auction without tenant's consent**

- (1) The lessor or lessor's agent for premises must not do either of the following without the tenant's written consent—
- (a) conduct an auction, or allow an auction to be conducted, on the premises;
  - (b) conduct an open house, or allow an open house to be conducted, on the premises.

Maximum penalty—20 penalty units.

- (2) In this section—

*open house* means an advertised period during which premises that are for sale or rent may be entered and inspected by prospective buyers or tenants generally.

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## Part 4                      **Personal details of the parties and agents**

### **205      Tenant's name and other details**

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

Maximum penalty—20 penalty units.

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

Maximum penalty—20 penalty units.

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

### **206      Lessor's or agent's name and other details**

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

- (a) the lessor's name and address for service; or
- (b) if the lessor has an agent who is authorised to stand in the lessor's place in a proceeding prescribed under a regulation (the *prescribed proceeding*)—the agent's name and address for service.

Maximum penalty—20 penalty units.

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

Maximum penalty—20 penalty units.

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- (3) If details of the agent mentioned in subsection (1)(b) are given to the tenant under this section, the agent stands in the lessor's place for a prescribed proceeding and, for example—
- (a) the proceeding may be taken against the agent as if the agent were the lessor; and
  - (b) a tribunal may make an order against the agent as if the agent were the lessor; and
  - (c) settlement may be made with the agent as if the agent were the lessor.
- (4) In this section—
- address for service* means—
- (a) for an individual—the individual's place of residence or place of business; or
  - (b) for a body corporate—the body corporate's registered office or place of business.

## **Part 5                      The dwelling**

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

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

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

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

- (1) The lessor's agreement to the attaching of a fixture, or making of a structural change, must—
- (a) be in writing; and

- 
- (b) describe the nature of the fixture or change; and
  - (c) include any terms of the agreement.
- (2) For an agreement about attaching a fixture to premises, the terms may include terms about—
- (a) whether the tenant may remove the fixture; and
  - (b) if removal by the tenant is allowed—
    - (i) when and how the removal may be performed; and
    - (ii) the obligation of the tenant to repair any damage caused to the premises in the removal or compensate the lessor for the lessor's reasonable costs of repairing the damage; and
  - (c) if removal by the tenant is not allowed—the obligation of the lessor to compensate the tenant for any improvement the fixture makes to the premises.
- (3) The lessor must not act unreasonably in failing to agree to the attaching of a fixture, or the making of a structural change, to the premises.
- (4) If the lessor agrees to a fixture being attached, or a structural change being made, to the premises by the tenant, the tenant must not contravene a term of the agreement.

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

- (1) If the tenant attaches a fixture, or makes a structural change, to the premises without the lessor's agreement, the lessor may—
- (a) waive the breach; and
  - (b) treat the fixture or change as an improvement to the premises for the lessor's benefit.
- (2) The lessor may take the action under subsection (1) instead of taking action for a breach of a term of the residential tenancy agreement by the tenant.

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## Division 2                      Locks and keys

### 210      Supply of locks and keys

- (1) The lessor must supply and maintain the locks that are necessary to ensure the premises are reasonably secure.
- (2) If there is only 1 tenant, the lessor must give to the tenant a key for each lock that—
  - (a) secures an entry to the premises; or
  - (b) secures a road or other place that is normally used to gain access to, or leave, the area or building in which the premises are situated; or

*Example of a lock for paragraph (b)—*

a lock operating a boom gate that must be passed to enter or leave the area in which the premises are situated

- (c) is part of the premises.

*Examples of locks for paragraph (c)—*

- 1 a lock on a door to a room in the premises
- 2 a lock on the mailbox for the premises
- 3 a lock on the door to a toolshed that forms part of the premises
- 4 a lock on a built-in cupboard in the premises

- (3) If there is more than 1 tenant, the lessor must—
  - (a) give one of the tenants a key for each lock mentioned in subsection (2); and
  - (b) give each of the other tenants a key for each lock mentioned in subsection (2)(a) or (b).
- (4) In this section—

***tenant*** means a person named in the agreement as a tenant.

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## **211 Changing locks**

- (1) If the lessor or tenant changes a lock, the party must give to the other party a key for the changed lock, unless—
  - (a) the other party agrees to not being given a key; or
  - (b) a tribunal orders that a key not be given.
- (2) However, the lessor or tenant may change a lock only if—
  - (a) the party has a reasonable excuse for making the change; or
  - (b) the other party agrees to the change.
- (3) Without limiting subsection (2)(a), it is a reasonable excuse for the lessor or tenant to change a lock if it is changed in an emergency or under an order of a tribunal.

## **212 Agreement about changing locks**

- (1) The lessor or tenant must not act unreasonably in failing to agree to the change of a lock.
- (2) The changing of a lock by the lessor or tenant without the other party's agreement is evidence the party did not have a reasonable excuse for making the change.

## **213 Orders of tribunal**

- (1) If an application is made to a tribunal by the lessor or tenant about a lock or key for the premises, the tribunal may make any of the following orders about locks or keys for the premises—
  - (a) an order requiring the lessor to supply a lock, or a lock of a particular kind;
  - (b) an order requiring the lessor to carry out stated maintenance of a lock;
  - (c) an order authorising the lessor or tenant to change a lock;

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- (d) an order that the lessor or tenant is not required to give to the other party a key to a lock;
  - (e) an order requiring the lessor or tenant to give to the other party a key to a lock.
- (2) In making an order mentioned in subsection (1)(a) or (c), the tribunal may have regard to the following—
- (a) the likelihood of risk to the tenant's personal safety;
  - (b) the requirements of insurance companies for allowing the tenant to obtain insurance for property of the tenant kept at the premises;
  - (c) the likelihood of break-ins or other unlawful entry to the premises or nearby premises;
  - (d) local community standards about adequate security for premises;
  - (e) the physical characteristics of the premises and adjoining areas;
  - (f) anything else the tribunal considers relevant.

## **Division 3                      Damage and repairs**

### **214      Meaning of *emergency repairs***

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

- (a) a burst water service or a serious water service leak;
- (b) a blocked or broken lavatory system;
- (c) a serious roof leak;
- (d) a gas leak;
- (e) a dangerous electrical fault;
- (f) flooding or serious flood damage;
- (g) serious storm, fire or impact damage;



- 
- (h) a failure or breakdown of the gas, electricity or water supply to premises;
  - (i) a failure or breakdown of an essential service or appliance on premises for hot water, cooking or heating;
  - (j) a fault or damage that makes premises unsafe or insecure;
  - (k) a fault or damage likely to injure a person, damage property or unduly inconvenience a tenant of premises;
  - (l) a serious fault in a staircase, lift or other common area of premises that unduly inconveniences a tenant in gaining access to, or using, the premises.

## **215 Meaning of *routine repairs***

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

## **216 Nominated repairer for emergency repairs**

- (1) The lessor may nominate a person (the *nominated repairer*)—
  - (a) to act for the lessor in arranging for emergency repairs, or emergency repairs of a particular type, to be made of the premises or inclusions; or
  - (b) to make emergency repairs, or emergency repairs of a particular type, of the premises or inclusions for the lessor.
- (2) The nominated repairer may be stated in the agreement or a written notice given by the lessor to the tenant.
- (3) The agreement or notice must state whether or not the nominated repairer is the tenant's first point of contact for notifying the need for emergency repairs.
- (4) The lessor must give written notice to the tenant of any change of the lessor's nominated repairer.

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## **217 Notice of damage**

- (1) If the tenant knows the premises or inclusions have been damaged, the tenant must give notice as soon as practicable of the damage.
- (2) If the premises or inclusions need routine repairs, the notice must be given to the lessor.
- (3) If the premises or inclusions need emergency repairs, the notice must be given to the lessor if—
  - (a) there is no nominated repairer for the repairs; or
  - (b) a nominated repairer for the repairs is not the tenant's first point of contact; or
  - (c) a nominated repairer for the repairs is the tenant's first point of contact but the tenant has been unable to contact the repairer after making reasonable efforts.
- (4) If the premises or inclusions need emergency repairs and there is a nominated repairer of the lessor for the repairs, the notice must be given to the repairer if—
  - (a) the repairer is the tenant's first point of contact; or
  - (b) the repairer is not the tenant's first point of contact but the tenant has been unable to contact the lessor after making reasonable efforts.

## **218 Tenant may arrange for emergency repairs to be made or may apply to the tribunal for an order about the repairs**

- (1) This section applies—
  - (a) if—
    - (i) the tenant has been unable to notify the lessor or nominated repairer of the need for emergency repairs of the premises or inclusions; or
    - (ii) the repairs are not made within a reasonable time after notice is given; and

- 
- (b) if the residential tenancy is not a short tenancy (moveable dwelling).
  - (2) The tenant may—
    - (a) arrange for a suitably qualified person to make the repairs; or
    - (b) apply to a tribunal under section 221 for orders about the repairs.

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

- (1) The maximum amount that may be incurred for emergency repairs arranged to be made by the tenant is an amount equal to the amount payable under the agreement for 2 weeks rent.
- (2) The tenant may require the lessor—
  - (a) to reimburse the tenant for any amount properly incurred by the tenant for the repairs; or
  - (b) to pay the amount properly incurred for the repairs direct to the actual repairer.
- (3) The requirement must—
  - (a) be made by written notice given to the lessor; and
  - (b) be supported by appropriate documents about the incurring of the amount; and
  - (c) state that, if the lessor does not comply with the requirement within 7 days after receiving the notice, the tenant may apply to a tribunal for an order about the reimbursement or payment of the amount.

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

invoices, accounts and receipts

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**220 Orders of tribunal about reimbursement or payment for emergency repairs**

- (1) This section applies if the tenant makes a requirement of the lessor under section 219 for the reimbursement or payment of an amount for emergency repairs.
- (2) If the lessor objects to the requirement, the lessor may, within 7 days after the requirement is made, apply to a tribunal for an order about the reimbursement or payment.
- (3) If, within the 7 day period, the lessor does not comply with the requirement or make the application, the tenant may apply to a tribunal for an order about the reimbursement or payment.
- (4) An application under subsection (2) must be decided by a tribunal, but an application under subsection (3) may be decided by a tribunal or registrar.
- (5) However, a registrar may decide an application only if—
  - (a) the registrar is satisfied the tenant has given to the lessor appropriate documents to support the incurring of the amount for which reimbursement or payment is sought; and
  - (b) the lessor has not made an application under subsection (2); and
  - (c) the registrar is satisfied a tribunal has not been notified of a dispute between the parties about the amount.

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

invoices, accounts and receipts

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

- 
- (a) whether the tenant obtained a number of quotations for the repairs; and
  - (b) whether the repairs were necessary because of a breach of a term of the agreement by the tenant.
- (8) Subsection (7) does not limit the issues to which the tribunal or registrar may have regard.

## **221 Orders of tribunal about carrying out emergency repairs**

- (1) This section applies if, on application made to the tribunal by the tenant for an order under this section, the tribunal is satisfied that—
- (a) either—
    - (i) the tenant has been unable to notify the lessor or nominated repairer of the need for emergency repairs of the premises or inclusions; or
    - (ii) the repairs are not made within a reasonable time after notice is given; and
  - (b) the tenant has not arranged for a suitably qualified person to make the repairs; and
  - (c) the residential tenancy is not a short tenancy (moveable dwelling).
- (2) If an application is made under this section, a tribunal may make any order or give any directions about the repairs, the tribunal considers appropriate in all the circumstances of the case.
- (3) Without limiting subsection (2), the tribunal may make any of the following orders—
- (a) that the lessor carry out the repairs within the time decided by the tribunal;
  - (b) that the tenant may arrange for a suitably qualified person to make the repairs for an amount decided by the tribunal;

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- (c) if paragraph (b) applies, that the lessor pay or reimburse the amount decided by the tribunal, in the way stated by the tribunal.
- (4) In deciding an application under this section, the tribunal may have regard to—
  - (a) whether the tenant obtained a number of quotations for the repairs; and
  - (b) whether the repairs were necessary because of a breach of a term of the agreement by the tenant.
- (5) Subsection (4) does not limit the issues to which the tribunal may have regard.

## **Part 6                      Additional provisions for    moveable dwelling premises**

### **Division 1                      Application of part**

#### **222      Application of pt 6**

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

### **Division 2                      Relocation**

#### **223      Notice to relocate**

- (1) The lessor may give a notice (*notice to relocate*) to the tenant requiring the tenant to relocate to another site in the moveable dwelling park within a stated period.
- (2) The notice to relocate may be given only if the relocation is necessary—

- 
- (a) to allow the carrying out of necessary or desirable work in the park; or
  - (b) because of an emergency; or
  - (c) for health or safety reasons; or
  - (d) if the lessor is a home owner—because the lessor has an obligation under a site agreement to reposition the moveable dwelling.

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

maintenance, repairs, upgrading and restoration

- (3) The notice to relocate to another site may be given only if the other site is, as far as practicable, reasonably comparable to the site currently occupied by the tenant.
- (4) The period stated in the notice must be reasonable but, in any event, for a notice given under subsection (2)(a) or (d), must be not less than 1 month after the notice is given to the tenant.
- (5) The notice to relocate must—
  - (a) be in writing; and
  - (b) identify the site to which the tenant is to relocate; and
  - (c) state the period within which the tenant is to relocate; and
  - (d) state the reasons for the relocation.

*Editor's note—*

See section 283 (Notice to leave for noncompliance (moveable dwelling relocation)) in relation to a failure of the tenant to comply with the notice to relocate.

## **224 Restriction against enforcing relocation**

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

- (a) the tenant agrees; or

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

Maximum penalty—20 penalty units.

## **225 Effect of relocation**

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

## **226 Costs of relocation**

- (1) The reasonable costs and expenses incurred by the tenant in complying with the notice to relocate are payable to the tenant by the lessor.
- (2) If application is made to a tribunal under this section by the tenant, the tribunal may make an order requiring the lessor to pay to the tenant the amount it considers the tenant is entitled to receive under subsection (1).

## **227 Application to tribunal**

- (1) This section applies if—
  - (a) a notice to relocate is given to the tenant; and
  - (b) the tenant—
    - (i) has not complied with the notice; or
    - (ii) is proposing not to comply with the notice (whether or not the tenant has told the lessor).
- (2) Either party may apply to a tribunal for an order about the relocation.
- (3) In deciding the application, the tribunal may make either of the following orders—



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

## Division 3                      Park rules

### 228      Park rules

- (1) The owner of the moveable dwelling park may make rules about the use, enjoyment, control and management of the park.
- (2) However, rules may be made only about—
  - (a) the use and operation of communal facilities; and
  - (b) the making and abatement of noise; and
  - (c) the carrying on of sporting and other recreational activities; and
  - (d) speed limits for motor vehicles; and
  - (e) parking of motor vehicles; and
  - (f) the disposal of refuse; and
  - (g) the keeping of pets; and
  - (h) other things prescribed under a regulation.

### 229      Notice of proposed change of park rule

- (1) If the owner of a moveable dwelling park proposes to change a park rule, the owner must—
  - (a) fix a day (the *objection closing day*) by which residents of the park may object to the proposed change (the *proposal*); and
  - (b) give notice of the proposal to each resident and any person who becomes a resident before the objection closing day.

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- (2) A notice must be given—
  - (a) for a resident—at least 1 month before the objection closing day; or
  - (b) for someone else—when the person becomes a resident.
- (3) The notice must—
  - (a) be in writing; and
  - (b) inform the resident that the resident may object to the proposal before the objection closing day; and
  - (c) inform the resident how the objection may be made.

### **230 Objection to proposal**

- (1) A resident of the park may object to the proposal because it is unreasonable.
- (2) The objection must be made by written notice given to the park owner before the objection closing day.
- (3) The notice must give particulars of why the proposal is considered to be unreasonable.

### **231 Park liaison committee**

- (1) This section applies only if objections to the proposal are made before the objection day by—
  - (a) at least 5 park residents from 5 different sites in the park; or
  - (b) if the park has less than 10 sites—a majority of the park residents.
- (2) As soon as practicable after the objection closing day, the persons who have objected (the *objectors*) and the park owner must set up a committee (the *park liaison committee*) to consider the objections.
- (3) The committee is to consist of the following members—
  - (a) a person chosen by the objectors;

- (b) the park owner or the park owner's nominee;
- (c) someone else agreed on by the other members.
- (4) The member mentioned in subsection (3)(a) may be an objector.
- (5) The committee may consider the objections only if the 3 members are present.
- (6) If the members mentioned in subsection (3)(a) and (b) fail, within 7 days after the objection closing day, to agree on the other person who is to be a member, the park owner must give written notice of the failure to each of the objectors (*non-resolution notice*).

## **232 Consideration of objections by committee**

- (1) If a park liaison committee is set up, it must consider all objections properly made about the proposal and—
  - (a) declare the proposal to be either reasonable or unreasonable; or
  - (b) if it considers the proposal is unreasonable—change the proposal in a way it considers appropriate to make it reasonable.
- (2) The committee must give written notice of its decision to—
  - (a) the objectors; and
  - (b) if the park owner is not a member of the committee—the park owner.

## **233 Application to tribunal about proposal**

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

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- (2) The park owner or objector may apply to a tribunal for an order declaring the proposal to be reasonable or unreasonable.
- (3) The application must—
  - (a) be made within 7 days after receiving the non-resolution notice or the decision being made; and
  - (b) give particulars of why the proposal is considered to be reasonable or unreasonable.
- (4) A single application may be made by objectors if it is made by—
  - (a) at least 5 park residents from 5 different sites in the park; or
  - (b) if the park has less than 10 sites—a majority of the park residents.
- (5) In subsection (2), a reference to the proposal about which an order may be sought includes a change of a park rule proposed by the park owner as changed by the park liaison committee.

### **234 Decision of tribunal about proposal**

- (1) If an application is made to a tribunal about the reasonableness of the proposal to change a park rule, the tribunal may—
  - (a) declare the proposal to be reasonable or unreasonable; or
  - (b) change the proposal in a way it considers appropriate to make it reasonable; or
  - (c) make any other order it considers appropriate.
- (2) In deciding the application, the issues to which the tribunal may have regard include the following—
  - (a) the park's location;
  - (b) the park's internal layout;

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- (c) the amenities, improvements, facilities and other physical features of the park;
  - (d) the number of residents and their needs;
  - (e) the levels of rent and other charges paid by residents.
- (3) Subsection (2) does not limit the issues to which the tribunal may have regard.

### **235 When proposal takes effect**

- (1) This section sets out the way of working out when a proposal to change a park rule takes effect.
- (2) This section applies (as *case 1*) if—
- (a) no objections are made to the proposal; or
  - (b) the number of objections made to the proposal are not sufficient to require the setting up of a park liaison committee.
- (3) This section applies (as *case 2*) if—
- (a) non-resolution notices about the proposal are given to the objectors; and
  - (b) no application is made to a tribunal within the required time.
- (4) This section applies (as *case 3*) if—
- (a) a decision is made by a park liaison committee—
    - (i) declaring the proposal to be reasonable; or
    - (ii) changing the proposal in a way it considers appropriate to make the proposal reasonable; and
  - (b) no application is made to a tribunal within the required time.
- (5) This section applies (as *case 4*) if a decision is made by a tribunal—
- (a) declaring the proposal to be reasonable; or

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- (b) changing the proposal in a way it considers appropriate to make the proposal reasonable.
- (6) If case 1 applies, the proposal takes effect—
  - (a) at the end of the objection closing day; or
  - (b) if a later day is stated by the park owner—on the later day.
- (7) If case 2 applies, the proposal takes effect—
  - (a) at the end of the last day on which an application may be made to a tribunal; or
  - (b) if a later day is stated by the park owner—on the later day.
- (8) If case 3 applies, the proposal takes effect on the day decided by the park liaison committee.
- (9) If case 4 applies, the proposal takes effect on the day decided by the tribunal.

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

- (1) A change of a park rule has no effect if—
  - (a) it is made otherwise than under this division; or
  - (b) a park liaison committee or tribunal, in considering a proposal about the change, decides that the proposal is unreasonable.
- (2) However, subsection (1)(b) does not apply to a decision of the park liaison committee if a later decision of a tribunal—
  - (a) decided the proposal was reasonable; or
  - (b) changes the proposal in a way it considered appropriate to make the proposal reasonable.

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## Part 7                      Change of lessor or tenant

### Division 1                Transfer or subletting by tenant

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

- (1) This section applies to an agreement if—
  - (a) the lessor is the State; or
  - (b) the lessor is an entity receiving financial or other assistance from the State to supply rented accommodation to persons; or
  - (c) the tenant’s right to occupy the premises is given under the tenant’s terms of employment; or
  - (d) the tenancy is a short tenancy (moveable dwelling).
- (2) The tenant may transfer the whole or a part of the tenant’s interest under the agreement, or sublet the premises, only if the lessor agrees in writing to the transfer or subletting.

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

- (1) This section applies to an agreement only if section 237 does not apply to the agreement.
- (2) The tenant may transfer all or a part of the tenant’s interest under the agreement, or sublet the premises, only if—
  - (a) the lessor agrees in writing to the transfer or subletting; or
  - (b) the transfer or subletting is made under an order of a tribunal.
- (3) The lessor must act reasonably in failing to agree to the transfer or subletting.
- (4) The lessor is taken to act unreasonably in failing to agree to the transfer or subletting if the lessor acts in a capricious or retaliatory way.

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

- (1) If the tenant believes the lessor has acted unreasonably in failing to agree to a transfer or subletting under section 238, the tenant may apply to a tribunal for an order under this section.
- (2) If, on an application made to a tribunal by the tenant, the lessor fails to satisfy the tribunal that the lessor acted reasonably in failing to agree to the transfer or subletting, the tribunal may make an order authorising the tenant to make the transfer or subletting without the lessor's agreement.
- (3) In deciding whether the lessor acted reasonably in failing to agree to the transfer or subletting, the tribunal may have regard to the following issues—
  - (a) the likelihood of the proposed transferee fulfilling the tenant's obligations under the agreement;
  - (b) the risk of damage to the premises or inclusions.

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

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

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

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

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

Maximum penalty—20 penalty units.

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

- (1) This section applies—



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- (a) only to an agreement for moveable dwelling premises consisting only of the site for a caravan; and
  - (b) if the residential tenancy is a long tenancy (moveable dwelling).
- (2) The lessor may require the tenant to pay, or accept from the tenant, a fee (not more than an amount prescribed under a regulation) for the sale or attempted sale of a caravan on the premises only if—
    - (a) the lessor supplies a service in the sale or attempted sale; and
    - (b) when the service is supplied, there is a written agreement in force between the parties for the payment of the fee by the tenant to the lessor for the service.
  - (3) The lessor or lessor's agent must not require the tenant to pay, or accept from the tenant, a fee for the sale or attempted sale of a caravan on the premises in contravention of subsection (2).

Maximum penalty—20 penalty units.

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

## Division 2                      Transfer by lessor

### 242      Transfer by lessor

- (1) The lessor must—
  - (a) if the lessor proposes to transfer the lessor's interest in the premises to another person (the *buyer*)—give written notice of the tenancy to the buyer; and

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- (b) if the lessor transfers the interest subject to the tenancy—give written notice of the transfer (the *attornment notice*) to the tenant.
- (2) The attornment notice operates as an attornment as tenant to the buyer by the tenant at the rent, and on the other terms of the agreement applying when the notice is given, but only if the notice—
  - (a) states the buyer’s name and address; and
  - (b) directs the tenant to make all future payments of rent to the buyer.

*Note—*

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

- (3) However, if an amount for rent is unpaid when the attornment notice is given, the amount may be recovered by the former lessor as a debt owing to the former lessor by the tenant.
- (4) Subsection (1)(a) applies whether the transfer is proposed to be made with vacant possession or subject to the tenancy.

## **Division 3                      Replacement of tenant**

### **243      End of tenant’s occupation**

- (1) This section applies if—
  - (a) a person who is not the tenant under an agreement is occupying the premises; and
  - (b) the tenant dies or otherwise ceases to occupy the premises; and
  - (c) the lessor is not the State.
- (2) The person may apply to a tribunal for the following orders—
  - (a) an order to be recognised as the tenant under the agreement;

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- (b) an order to be joined as a party to a proceeding before the tribunal about the premises.
  - (3) The application may be made—
    - (a) when making another application to, or in a proceeding before, the tribunal; or
    - (b) independently of another application or proceeding.
  - (4) In deciding the application, the tribunal may make the following orders—
    - (a) an order recognising the person as the tenant under the agreement;
    - (b) an order joining the person as a party to a proceeding before the tribunal.
  - (5) If the tribunal makes an order under subsection (4)(a), it may make any other order it considers appropriate.

*Example of an order under subsection (5)—*

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

- (6) A person in whose favour an order is made under subsection (4)(a) is taken to be the tenant under the agreement on the terms the tribunal orders.
- (7) The tribunal may not make an order under this section without giving the lessor an opportunity to be heard on the application.

## **244 Death of a cotenant**

- (1) This section applies if—
  - (a) there are cotenants under an agreement; and
  - (b) the cotenants are not stated under the agreement to be joint tenants; and
  - (c) 1 of the cotenants dies.
- (2) On the deceased's death—

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- (a) the deceased's interest in the tenancy ends; and
  - (b) the agreement continues in force with the parties to the agreement being the lessor and the other cotenant or cotenants.
- (3) Subsection (2) does not affect, as between the deceased and the other cotenant or cotenants, any right (including, in particular, a right relating to a rental bond) or liability of the deceased existing immediately before the deceased's death.

## **245 Injury to domestic associate**

- (1) This section applies to—
- (a) the domestic associate of the tenant occupying the premises with the tenant; and
  - (b) a cotenant whose domestic associate is the other, or another, cotenant.
- (2) The person may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement instead of the person's domestic associate because the person's domestic associate has committed domestic violence against the person.
- (3) The tribunal may make the order if it is satisfied the person has established the ground of the application.
- (4) In deciding the application, the tribunal must have regard to the following issues (the *domestic violence issues*)—
- (a) whether the person has applied for a protection order against the person's domestic associate;
  - (b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;
  - (c) if a domestic violence order has been made—whether a condition was imposed prohibiting the person's domestic associate from entering, or remaining, on the premises.

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- (5) Subsection (4) does not limit the issues to which the tribunal may have regard.
- (6) If the tribunal makes the order, it may make any other order it considers appropriate.

*Examples of orders tribunal may make—*

- 1 an order about the application of the terms of the agreement, or other terms, to the person as tenant, or as a cotenant
  - 2 an order about any rental bond paid by the person's domestic associate
- (7) A person in whose favour an order is made under subsection (3) is taken to be the tenant, or a cotenant, under the agreement on the terms the tribunal orders.
- (8) The tribunal may not make an order under subsection (3) without giving the lessor an opportunity to be heard on the application.
- (9) In this section—  
***domestic associate*** means a person in any of the following relationships—
- (a) an intimate personal relationship;
  - (b) a family relationship;
  - (c) an informal care relationship.
- (10) A term used in subsection (9)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.

## **246 Injury or damage affecting occupants**

- (1) This section applies to a person (the ***occupant***) who is an occupant of premises and who is not the tenant or a cotenant.
- (2) The occupant may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement

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instead of the tenant, or a cotenant, because the tenant or cotenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—

- (a) serious damage to the premises; or
  - (b) injury to—
    - (i) the occupant; or
    - (ii) someone else occupying, or allowed on, the premises.
- (3) The tribunal may make the order if it is satisfied the occupant has established the ground of the application.
- (4) If the tribunal makes the order, it may make any other order it considers appropriate.

*Examples of orders tribunal may make—*

- 1 an order about the application of the terms of the agreement, or other terms, to the occupant as tenant, or as a cotenant
  - 2 an order about any rental bond paid for the agreement
- (5) A person in whose favour an order is made under subsection (3) is taken to be the tenant, or a cotenant, under the agreement on the terms the tribunal orders.
- (6) The tribunal may not make an order under subsection (3) without giving the lessor an opportunity to be heard on the application.

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## **Chapter 4      Rights and obligations of parties for rooming accommodation**

### **Part 1            Rights and obligations generally**

#### **247      Provider's obligations generally**

- (1) The provider for rooming accommodation has the following obligations in relation to each resident in the rental premises—
  - (a) to ensure the provider is not in breach of a law dealing with issues about the health or safety of persons using or entering the resident's room or common areas;
  - (b) to take reasonable steps to ensure the resident—
    - (i) always has access to the resident's room and to bathroom and toilet facilities; and
    - (ii) has reasonable access to any other common areas;
  - (c) to take reasonable steps to ensure the security of the resident's room and the resident's personal property in the room;
  - (d) to maintain the resident's room and common areas in a way that the room and areas remain fit for the resident to live in;
  - (e) to take reasonable steps to ensure the resident's room and common areas and facilities provided in the room and areas—
    - (i) are kept safe and in good repair; and
    - (ii) subject to any agreement with the resident about cleaning the resident's room or common areas or facilities—are kept clean;

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- (f) not to unreasonably restrict the resident's guests in visiting the resident;
- (g) to ensure that the times during which the provider, or an agent of the provider, is available to be contacted by the resident are reasonable, having regard to all the circumstances including the services being provided to the resident under the rooming accommodation agreement.

*Editor's note—*

Under section 72, these and other obligations under this part are taken to be included as terms of the rooming accommodation agreement.

- (2) For subsection (1)(e)(ii), an agreement about cleaning common areas may be made only for a common area used by the resident and a minority of other residents of the provider.

*Example for subsection (2)—*

Four residents have individual rooms opening out onto a living area which is available for use only by those residents. The provider and the 4 residents may agree that the cleaning of the living area is to be done by the 4 residents.

## **248 Provider's or agent's name and other details**

- (1) On or before the day the resident starts occupying the premises, the provider or provider's agent must give a written notice to the resident stating—
  - (a) the provider's name and address for service; or
  - (b) if the provider has an agent who is authorised to stand in the provider's place in a proceeding prescribed under a regulation (the *prescribed proceeding*)—the agent's name and address for service.

Maximum penalty—20 penalty units.

- (2) If a detail mentioned in the notice changes, the provider or provider's agent must give written notice of the change to the resident within 14 days after the change.



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Maximum penalty—20 penalty units.

- (3) If details of the agent mentioned in subsection (1)(b) are given to the resident under this section, the agent stands in the provider's place for a prescribed proceeding and, for example—
- (a) the proceeding may be taken against the agent as if the agent were the provider; and
  - (b) a tribunal may make an order against the agent as if the agent were the provider; and
  - (c) settlement may be made with the agent as if the agent were the provider.
- (4) In this section—
- address for service* means—
- (a) for an individual—the individual's place of residence or place of business; or
  - (b) for a body corporate—the body corporate's registered office or place of business.

## **249 Quiet enjoyment**

- (1) The provider must take reasonable steps to ensure the resident has quiet enjoyment of the resident's room and common areas.
- (2) The provider or provider's agent must not interfere with the reasonable peace, comfort or privacy of the resident in using the resident's room and common areas.

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

## **250 Supply of locks and keys**

- (1) The provider must supply and maintain the locks that are necessary to ensure the resident's room is reasonably secure.

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- (2) The provider must give the resident a key for each lock that secures entry to the following—
  - (a) the resident's room;
  - (b) a building or building within which the resident's room and common areas are situated.
- (3) The resident must not make a copy of a key without the provider's permission.
- (4) The resident must not tamper with a door lock in the premises.
- (5) In this section—

*resident* means a person named in a rooming accommodation agreement as a resident.

## **251 Changing locks**

- (1) The resident may request the provider to change or repair a lock that secures entry to the resident's room if the resident reasonably believes there is the likelihood of—
  - (a) risk to the resident's safety; or
  - (b) theft of, or damage to, the tenant's belongings.
- (2) The provider must not act unreasonably in failing to agree to change or repair the lock.

## **252 Application to tribunal about lock or key**

- (1) A provider or resident may apply to the tribunal for an order relating to a lock or key mentioned in section 250.
- (2) The tribunal may make any of the following orders—
  - (a) an order requiring the provider to supply a lock, or a lock of a particular kind;
  - (b) an order requiring the provider to carry out stated maintenance of a lock;
  - (c) an order authorising the provider or resident to change a lock;

- (d) an order that the provider or resident is not required to give to the other party a key to a lock;
  - (e) an order requiring the provider or resident to give to the other party a key to a lock.
- (3) In making an order mentioned in subsection (2)(a) or (c), the tribunal may have regard to the following—
- (a) the likelihood of risk to the resident's personal safety or theft of, or damage to, the resident's belongings;
  - (b) the requirements of insurance companies for allowing the resident to obtain insurance for property of the resident kept at the premises;
  - (c) the likelihood of break-ins or other unlawful entry to the premises or nearby premises;
  - (d) local community standards about adequate security for premises;
  - (e) the physical characteristics of the premises and adjoining areas;
  - (f) anything else the tribunal considers relevant.

### **253 Resident's obligations generally**

A resident in rental premises has the following obligations—

- (a) to use the resident's room and common areas only or mainly as a place of residence;
- (b) not to use the resident's room or common areas for an illegal purpose;
- (c) not to interfere with, and to ensure the resident's guests do not interfere with, the reasonable peace, comfort or privacy of another resident or another resident's appropriate use of the other resident's room or common areas;
- (d) to pay the rent when it falls due;

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- (e) not to keep an animal on the rental premises without the provider's permission;
- (f) not to intentionally or recklessly damage or destroy, or allow the resident's guests to intentionally or recklessly damage or destroy, any part of the rental premises or a facility in the rental premises;
- (g) to keep the resident's room and inclusions clean, having regard to their condition at the start of the tenancy;
- (h) to maintain the resident's room in a condition that does not give rise to a fire or health hazard;

*Examples of fire hazard—*

- 1 allowing newspapers to build up in the resident's room
  - 2 blocking access to the resident's room
- (i) at the end of the rooming accommodation agreement, to leave the resident's room and inclusions, as far as possible, in the same condition they were in at the start of the agreement, fair wear and tear excepted.

*Editor's note—*

Under section 72, these and other obligations under this part are taken to be included as terms of the rooming accommodation agreement.

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

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

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

- (1) The provider's agreement to the attaching of a fixture, or making of a structural change, must—
  - (a) be in writing; and
  - (b) describe the nature of the fixture or change; and

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- (c) include any terms of the agreement.
- (2) For an agreement about attaching a fixture to rental premises, the terms may include terms about—
    - (a) whether the resident may remove the fixture; and
    - (b) if removal by the resident is allowed—
      - (i) when and how the removal may be performed; and
      - (ii) the obligation of the resident to repair any damage caused to the rental premises in the removal or compensate the provider for the provider's reasonable costs of repairing the damage; and
    - (c) if removal by the resident is not allowed—the obligation of the provider to compensate the resident for any improvement the fixture makes to the rental premises.
  - (3) The provider must not act unreasonably in failing to agree to the attaching of a fixture, or the making of a structural change, to the rental premises.
  - (4) If the provider agrees to a fixture being attached, or a structural change being made, to the rental premises by the resident, the resident must not contravene a term of the agreement.

**256 Attaching fixture or making structural change without provider's agreement**

- (1) If the resident attaches a fixture, or makes a structural change, to the rental premises without the provider's agreement, the provider may—
  - (a) waive the breach; and
  - (b) treat the fixture or change as an improvement to the rental premises for the provider's benefit.
- (2) The provider may take the action under subsection (1) instead of taking action for a breach of a term of the rooming accommodation agreement by the resident.

## **Part 2                      Entry to residents' rooms**

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

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

*Examples of resident's agreement to entry—*

- 1 The provider orally asks to enter the resident's room and the resident orally agrees.
  - 2 The rooming accommodation agreement states times at which the provider may enter the room each week to carry out cleaning.
- (2) If the provider has agreed to provide a service other than accommodation to the resident, the provider may enter the resident's room at the times that are reasonably necessary to provide the service.

### **258    Entry to carry out inspection**

- (1) The provider may enter the resident's room, at a reasonable time, to inspect the room.
- (2) The provider must give a written notice of the proposed entry to the resident at least 48 hours before the entry.
- (3) An entry may not be made under this section more than once each month.

### **259    Entry after giving notice**

- (1) The provider may enter the resident's room, at a reasonable time—
- (a) to clean the room; or
  - (b) to carry out pest control in the room; or
  - (c) to make routine repairs to, or carry out maintenance of, the room or another part of the rental premises; or
  - (d) to show the room to a prospective buyer or resident; or

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- (e) to allow a valuation of the rental premises to be carried out.
- (2) The provider must give a written notice of the proposed entry to the resident at least 24 hours before the entry.
- (3) Subsection (4) applies to an entry by the provider or the provider's agent (the *selling agent*) to show the room to a prospective buyer, if the selling agent is not the agent to whom the resident normally pays the rent.
- (4) The provider or selling agent must also give a written notice of the proposed entry to the agent to whom the resident normally pays the rent at least 24 hours before the entry.
- (5) A notice under subsection (2)—
- (a) may relate to more than 1 proposed entry to a room; and
  - (b) may relate to entry to more than 1 room; and
  - (c) if it relates to entry to more than 1 room—may be given by posting it, at least 24 hours before the entry, or first entry, to which it relates, on a notice board or other place in the rental premises where it is likely to be seen by the residents to whom it is given.

*Example for subsection (5)—*

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

## **260 Entry without notice**

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

- (a) in an emergency; or
- (b) if the provider reasonably believes the room has been abandoned; or

*Editor's note—*

See section 509 (Indications a resident has abandoned a room).

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

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*Examples for paragraph (c)—*

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

**261 General qualifications about entry**

- (1) Immediately before entering the resident's room, the provider must tell the resident about the proposed entry, unless the resident is not in or near the room at the time.
- (2) After entering the resident's room, the provider—
  - (a) must preserve, as far as practicable, the resident's privacy; and
  - (b) must not remain in the room for longer than is reasonably necessary to carry out the purpose of the entry.

**262 Entry by provider's agent or other person**

- (1) A reference in sections 257, 258, 259(1) and (2), 260 and 261 to the provider includes an agent of the provider.
- (2) However, if—
  - (a) an agent of the provider proposes to enter or remain in the resident's room under this part; and
  - (b) the agent is not accompanied by the provider; and
  - (c) the agent is not a person to whom the resident normally pays the rent; and
  - (d) the resident asks for written evidence of the agent's appointment;



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

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

### **263 Rules of entry**

The rights and obligations under sections 257 to 262 about the entry to the resident's room are called the *rules of entry*.

### **264 Entry by provider or provider's agent under order of tribunal**

- (1) This section applies if, on an application made to a tribunal by the provider or resident, the tribunal is satisfied—
  - (a) the resident has not allowed the provider or provider's agent to enter the resident's room under the rules of entry; or
  - (b) the provider or agent has entered the resident's room in contravention of the rules of entry; or
  - (c) the provider or agent has entered the resident's room in a way, or at a time, that interferes with the reasonable peace, comfort or privacy of the resident in using the resident's room.
- (2) The tribunal may change the rules of entry in the way it considers appropriate.
- (3) If the tribunal changes the rules on the ground mentioned in subsection (1)(a), the provider or agent may enter the resident's room under the rules of entry or the rules of entry as changed.
- (4) If the tribunal makes an order on the ground mentioned in subsection (1)(b) or (c), the provider or agent may enter the resident's room only under the rules as changed.

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- (5) An application under this section may be made by 2 or more residents if the application relates to the same or a similar matter.
- (6) If an application is made by 2 or more residents, the tribunal may order that any change to the rules of entry applies to the provider and all the applicants.

### **265 Unlawful entry of resident's room**

The provider or provider's agent, must not enter the resident's room in contravention of—

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

Maximum penalty—20 penalty units.

## **Part 3 House rules**

### **Division 1 General**

#### **266 House rules**

- (1) House rules are rules about the use, enjoyment, control or management of rental premises.
- (2) The house rules in force for rental premises are—
  - (a) the prescribed rules that apply to the rental premises; and
  - (b) any other house rules made by the provider under this part.

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## 267 Prescribed rules

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

*Example—*

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

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

## 268 Rules made by the provider

- (1) A provider may make house rules for rental premises about any of the following matters—
  - (a) using shared facilities;
  - (b) parking motor vehicles;
  - (c) drinking alcohol or illegally consuming other drugs;
  - (d) smoking;
  - (e) making noise;
  - (f) keeping pets;
  - (g) guests;
  - (h) another matter prescribed under a regulation.
- (2) A rule made under subsection (1) has effect as a house rule for the rental premises only if—
  - (a) it is consistent with—
    - (i) the prescribed rules; and

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- (ii) the provider's obligations and the resident's rights under this Act; and
- (b) the rule is made under division 2.
- (3) Subsection (2)(b) does not apply to the making of a rule when there are no residents for the rental premises.
- (4) A provider must not make a rule about a matter not provided for under subsection (1).

Maximum penalty for subsection (4)—20 penalty units.

## **Division 2                      Rule changes**

### **269      Meaning of *rule change***

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

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

### **270      Notice of proposed rule change**

- (1) Before making a rule change for rental premises, a provider must give a written notice to each resident—
  - (a) setting out the proposed change; and
  - (b) stating the day when it is proposed the change is to take effect (the *proposed commencement day*); and
  - (c) stating that the resident may object to the change; and
  - (d) stating how the objection may be made.
- (2) The notice must be given to a resident—
  - (a) at least 7 days before the proposed commencement day;  
or

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

## **271 Withdrawal of proposed rule change**

If a provider decides not to proceed with a proposed rule change, the provider may withdraw the proposed change by giving a written notice to each resident to whom a notice under section 270 has been given.

## **272 Objection to proposed rule change**

- (1) A resident may object to a proposed rule change if the resident considers the change is unreasonable.
- (2) The objection may be made only by giving a written notice to the provider, before the proposed commencement day, stating—
  - (a) the resident's name; and
  - (b) that the resident objects to the proposed change; and
  - (c) why the resident considers the proposed change is unreasonable.
- (3) If the provider does not receive objections from at least the prescribed number of residents before the proposed commencement day, and does not withdraw the proposed change under section 271, the change takes effect on the proposed commencement day.
- (4) If the provider receives objections from at least the prescribed number of residents before the proposed commencement day—
  - (a) the proposed change does not take effect; and
  - (b) the provider must immediately give a written notice to each resident stating—

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- (i) that at least the prescribed number of residents have objected to the change; and
  - (ii) that the proposed change will not take effect on the proposed commencement day.
- (5) In this section—
  - prescribed number*, of residents, means the lesser of—
    - (a) 10 residents; or
    - (b) half of the total number of residents.

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

- (1) This section applies if, under section 272(4), a proposed rule change does not take effect.
- (2) The provider may apply to a tribunal for an order declaring the proposed change to be reasonable.
- (3) The application may only be made within 7 days after the proposed commencement day for the change.
- (4) The application must—
  - (a) be accompanied by a copy of each objection to the proposed change given under section 272; and
  - (b) state particulars of why the provider considers the proposed change to be reasonable.
- (5) The tribunal may decide the application by—
  - (a) declaring the proposed change to be reasonable; or
  - (b) amending the proposed change in a way it considers appropriate to make it reasonable; or
  - (c) declaring the proposed change to be unreasonable; or
  - (d) making any other order it considers appropriate.
- (6) If the tribunal makes an order declaring the proposed change to be reasonable or amending it in a way the tribunal considers

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appropriate to make it reasonable, the proposed change takes effect on the day decided by the tribunal.

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

## **274 Application to tribunal by resident about existing rule**

- (1) A resident may apply to a tribunal for an order declaring an existing house rule to be unreasonable.
- (2) The resident's application must—
- (a) state particulars of why the resident considers the rule to be unreasonable; and
  - (b) provide evidence that other residents also consider the rule to be unreasonable.
- (3) The tribunal must decide the application by—
- (a) confirming the existing house rule; or
  - (b) declaring the rule to be unreasonable.
- (4) If the tribunal declares the rule to be unreasonable the tribunal—
- (a) must declare that the existing house rule is void or amend the rule in a way it considers appropriate; and
  - (b) may make any other order it considers appropriate.
- (5) In deciding the application, the tribunal must have regard to the views of other residents bound by the rule.
- (6) An order of the tribunal takes effect on the day decided by the tribunal.
- (7) As soon as practicable after the tribunal decides the application, the provider must give a written notice of the decision to each resident of the rental premises.

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

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

The provider or provider's agent for rental premises must not enter into a rooming accommodation agreement to provide accommodation in the premises to a person unless the provider or provider's agent has given the person a copy of the house rules for the premises.

Maximum penalty—10 penalty units.

### **276      Display of house rules**

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

Maximum penalty—10 penalty units.

## **Chapter 5                      Ending of agreements**

### **Part 1                              Ending of residential tenancy agreements**

#### **Division 1                      General**

### **277      Ending of residential tenancy agreements**

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



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- (2) A residential tenancy agreement ends by written agreement of the lessor and tenant.
  - (3) A residential tenancy agreement ends if—
    - (a) the lessor gives a notice to leave the premises to the tenant; and
    - (b) the tenant hands over vacant possession of the premises on or after the handover day.

*Editor's notes—*

See section 326 (Notice to leave) for requirements for the notice.

See sections 329 (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330 (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day.

- (4) A residential tenancy agreement ends if the tenant—
  - (a) gives a notice of intention to leave the premises to the lessor; and
  - (b) hands over vacant possession of the premises on or after the handover day.

*Editor's notes—*

See section 327 (Notice of intention to leave) for requirements for the notice.

See sections 331 (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 332 (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day.

- (5) A residential tenancy agreement ends—
  - (a) if a tribunal makes an order terminating the agreement;  
or
  - (b) if the tenant abandons the premises.

*Editor's notes—*

See chapter 5 (Ending of agreements), part 1 (Ending of residential tenancy agreements), division 6 (Orders of tribunal) for the making of termination orders by the tribunal.

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See chapter 5 (Ending of agreements), part 1 (Ending of residential tenancy agreements), division 8 (Abandonment) for alternative procedures the lessor needs to follow in the case of abandonment of the premises.

- (6) A residential tenancy agreement ends if, after receiving a notice from a mortgagee under section 317, the tenant vacates, or is removed from, the premises.
- (7) If a sole tenant dies, the residential tenancy agreement ends on the earliest of the following—
  - (a) 2 weeks after the tenant's personal representative or relative gives the lessor or lessor's agent written notice that the agreement ends because of the tenant's death;
  - (b) 2 weeks after the lessor or lessor's agent gives the tenant's personal representative or relative written notice that the agreement ends because of the tenant's death;
  - (c) the day agreed between the lessor or lessor's agent and the tenant's personal representative or relative;
  - (d) the day decided by the tribunal on application by the lessor or lessor's agent.
- (8) However, if no notice is given, or agreement or application made, under subsection (7), the residential tenancy agreement ends 1 month after the tenant's death.
- (9) Nothing prevents the withdrawal of a notice or application under subsection (7) so that a day may be agreed under subsection (7)(c).

## **278 Acceptance of rent does not operate as waiver of tenant's breach**

- (1) If the lessor makes a demand for, takes a proceeding for the recovery of, or accepts, rent payable under the agreement, the lessor's action—
  - (a) does not operate as a waiver of—
    - (i) a breach of the agreement by the tenant; or

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- (ii) a notice to leave given to the tenant by the lessor for an unremedied breach; and
  - (b) is not evidence of the creation of a new tenancy.
- (2) Despite subsection (1), if the lessor gives the tenant a notice to remedy breach under section 280 for a breach of the agreement relating to a failure to pay rent, acceptance by the lessor of the total amount of rent required under the notice to be paid to remedy the breach operates as a waiver of the breach.
- (3) Subsection (2) applies only if the amount mentioned in the subsection is tendered by the tenant to the lessor within the allowed remedy period.

**279 Offer or payment of rent does not operate as waiver of lessor's breach**

If the tenant pays or offers to pay to the lessor rent payable under the agreement, the payment or offer does not operate as a waiver of—

- (a) a breach of the agreement by the lessor; or
- (b) a notice of intention to leave for an unremedied breach given to the lessor by the tenant.

**Division 2 Action by lessor**

**Subdivision 1 Notices to remedy breach given by lessor**

**280 Notice to remedy tenant's breach**

- (1) This section applies if the lessor believes on reasonable grounds that—
- (a) the rent payable under the agreement has remained unpaid in breach of the agreement for at least 7 days; or

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- (b) the tenant has breached another term of the agreement and the breach has not been remedied.
- (2) The lessor may give a notice to the tenant requiring the tenant to remedy the breach within the allowed remedy period.
- (3) This section does not apply to an agreement for a short tenancy (moveable dwelling).

*Editor's notes—*

See section 325 (Notice to remedy breach) for requirements for the notice.

See section 328 (Allowed remedy period) and schedule 2 (Dictionary), definition *allowed remedy period*.

## **Subdivision 2      Notices to leave premises given by lessor**

### **281      Notice to leave for unremedied breach**

- (1) The lessor may give a notice to leave the premises to the tenant because the tenant has failed to comply, within the allowed remedy period, with a notice to remedy breach given to the tenant by the lessor.
- (2) A notice to leave under this section is called a notice to leave for an ***unremedied breach***.

*Editor's notes—*

See section 326 (Notice to leave) for requirements for the notice under this section.

See section 328 (Allowed remedy period) and schedule 2 (Dictionary), definition *allowed remedy period*.

### **282      Notice to leave for tenant's noncompliance with tribunal order**

- (1) The lessor may give a notice to leave the premises to the tenant because the tenant has failed to comply with an order of a tribunal.

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- (2) A notice to leave under this section is called a notice to leave for *noncompliance (tribunal order)*.

**283 Notice to leave for noncompliance (moveable dwelling relocation)**

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) The lessor may give a notice to leave the premises to the tenant because the tenant has failed to comply, within the required period, with a notice to relocate given to the tenant by the lessor.

*Editor's note—*

See section 223 (Notice to relocate) for requirements for the notice to relocate.

- (3) A notice to leave under this section is called a notice to leave for *noncompliance (moveable dwelling relocation)*.

*Editor's note—*

See section 330(2)(c) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of noncompliance (moveable dwelling relocation).

**284 Notice to leave if agreement frustrated**

- (1) The lessor may give a notice to leave the premises to the tenant because the premises—
- (a) have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the agreement; or
  - (b) no longer may be used lawfully as a residence; or
  - (c) have been appropriated or acquired compulsorily by an authority.

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- (2) A notice to leave under this section must be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) A notice to leave under subsection (1)(a) or (b) is called a notice to leave for ***non-livability***.

*Editor's note—*

See sections 329(2)(d) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330(2)(d) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of non-livability.

- (4) A notice to leave under subsection (1)(c) is called a notice to leave for ***compulsory acquisition***.

*Editor's note—*

See sections 329(2)(e) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330(2)(e) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of compulsory acquisition.

## **285 Notice to leave if agreement frustrated (moveable dwelling premises)**

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) The lessor may give a notice to leave the premises to the tenant because the park has become an unfit place in which to live in a moveable dwelling.
- (3) A notice to leave may be given under this section only if a facility in the park generally available for use by occupants of moveable dwellings in the park has been destroyed, or become completely or partially unavailable for use, other than because of a breach of the agreement.
- (4) A notice to leave under this section must be given within 1 month after the park becoming an unfit place in which to live.

- (5) A notice to leave under this section is called a notice to leave for ***non-livability***.

*Editor's note—*

See section 330(2)(d) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of non-livability.

## **286 Notice to leave if premises being sold**

- (1) The lessor under a periodic agreement may give a notice to leave the premises to the tenant because the lessor has entered into a contract to sell the premises with vacant possession.
- (2) A notice to leave under this section is called a notice to leave for ***sale contract***.

*Editor's note—*

See sections 329(2)(f) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330(2)(f) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of a sale contract.

## **287 Notice to leave if closure of moveable dwelling park involved**

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) The lessor may give a notice to leave the premises to the tenant because—
- (a) the use of the premises where the park is situated (the ***park premises***) is to be, or is proposed to be, changed to a use other than as a moveable dwelling park; or
  - (b) the park is to be closed.
- (3) If the authority under which a person is allowed to use the park premises as a moveable dwelling park ends, the lessor must give a notice to leave the premises to the tenant within 24 hours of the authority ending.

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- (4) A notice to leave under subsection (2) is called a notice to leave for *voluntary park closure*.

*Editor's note—*

See section 330(2)(g) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of a voluntary park closure.

- (5) A notice to leave under subsection (3) is called a notice to leave for *compulsory park closure*.

*Editor's note—*

See section 330(2)(h) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of a compulsory park closure.

## **288 Notice to leave if tenant's employment ends or entitlement to occupy under employment ends**

- (1) If—
- (a) the tenant occupies the premises under the tenant's terms of employment; and
  - (b) either—
    - (i) the tenant's employment ends; or
    - (ii) the tenant's entitlement to occupy the premises ends under the tenant's terms of employment;
- the lessor may give a notice to leave the premises to the tenant.
- (2) A notice to leave under this section is called a notice to leave for *ending of entitlement under employment*.
- (3) This section applies subject to an industrial award or agreement or contract of employment.

*Editor's notes—*

See section 326 (Notice to leave) for requirements for the notice.

See sections 329(2)(g) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330(2)(i) (Handover day for notice to leave for moveable dwelling premises) for requirements



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about the handover day for a notice to leave given because of ending of entitlement under employment.

## **289 Notice to leave if tenant's entitlement to supported accommodation ends**

- (1) This section applies if—
  - (a) the tenant's right of occupancy of the premises arises out of approved supported accommodation; and
  - (b) the tenant ceases to be eligible—
    - (i) to be provided with approved supported accommodation; or
    - (ii) to continue to occupy the particular premises.
- (2) The lessor may give a notice to leave the premises to the tenant.
- (3) A notice to leave under this section is called a notice to leave for *ending of accommodation assistance*.

*Editor's notes—*

See section 326 (Notice to leave) for requirements for the notice.

See sections 329(2)(h) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330(2)(j) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of ending of accommodation assistance.

## **290 Notice to leave if tenant's entitlement under affordable housing scheme**

- (1) This section applies if—
  - (a) the tenant occupies the premises under an affordable housing scheme; and
  - (b) the tenant ceases to be eligible under the scheme—
    - (i) to receive assistance; or
    - (ii) to continue to occupy the particular premises.

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- (2) The lessor may give a notice to leave the premises to the tenant.
- (3) A notice to leave under this section is called a notice to leave for *ending of housing assistance*.

*Editor's note—*

See sections 329(2)(i) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330(2)(k) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of ending of housing assistance.

## **291 Notice to leave without ground**

- (1) The lessor may give a notice to leave the premises to the tenant without stating a ground for the notice.
- (2) However, the lessor must not give a notice to leave under this section because—
  - (a) the tenant has applied, or is proposing to apply, to a tribunal for an order under this Act; or
  - (b) the tenant—
    - (i) has complained to a government entity about an act or omission of the lessor adversely affecting the tenant; or
    - (ii) has taken some other action to enforce the tenant's rights; or
  - (c) an order of a tribunal is in force in relation to the lessor and tenant.
- (3) Also, the lessor may not give a notice to leave under this section if the giving of the notice constitutes taking retaliatory action against the tenant.
- (4) A notice to leave under this section is called a notice to leave *without ground*.

*Editor's note—*

See sections 329(2)(j) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330(2)(l) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given without ground for a periodic agreement.

**292 Application to tribunal about notice to leave without ground**

- (1) This section applies if—
  - (a) the tenant is given a notice to leave without ground; and
  - (b) the tenant reasonably believes the notice was given in contravention of section 291.
- (2) The tenant may apply to a tribunal for an order to set aside the notice.
- (3) The application must be made within 4 weeks after the notice was given.
- (4) On an application under this section, the tribunal may make the order sought if it is satisfied the notice was given in contravention of section 291.

**Subdivision 3 Applications for termination by lessor**

**293 Application for termination for failure to leave**

- (1) The lessor may apply to a tribunal for a termination order because—
  - (a) the lessor gave a notice to leave the premises to the tenant; and
  - (b) the tenant failed to hand over vacant possession of the premises to the lessor on the handover day.

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- (2) An application under this section must be made within 2 weeks after the handover day.
- (3) An application made under this section is called an application made because of a *failure to leave*.

## **294 Application for termination for failure to leave as intended**

- (1) The lessor may apply to a tribunal for a termination order because the tenant—
  - (a) gave a notice of intention to leave the premises to the lessor; and
  - (b) did not withdraw the notice before the handover day; and
  - (c) failed to hand over vacant possession of the premises to the lessor on the handover day.
- (2) An application under this section must be made within 2 weeks after the handover day.
- (3) An application under this section is called an application made because of a *failure to leave as intended*.

*Editor's note—*

See sections 335(1) (Applications for termination orders) and 342 (Failure to leave as intended) for other provisions about the application.

## **295 Application for termination for excessive hardship**

- (1) The lessor may apply to a tribunal for a termination order because the lessor would suffer excessive hardship if the agreement were not terminated.
- (2) An application under this section is called an application made because of *excessive hardship*.

*Editor's note—*

See sections 335(1) (Applications for termination orders) and 343 (Excessive hardship) for other provisions about the application.

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**296 Application for termination for damage or injury**

- (1) The lessor may apply to a tribunal for a termination order because the tenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—
  - (a) serious damage to the premises; or
  - (b) injury to—
    - (i) the lessor, the lessor’s agent or someone else allowed on the premises; or
    - (ii) a person occupying, or allowed on, premises nearby.
- (2) However, the lessor may not make an application about injury to a person if the person is—
  - (a) the spouse of the tenant occupying the premises with the tenant; or
  - (b) a cotenant whose spouse is the other, or another, cotenant.
- (3) An application under this section about damage to premises is called an application made because of *damage*.
- (4) An application under this section about injury to a person is called an application made because of *injury*.

*Editor’s note—*

See sections 335(1) (Applications for termination orders) and 344 (Damage or injury) for other provisions about the application.

**297 Application for termination for tenant’s objectionable behaviour**

- (1) The lessor may apply to a tribunal for a termination order because the tenant—
  - (a) has harassed, intimidated or verbally abused—
    - (i) the lessor or lessor’s agent; or

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- (ii) a person occupying, or allowed on, premises nearby; or
  - (b) is causing, or has caused, a serious nuisance to persons occupying premises nearby.
- (2) An application under this section is called an application made because of ***objectionable behaviour***.

*Editor's note—*

See sections 335(1) (Applications for termination orders) and 345 (Objectionable behaviour) for other provisions about the application.

## **298 Application for termination for incompatibility**

- (1) This section applies only to a residential tenancy that is a short tenancy (moveable dwelling).
- (2) The lessor may apply to a tribunal for a termination order because the lessor and tenant are incompatible in a way that makes it desirable, in the interests of both parties, for the agreement to end.
- (3) An application under this section is called an application made because of ***incompatibility***.

*Editor's note—*

See sections 335(1) (Applications for termination orders) and 346 (Incompatibility) for other provisions about the application.

## **299 Application by lessor for termination for repeated breaches by tenant**

- (1) This section applies if—
  - (a) the lessor gives 2 notices to remedy breach to the tenant for breaches of a particular provision in relation to the agreement; and
  - (b) each notice relates to a separate breach of the particular provision; and

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- (c) the tenant remedies each breach within the relevant allowed remedy period; and
  - (d) the tenant commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
  - (e) all breaches happen within the period prescribed under a regulation for this section.
- (2) The lessor may apply to a tribunal for a termination order.
  - (3) An application under this section is called an application made because of *repeated breaches*.
  - (4) In this section—
    - provision* means—
      - (a) section 184 (Tenant’s use of premises); or
      - (b) section 188 (Tenant’s obligations generally); or
      - (c) section 189 (Tenant’s obligations for facilities in moveable dwelling parks); or
      - (d) section 190 (Tenant’s obligations for moveable dwelling site); or
      - (e) a provision of a section mentioned in paragraphs (a) to (d); or
      - (f) a provision of an agreement providing for the payment of rent.

*Editor’s note—*

See sections 335(1) (Applications for termination orders) and 347 (Repeated breaches) for other provisions about the application.

### **300 Application for interim order about damage or injury**

- (1) This section applies if—
  - (a) the lessor makes an application to a tribunal for a termination order because of damage or injury; and

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- (b) the lessor believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought.
- (2) The lessor may apply to a tribunal for an order to restrain the tenant from causing the further damage or injury.

*Editor's note—*

See section 348 (Interim order about damage or injury) for provisions about making the order.

## **Division 3                    Action by tenant**

### **Subdivision 1            Notices to remedy breach given by tenant**

#### **301    Notice to remedy lessor's breach**

- (1) If the tenant believes on reasonable grounds that the lessor has breached a term of the agreement and the breach has not been remedied, the tenant may give a notice to the lessor requiring the lessor to remedy the breach within the allowed remedy period.
- (2) This section does not apply to an agreement for a short tenancy (moveable dwelling).

*Editor's notes—*

See section 325 (Notice to remedy breach) for requirements for the notice.

See section 328 (Allowed remedy period) and schedule 2 (Dictionary), definition *allowed remedy period*.



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## **Subdivision 2      Notices of intention to leave                                  premises given by tenant**

### **302      Notice of intention to leave for unremedied breach**

- (1) The tenant may give a notice of intention to leave the premises to the lessor because the lessor has failed to comply, within the allowed remedy period, with a notice to remedy breach given to the lessor by the tenant.
- (2) A notice of intention to leave under this section is called a notice of intention to leave for an *unremedied breach*.

*Editor's notes—*

See section 327 (Notice of intention to leave) for requirements for the notice.

See sections 331(2)(a) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 332(2)(a) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of an unremedied breach.

### **303      Waiver of breach**

If—

- (a) a notice of intention to leave is given to the lessor for an unremedied breach; and
- (b) the lessor remedies the breach before the handover day;  
the tenant may, instead of handing over vacant possession of the premises to the lessor on the handover day, waive the breach by written notice given to the lessor before the handover day.

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### **304 Notice of intention to leave for lessor's noncompliance with tribunal order**

- (1) The tenant may give a notice of intention to leave the premises to the lessor because the lessor has failed to comply with an order of a tribunal.
- (2) A notice of intention to leave under this section is called a notice of intention to leave for ***noncompliance (tribunal order)***.

*Editor's notes—*

See section 327 (Notice of intention to leave) for requirements for the notice.

See sections 331(2)(b) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 332(2)(b) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of noncompliance (tribunal order).

### **305 Notice of intention to leave if agreement frustrated**

- (1) The tenant may give a notice of intention to leave the premises to the lessor because the premises—
  - (a) have been destroyed, or made completely or partially unfit to live in, other than because of a breach of the agreement; or
  - (b) no longer may be used lawfully as a residence; or
  - (c) have been appropriated or acquired compulsorily by an authority.
- (2) A notice of intention to leave under this section must be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) A notice of intention to leave under subsection (1)(a) or (b) is called a notice of intention to leave for ***non-livability***.
- (4) A notice of intention to leave under subsection (1)(c) is called a notice of intention to leave for ***compulsory acquisition***.

*Editor's notes—*

See section 327 (Notice of intention to leave) for requirements for the notice.

See sections 331(2)(c) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 332(2)(c) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of non-livability.

See sections 331(2)(d) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 332(2)(d) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of compulsory acquisition.

**306 Notice of intention to leave if agreement frustrated  
(moveable dwelling premises)**

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) The tenant may give a notice of intention to leave the premises to the lessor because the park has become an unfit place in which to live in a moveable dwelling.
- (3) A notice of intention to leave may be given under this section only if a facility in the park generally available for use by occupants of moveable dwellings in the park has been destroyed, or become completely or partially unavailable for use, other than because of a breach of the agreement.
- (4) A notice of intention to leave under this section must be given within 1 month after the park becoming an unfit place in which to live.
- (5) A notice of intention to leave under this section is called a notice of intention to leave for *non-livability*.

*Editor's notes—*

See section 327 (Notice of intention to leave) for requirements for the notice.

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See section 332(2)(c) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of non-livability.

### **307 Notice of intention to leave if premises being sold**

- (1) The tenant may give notice of intention to leave the premises to the lessor or lessor's agent if either of the following happen within 2 months (the *prescribed period*) after the start of the agreement—
  - (a) the premises are advertised for sale;
  - (b) the lessor or lessor's agent enters the premises under section 192(1)(f) to show the premises to a prospective buyer.
- (2) However, subsection (1) does not apply if the lessor gave the tenant written notice of the lessor's intention to sell the premises before the agreement was entered into.
- (3) A notice of intention to leave under this section must be given not later than 2 weeks after the end of the prescribed period.
- (4) A notice of intention to leave under subsection (1) is called a notice of intention to leave for *intention to sell*.

*Editor's notes—*

See section 327 (Notice of intention to leave) for requirements for the notice.

See sections 331(2)(e) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 332(2)(e) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of intention to sell.

### **308 Notice of intention to leave without ground**

- (1) The tenant may give a notice of intention to leave the premises to the lessor without stating a ground for the notice.
- (2) A notice of intention to leave under this section is called a notice of intention to leave *without ground*.

*Editor's notes—*

See section 327 (Notice of intention to leave) for requirements for the notice.

See sections 331(2)(f) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 332(2)(f) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given without ground for a periodic agreement.

### **Subdivision 3      Applications for termination by tenant**

#### **309      Application for termination for failure of lessor to remedy breach**

- (1) This section applies if the tenant has given the lessor a notice to remedy breach under section 301.
- (2) The tenant may apply to a tribunal for a termination order because the lessor has failed to comply, within the allowed remedy period, with a notice to remedy breach given to the lessor by the tenant.
- (3) Nothing prevents a tenant who has given a notice of intention to leave from applying to a tribunal for a termination order if the tenant has withdrawn the notice before the handover day.

#### **310      Application for termination for excessive hardship**

- (1) The tenant may apply to a tribunal for a termination order because the tenant would suffer excessive hardship if the agreement were not terminated.
- (2) An application under this section is called an application made because of *excessive hardship*.

*Editor's note—*

See sections 335(2) (Applications for termination orders) and 343 (Excessive hardship) for other provisions about the application.

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### **311 Application for termination for damage or injury**

- (1) The tenant may apply to a tribunal for a termination order because the lessor has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—
  - (a) serious damage to the tenant's goods; or
  - (b) injury to—
    - (i) the tenant; or
    - (ii) someone else occupying, or allowed on, the premises.
- (2) An application under this section about damage to goods is called an application made because of *damage*.
- (3) An application under this section about injury to a person is called an application made because of *injury*.

*Editor's note—*

See sections 335(2) (Applications for termination orders) and 344 (Damage or injury) for other provisions about the application.

### **312 Application by cotenant for termination for damage or injury**

- (1) A cotenant may apply to a tribunal for a termination order because the other cotenant, or another cotenant, has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—
  - (a) serious damage to the premises; or
  - (b) injury to—
    - (i) the applicant; or
    - (ii) someone else occupying, or allowed on, the premises.
- (2) An application under this section about damage to premises is called an application made because of *damage*.

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- (3) An application under this section about injury to a person is called an application made because of *injury*.

### **313 Application for termination for lessor's objectionable behaviour**

- (1) The tenant may apply to a tribunal for a termination order because the lessor has harassed, intimidated or verbally abused—
- (a) the tenant; or
  - (b) another person occupying, or allowed on, the premises.
- (2) An application made under this section is called an application made because of *objectionable behaviour*.

*Editor's note—*

See sections 335(2) (Applications for termination orders) and 345 (Objectionable behaviour) for other provisions about the application.

### **314 Application for termination for incompatibility**

- (1) This section applies only to a residential tenancy that is a short tenancy (moveable dwelling).
- (2) The tenant may apply to a tribunal for a termination order because the tenant and lessor are incompatible in a way that makes it desirable, in the interests of both parties, for the agreement to end.
- (3) An application under this section is called an application made because of *incompatibility*.

*Editor's note—*

See sections 335(2) (Applications for termination orders) and 346 (Incompatibility) for other provisions about the application.

### **315 Application by tenant for termination for repeated breaches by lessor**

- (1) This section applies if—

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- (a) the tenant gives 2 notices to remedy breach to the lessor for breaches of a particular provision in relation to the agreement; and
  - (b) each notice relates to a separate breach of the particular provision; and
  - (c) the lessor remedies each breach within the relevant allowed remedy period; and
  - (d) the lessor commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
  - (e) all breaches happen within the period prescribed under a regulation for this section.
- (2) The tenant may apply to a tribunal for a termination order.
- (3) An application under this section is called an application made because of *repeated breaches*.
- (4) In this section—
- provision* means—
- (a) section 183 (Quiet enjoyment); or
  - (b) section 185 (Lessor's obligations generally); or
  - (c) section 186 (Lessor's obligations for facilities in moveable dwelling parks); or
  - (d) section 187 (Lessor's obligations for moveable dwelling site); or
  - (e) section 202 (Unlawful entry of premises); or
  - (f) a provision of a section mentioned in paragraphs (a) to (e); or
  - (g) a provision of an agreement providing for the payment of rent.

*Editor's note—*

See sections 335(2) (Applications for termination orders) and 347 (Repeated breaches) for other provisions about the application.



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### **316 Application for interim order about damage or injury**

- (1) This section applies if—
  - (a) the tenant makes an application to a tribunal for a termination order because of damage or injury; and
  - (b) the tenant believes on reasonable grounds the lessor is likely to cause further damage or injury for which a termination order could be sought.
- (2) The tenant may apply to a tribunal for an order to restrain the lessor from causing the further damage or injury.

## **Division 4 Action by other persons**

### **Subdivision 1 Mortgagees**

#### **317 Notice about proposed action of mortgagee**

- (1) This section applies if—
  - (a) residential premises are subject to a mortgage; and
  - (b) after the premises become subject to the mortgage, a residential tenancy agreement is entered into for the premises; and
  - (c) the mortgagee under the mortgage does not consent to the tenancy; and
  - (d) the mortgagee, or another person appointed under the mortgage (the *appointed person*), has become entitled to obtain possession of the premises.
- (2) The mortgagee must not obtain possession of the premises unless, at least 2 months before obtaining possession, the mortgagee or the appointed person gives the tenant notice in the approved form informing the tenant that possession is to be obtained.

Maximum penalty—50 penalty units.

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- (3) The appointed person must not obtain possession of the premises unless, at least 2 months before obtaining possession, the appointed person or mortgagee gives the tenant notice in the approved form informing the tenant that possession is to be obtained.

Maximum penalty—50 penalty units.

- (4) In this section—  
*obtain* includes take.

### **318 Acceptance of rent does not operate as consent**

- (1) This section applies if—
  - (a) residential premises are subject to a mortgage; and
  - (b) after the premises becomes subject to the mortgage, a residential tenancy agreement is entered into for the premises; and
  - (c) the mortgagee under the mortgage does not consent to the tenancy.
- (2) If the mortgagee, or another person appointed under the mortgage, makes a demand for, takes a proceeding for the recovery of, or accepts, rent payable under the residential tenancy agreement, the mortgagee's or person's action does not operate as a consent to the tenancy.

### **319 Tenant not liable for loss if tenant vacates or is removed from premises after receiving notice from mortgagee**

- (1) This section applies if the tenant of premises is given a notice by a mortgagee under section 317 and vacates, or is removed from, the premises.
- (2) The tenant is not liable for rent or for any other loss or expense incurred by the lessor merely because the tenant vacates, or is removed from, the premises.

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### **320 Tenant not liable for loss if rent paid to mortgagee**

- (1) This section applies if a mortgagee of premises gives the tenant written notice that the tenant must pay rent for the premises to the mortgagee.
- (2) The tenant is not liable for rent or for any other loss or expense incurred by the lessor merely because the tenant pays rent for the premises to the mortgagee.

## **Subdivision 2 Other persons**

### **321 Application by tenant's domestic associate for termination for damage or injury**

- (1) The domestic associate of the tenant occupying the premises with the tenant may apply to a tribunal for a termination order because the tenant—
  - (a) has intentionally or recklessly caused, or is likely to intentionally or recklessly cause, serious damage to the premises; or
  - (b) has committed domestic violence against the domestic associate.
- (2) In this section—

***domestic associate*** means a person in any of the following relationships—

  - (a) an intimate personal relationship;
  - (b) a family relationship;
  - (c) an informal care relationship.
- (3) A term used in subsection (2)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.

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### **322 Application by occupant for termination for damage or injury**

An occupant of premises under an agreement who is not the tenant may apply to a tribunal for a termination order because the tenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—

- (a) serious damage to the premises; or
- (b) injury to—
  - (i) the applicant; or
  - (ii) someone else occupying, or allowed on, the premises.

### **323 Application for interim order about damage or injury**

- (1) This section applies if—
  - (a) the domestic associate of the tenant, or an occupant of the premises, makes an application to a tribunal for a termination order for damage or injury; and
  - (b) the applicant believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought.
- (2) The applicant may apply to a tribunal for an order to restrain the tenant from causing the further damage or injury.
- (3) In this section—

***domestic associate*** means a person in any of the following relationships—

  - (a) an intimate personal relationship;
  - (b) a family relationship;
  - (c) an informal care relationship.
- (4) A term used in subsection (3)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a

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relationship exists includes a reference to the tribunal deciding that issue for this section.

### **324 References to applications**

- (1) An application under this part about damage to premises is called an application made because of *damage*.
- (2) An application under this part about injury to a person is called an application made because of *injury*.

## **Division 5 Procedural requirements for action taken by lessor or tenant**

### **325 Notice to remedy breach**

- (1) A notice to remedy breach must be in the approved form.
- (2) The approved form must provide for the notice—
  - (a) to be signed by or for the party giving the notice; and
  - (b) to include particulars of the breach; and
  - (c) to state the day by which the party to whom the notice is directed is required to remedy the breach.

### **326 Notice to leave**

- (1) A notice to leave premises must—
  - (a) be in the approved form; and
  - (b) be signed by or for the lessor; and
  - (c) identify the premises; and
  - (d) require the tenant to hand over vacant possession of the premises to the lessor on the day stated in the notice; and

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- (e) state—
  - (i) the ground on which the notice is given; or
  - (ii) that the notice is given without ground; and
- (f) unless the notice is given without ground—give particulars of the ground on which the notice is given.
- (2) The notice also must—
  - (a) state that information about the tenant’s rights and obligations is contained in the agreement; and
  - (b) inform the tenant that—
    - (i) if the tenant does not comply with the notice on the handover day the lessor may apply to a tribunal for a termination order without giving the tenant any further notice; and
    - (ii) if the tribunal makes the order, it also must make an order for possession of the premises in favour of the lessor.
- (3) A notice to leave given for a fixed term agreement is not ineffective because the handover day is earlier than the day the term ends.
- (4) A notice to leave given for a periodic agreement is not ineffective merely because the handover day is not—
  - (a) the last day of a period of the tenancy; or
  - (b) another day when the tenancy would have ended if this Act had not been enacted.

*Editor’s note—*

See also section 349(1) (Defects in notices).

### **327 Notice of intention to leave**

- (1) A notice of intention to leave premises must—
  - (a) be in the approved form; and
  - (b) be signed by or for the tenant; and

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- (c) identify the premises; and
  - (d) state the tenant intends handing over vacant possession of the premises to the lessor on the day stated in the notice; and
  - (e) state—
    - (i) the ground on which the notice is given; or
    - (ii) that the notice is given without ground; and
  - (f) unless the notice is given without ground—give particulars of the ground on which the notice is given.
- (2) A notice of intention to leave given for a fixed term agreement is not ineffective merely because the handover day is earlier than the day the term ends.
- (3) A notice of intention to leave given for a periodic agreement is not ineffective because the handover day is not—
- (a) the last day of a period of the tenancy; or
  - (b) another day the tenancy would have ended if this Act had not been enacted.

*Editor's note—*

See also section 349(2) (Defects in notices).

### **328 Allowed remedy period**

- (1) The allowed remedy period for a notice to remedy breach must not end earlier than 7 days after the notice is given.
- (2) However, if the notice is given about a breach of the term of the agreement for payment of rent and the agreement is an agreement for a long tenancy (moveable dwelling), the allowed remedy period for the notice must not end earlier than 5 days after the notice is given.

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**329 Handover day for notice to leave for premises that are not moveable dwelling premises**

- (1) This section applies only to notices to leave given for premises that are not moveable dwelling premises.
- (2) The handover day for a notice to leave given by the lessor must not be earlier than—
  - (a) if the notice is given because of an unremedied breach and the breach is a failure to pay rent—7 days after the notice is given; or
  - (b) if the notice is given because of an unremedied breach and the notice is not a notice to which paragraph (a) applies—14 days after the notice is given; or
  - (c) if the notice is given because of noncompliance (tribunal order)—7 days after the notice is given; or
  - (d) if the notice is given because of non-livability—the day the notice is given; or
  - (e) if the notice is given because of compulsory acquisition—2 months after the notice is given; or
  - (f) if the notice is given because of a sale contract—4 weeks after the notice is given; or
  - (g) if the notice is given because of ending of entitlement under employment—4 weeks after the notice is given; or
  - (h) if the notice is given because of ending of accommodation assistance—4 weeks after the notice is given; or
  - (i) if the notice is given because of ending of housing assistance—2 months after the notice is given; or
  - (j) if the notice is given without ground for a periodic agreement—2 months after the notice is given; or
  - (k) if the notice is given without ground for a fixed term agreement—the later of—



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- (i) 2 months after the notice is given; or
  - (ii) the day the term of the agreement ends.
- (3) Nothing prevents a notice to leave under subsection (2)(k) being given at any time before the end of the term of the fixed term agreement.

**330 Handover day for notice to leave for moveable dwelling premises**

- (1) This section applies only to notices to leave given for moveable dwelling premises.
- (2) If the tenancy is not a short tenancy (moveable dwelling), the handover day for a notice to leave given by the lessor must not be earlier than—
  - (a) if the notice is given because of an unremedied breach—2 days after the notice is given; or
  - (b) if the notice is given because of noncompliance (tribunal order)—7 days after the notice is given; or
  - (c) if the notice is given because of noncompliance (moveable dwelling relocation)—2 days after the notice is given; or
  - (d) if the notice is given because of non-livability—the day the notice is given; or
  - (e) if the notice is given because of compulsory acquisition—2 months after the notice is given; or
  - (f) if the notice is given because of a sale contract—4 weeks after the notice is given; or
  - (g) if the notice is given because of a voluntary park closure—3 months after the notice is given; or
  - (h) if the notice is given because of a compulsory park closure—the day the notice is given; or

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- (i) if the notice is given because of ending of entitlement under employment—4 weeks after the notice is given; or
  - (j) if the notice is given because of ending of accommodation assistance—4 weeks after the notice is given; or
  - (k) if the notice is given because of ending of housing assistance—2 months after the notice is given; or
  - (l) if the notice is given without ground for a periodic agreement—2 months after the notice is given; or
  - (m) if the notice is given without ground for a fixed term agreement—the later of—
    - (i) 2 months after the notice is given; or
    - (ii) the day the term of the agreement ends.
- (3) Nothing prevents a notice to leave under subsection (2)(m) being given at any time before the end of the term of the fixed term agreement.
- (4) If the tenancy is a short tenancy (moveable dwelling), the handover day for a notice to leave given by the lessor must not be earlier than—
- (a) if neither paragraph (b) nor paragraph (c) applies—2 days after the notice is given; or
  - (b) if the notice is given because of non-livability—the day the notice is given; or
  - (c) if the notice is given because of a compulsory park closure—the day the notice is given.

### **331 Handover day for notice of intention to leave for premises that are not moveable dwelling premises**

- (1) This section applies only to notices of intention to leave given for premises that are not moveable dwelling premises.

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- (2) The handover day for a notice of intention to leave given by the tenant must not be earlier than—
- (a) if the notice is given because of an unremedied breach—7 days after the notice is given; or
  - (b) if the notice is given because of noncompliance (tribunal order)—7 days after the notice is given; or
  - (c) if the notice is given because of non-livability—the day the notice is given; or
  - (d) if the notice is given because of compulsory acquisition—2 weeks after the notice is given; or
  - (e) if the notice is given because of intention to sell—2 weeks after the notice is given; or
  - (f) if the notice is given without ground for a periodic agreement—2 weeks after the notice is given; or
  - (g) if the notice is given without ground for a fixed term agreement—the later of—
    - (i) 14 days after the notice is given; or
    - (ii) the day the term of the agreement ends.
- (3) Nothing prevents a notice of intention to leave under subsection (2)(g) being given at any time before the end of the term of the fixed term agreement.

**332 Handover day for notice of intention to leave for moveable dwelling premises**

- (1) This section applies only to notices of intention to leave given for moveable dwelling premises.
- (2) If the tenancy is not a short tenancy (moveable dwelling) the handover day for a notice of intention to leave must not be earlier than—
- (a) if the notice is given because of an unremedied breach—2 days after the notice is given; or

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- (b) if the notice is given because of noncompliance (tribunal order)—7 days after the notice is given; or
  - (c) if the notice is given because of non-livability—the day the notice is given; or
  - (d) if the notice is given because of compulsory acquisition—2 weeks after the notice is given; or
  - (e) if the notice is given because of intention to sell—2 weeks after the notice is given; or
  - (f) if the notice is given without ground for a periodic agreement—2 weeks after the notice is given; or
  - (g) if the notice is given without ground for a fixed term agreement—the later of—
    - (i) 14 days after the notice is given; or
    - (ii) the day the term of the agreement ends.
- (3) Nothing prevents a notice of intention to leave under subsection (2)(g) being given at any time before the end of the term of the fixed term agreement.
- (4) If the tenancy is a short tenancy (moveable dwelling), the handover day for a notice of intention to leave must not be earlier than—
- (a) if paragraph (b) does not apply—1 day after the notice is given; or
  - (b) if the notice is given because of non-livability—the day the notice is given.

### **333 Withdrawing notice to leave for unremedied breach**

- (1) The lessor may withdraw a notice to leave for an unremedied breach given by the lessor if the tenant remedies the breach.
- (2) The withdrawal—
  - (a) must be made before the handover day; and
  - (b) must be made by written notice given to the tenant; and

- (c) may be made only with the tenant's written agreement.
- (3) On the withdrawal of a notice to leave under this section, the tenancy continues as if the notice to leave had not been given.

### **334 Withdrawing notice of intention to leave**

- (1) The tenant may withdraw a notice of intention to leave the premises given by the tenant to the lessor.
- (2) However, the withdrawal—
  - (a) must be made before the handover day; and
  - (b) may be made only with the lessor's written agreement.

### **335 Applications for termination orders**

- (1) An application may be made to a tribunal for a termination order by the lessor without giving a notice to leave the premises to the tenant if the application is made because of any of the following—
  - (a) failure to leave as intended;
  - (b) excessive hardship;
  - (c) damage;
  - (d) injury;
  - (e) objectionable behaviour;
  - (f) incompatibility;
  - (g) repeated breaches.
- (2) An application may be made to a tribunal for a termination order by the tenant without giving a notice of intention to leave the premises to the lessor if the application is made because of any of the following—
  - (a) the matter mentioned in section 309;
  - (b) excessive hardship;
  - (c) injury;

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- (d) damage;
- (e) objectionable behaviour;
- (f) incompatibility;
- (g) repeated breaches.

### **336 Applications to tribunal**

A tribunal may consider an application made to it under division 2 or 3 only if it is satisfied the applicant is entitled to make the application.

## **Division 6 Orders of tribunal**

### **337 Failure to leave for unremedied breach**

- (1) This section applies if—
  - (a) an application is made to a tribunal for a termination order because of a failure to leave; and
  - (b) the notice to leave was given because of an unremedied breach.
- (2) The tribunal may make the order if it is satisfied—
  - (a) the lessor has established the ground of the application and notice to leave; and
  - (b) the tenant committed the breach of the agreement stated in the notice to remedy breach about which the notice to leave was given; and
  - (c) the breach justifies terminating the agreement.
- (3) In deciding if the breach justifies terminating the agreement, the tribunal may have regard to—
  - (a) the seriousness of the breach; and
  - (b) any steps taken by the tenant to remedy the breach; and

- (c) whether the breach was recurrent and, if it was recurrent, the frequency of the recurrences; and
  - (d) the detriment caused, or likely to be caused, to the lessor by the breach; and
  - (e) whether the lessor has acted reasonably about the breach; and
  - (f) any other issues it considers appropriate.
- (4) Subsection (3) does not limit the issues to which the tribunal may have regard.

**338 Failure to leave for noncompliance (tribunal order)**

- (1) This section applies if—
- (a) an application is made to a tribunal for a termination order because of a failure to leave; and
  - (b) the notice to leave was given because of noncompliance (tribunal order).
- (2) The tribunal may make the order if it is satisfied—
- (a) the lessor has established the ground of the application and notice to leave; and
  - (b) it is appropriate to make the order.

**339 Failure to leave for noncompliance (moveable dwelling relocation)**

- (1) This section applies if—
- (a) an application is made to a tribunal for a termination order because of a failure to leave; and
  - (b) the notice to leave was given because of noncompliance (moveable dwelling relocation).
- (2) The tribunal may make the order if it—

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- (a) is satisfied the lessor has established the ground of the application, notice to leave and notice to relocate; and
- (b) considers it is appropriate to make the order.

### **340 Failure to leave for other grounds**

- (1) This section applies if—
  - (a) an application is made to a tribunal for a termination order because of a failure to leave; and
  - (b) the notice to leave was given because of any of the following—
    - (i) non-livability;
    - (ii) compulsory acquisition;
    - (iii) sale contract;
    - (iv) voluntary park closure;
    - (v) compulsory park closure;
    - (vi) employment termination;
    - (vii) ending of accommodation assistance.
- (2) The tribunal may make the order if it is satisfied the lessor has established the ground of the application and notice to leave.

### **341 Failure to leave without ground**

- (1) This section applies if—
  - (a) an application is made to a tribunal for a termination order because of a failure to leave; and
  - (b) the notice to leave was given without ground.
- (2) The tribunal may make the order if it is satisfied it is appropriate to make the order.



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**342 Failure to leave as intended**

If an application is made to a tribunal for a termination order because of a failure to leave as intended, the tribunal may make the order if it is satisfied the lessor has established the ground of the application.

**343 Excessive hardship**

If an application is made to a tribunal for a termination order because of excessive hardship, the tribunal may make the order if it is satisfied the applicant has established the ground of the application.

**344 Damage or injury**

- (1) If an application is made to a tribunal for a termination order because of damage or injury, the tribunal may make the order if it is satisfied the applicant has established the ground of the application.
- (2) If the application is made because of injury by the domestic associate of the tenant or a cotenant whose domestic associate is the other, or another, cotenant, in deciding the application the tribunal must have regard to the following issues (the *domestic violence issues*)—
  - (a) whether the applicant has applied for a domestic violence order against the applicant's domestic associate;
  - (b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;
  - (c) if a domestic violence order is in force—whether a condition was imposed prohibiting the applicant's domestic associate from entering, or remaining in, the premises.
- (3) Subsection (2) does not limit the issues to which the tribunal may have regard.

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- (4) In this section—
- domestic associate* means a person in any of the following relationships—
- (a) an intimate personal relationship;
  - (b) a family relationship;
  - (c) an informal care relationship.
- (5) A term used in subsection (4)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.

### **345 Objectionable behaviour**

- (1) If an application is made to a tribunal for a termination order because of objectionable behaviour, the tribunal may make the order if it is satisfied—
- (a) the applicant has established the ground of the application; and
  - (b) the behaviour justifies terminating the agreement.
- (2) In deciding if the behaviour justifies terminating the agreement, the tribunal may have regard to—
- (a) whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences; and
  - (b) for behaviour in the form of harassment, intimidation or verbal abuse—its seriousness.
- (3) Subsection (2) does not limit the issues to which the tribunal may have regard.

### **346 Incompatibility**

If an application is made to a tribunal for a termination order because of incompatibility, the tribunal may make the order if

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it is satisfied the applicant has established the ground of the application.

### **347 Repeated breaches**

- (1) If an application is made to a tribunal for a termination order because of repeated breaches, the tribunal may make the order if it is satisfied—
  - (a) the applicant has established the ground of the application; and
  - (b) the person in relation to whom the order is sought committed each breach stated in the 2 notices to remedy breach on which the application is based.
- (2) In deciding the application, the tribunal must have regard to the following—
  - (a) the seriousness of each breach associated with the application, having regard to the extent of any inconvenience or financial or other disadvantage suffered by the applicant;
  - (b) the period for which the tenancy has been in existence;
  - (c) the period in which the breaches were committed;
  - (d) for a fixed term agreement—the remaining period of the tenancy;
  - (e) anything else the tribunal considers relevant.

### **348 Interim order about damage or injury**

If an application is made to a tribunal for an order to restrain a party from causing damage or injury, the tribunal—

- (a) may make the order if it is satisfied it is appropriate to make the order; and
- (b) for supporting the order, may make an order restraining the party from entering premises.

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### **349 Defects in notices**

- (1) If an application is made to a tribunal by a lessor for a termination order because of a failure to leave, the tribunal may make the order if it is satisfied it is appropriate to make the order in all the circumstances of the case, even though the notice to leave contains a defect.
- (2) If an application is made to a tribunal about a notice of intention to leave, the tribunal may make any order it is satisfied it is appropriate to make in all the circumstances of the case, even though the notice contains a defect.

*Editor's notes—*

See section 326 (Notice to leave) for requirements for the notice.

See section 327 (Notice of intention to leave) for requirements for the notice.

## **Division 7                      Recovery of possession of premises**

### **350 Issue of warrant of possession**

- (1) If a tribunal makes a termination order on an application made other than by a tenant, it also must issue a warrant of possession.
- (2) If the termination order is made on an application made because of excessive hardship, as well as issuing the warrant of possession, the tribunal may make any other order it considers appropriate including, for example, an order that the applicant pay compensation to the other party to the agreement for the other party's loss of the tenancy.

### **351 Warrant of possession**

- (1) A warrant of possession must—
  - (a) authorise a police officer, or a stated authorised person, to enter the premises and give possession of the

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- premises to the person in whose favour the termination order was made; and
- (b) authorise the person to whom the warrant is directed to exercise the powers under the warrant with necessary and reasonable help and force; and
  - (c) state the hours of the day when entry may be made; and
  - (d) state the day the warrant ends.
- (2) The registrar must give written notice of the issue of a warrant of possession to the former tenant as soon as practicable after the warrant is issued.
- (3) If the registrar can not comply with subsection (2) after reasonable efforts (whether before or after the warrant is executed), the validity of the warrant is not affected merely because of the noncompliance.
- (4) A warrant of possession takes effect on the day stated in the warrant for it to take effect and ends—
- (a) if paragraph (b) does not apply—14 days after it takes effect; or
  - (b) if the tribunal is satisfied that, because of special circumstances, the warrant should continue until a later day stated in the warrant—on the later day.

*Examples of special circumstances under subsection (4)(b)—*

- 1 natural disasters, including floods, affecting the area in which the premises are located
  - 2 the remoteness of the premises
- (5) However, the day on which the warrant takes effect must not be later than 3 business days after it is issued.
- (6) If a warrant of possession (the **original warrant**) is lost or destroyed before it ends, the registrar may issue a copy of the warrant.
- (7) A copy of a warrant issued under subsection (6)—
- (a) has effect as if it were the original warrant; and

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- (b) is taken to have been issued when the original warrant was issued; and
- (c) ends when the original warrant ends.

### **352 Execution of warrant of possession**

The person to whom a warrant of possession is directed may exercise the powers under the warrant in the way stated in the warrant.

### **353 Way of recovering possession of premises**

- (1) This section applies to premises in the possession of a person—
  - (a) as the tenant under an agreement; or
  - (b) as the former tenant under an agreement holding over after termination of the agreement.
- (2) A person must not recover possession of the premises other than in a way authorised under this Act.

Maximum penalty for subsection (2)—50 penalty units.

### **354 Obstruction of person executing warrant of possession**

A person must not obstruct a person in the exercise of a power under a warrant of possession, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

## **Division 8 Abandonment**

### **355 Termination of agreement by lessor if premises abandoned**

- (1) If the lessor believes on reasonable grounds that the tenant has abandoned the premises, the lessor may give a notice

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(*abandonment termination notice*) to the tenant terminating the agreement.

- (2) The notice must be in the approved form.
- (3) The approved form must provide for the notice—
  - (a) to be signed by or for the lessor; and
  - (b) to identify the premises; and
  - (c) to state the lessor is terminating the agreement because the tenant has abandoned the premises.
- (4) If the tenant does not take action under section 356 about the notice within 7 days after receiving the notice, the tenant is taken to have abandoned the premises.
- (5) For subsection (1), reasonable grounds include the following—
  - (a) a failure of the tenant to pay rent under the agreement;
  - (b) the presence at the premises of uncollected mail, newspapers or other material;
  - (c) reports from neighbours of the tenant or from other persons indicating the tenant has abandoned the premises;
  - (d) the absence of household goods at the premises;
  - (e) the disconnection of services (including gas, electricity and telephone) to the premises;
  - (f) a failure of the tenant to respond to an entry notice.

### **356 Dispute about abandonment termination notice**

- (1) If the tenant disputes an abandonment termination notice, the tenant may apply to a tribunal for an order—
  - (a) setting aside the notice; or
  - (b) for compensation.

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- (2) The application must be made within 28 days after the notice is given.
- (3) On an application under this section, the tribunal may—
  - (a) if the application was made within 7 days after the notice was given—make an order setting aside the notice; or
  - (b) if paragraph (a) does not apply—make any of the following orders—
    - (i) an order terminating the agreement;
    - (ii) an order requiring the lessor to pay to the tenant the amount stated by the tribunal as compensation for loss or expense incurred by the tenant because of the termination of the agreement;
    - (iii) any other order it considers appropriate.

### **357 Order about abandonment**

- (1) If the lessor believes on reasonable grounds that the tenant has abandoned the premises, the lessor may apply to a tribunal for an order under this section.
- (2) The application may be decided by a tribunal or registrar.
- (3) The lessor may make the application instead of giving an abandonment termination notice to the tenant.
- (4) If an application is made, a tribunal or registrar may make an order declaring that the premises were abandoned by the tenant on the day stated in the order.
- (5) If the tribunal or registrar makes an order under subsection (4), the tenant is taken to have abandoned the premises on the day stated in the order.
- (6) In deciding whether to make the order, the tribunal or registrar may have regard to the following—
  - (a) a failure of the tenant to pay rent under the agreement;



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- (b) any presence at the premises of uncollected mail, newspapers or other material;
  - (c) any reports from neighbours of the tenant or from other persons indicating the tenant has abandoned the premises;
  - (d) any disconnection of services (including gas, electricity and telephone) to the premises;
  - (e) any absence from the premises of household goods;
  - (f) a failure of the tenant to respond to an entry notice for the premises;
  - (g) anything else the tribunal or registrar considers relevant.

*Editor's note—*

Under section 361 (Review of abandonment order) a former tenant may apply to a tribunal for a review of a decision of a registrar or tribunal declaring the person abandoned premises on a stated day.

## **Division 9                      Compensation**

### **358      Tenant remaining in possession**

- (1) If a tenant fails to hand over vacant possession of premises after a termination order is made by a tribunal, the lessor is entitled to receive from the tenant—
  - (a) compensation for any loss or expense incurred by the lessor by the failure; and
  - (b) an occupation fee equal to the amount of rent that would have been payable by the tenant for the premises for the period the tenant remains in possession after termination of the agreement.
- (2) If an application is made to a tribunal under this section by the lessor, the tribunal may make an order requiring the tenant to pay to the lessor the following amounts—

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- (a) the amount it considers the lessor is entitled to receive for compensation;
- (b) the amount it considers the lessor is entitled to receive for the occupation fee.

### **359 Compensation on abandonment termination notice**

- (1) If an agreement is terminated by the giving of an abandonment termination notice to the tenant, the lessor may apply to a tribunal for an order for compensation.
- (2) If an application is made by the lessor, a tribunal may make an order requiring the tenant to pay to the lessor an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the lessor by the abandonment.

### **360 Compensation on termination by tribunal**

If a tribunal or registrar makes an order declaring that premises were abandoned by the tenant under an agreement, the tribunal may make an order requiring the tenant to pay to the lessor an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the lessor by the abandonment.

### **361 Review of abandonment order**

- (1) The former tenant under an agreement who is dissatisfied with a decision of a tribunal or registrar declaring that the person abandoned the premises on a stated day may apply to a tribunal for a review of the decision.
- (2) The application must be made within 28 days after the decision is made.
- (3) The review is to be by way of a rehearing.
- (4) The tribunal—
  - (a) must exercise its original jurisdiction for the review; and

- (b) may make an order under this section if it is satisfied the applicant did not abandon the premises or only abandoned the premises on a day after the day stated.
- (5) The order the tribunal may make is an order requiring the former lessor under the agreement to pay to the applicant an amount the tribunal considers appropriate as compensation for any loss or expense incurred by the applicant by the termination of the agreement.

### **362 Duty to mitigate loss or expense**

- (1) This section applies to the lessor if the lessor incurs loss or expense because of—
  - (a) the tenant's failure to hand over vacant possession of the premises after a termination order is made by a tribunal; or
  - (b) the tenant's abandonment of the premises; or
  - (c) another act or omission of the tenant.
- (2) This section applies to the tenant if the tenant—
  - (a) incurs loss or expense because of an order made by a tribunal or registrar declaring that the tenant abandoned the premises on a stated day; and
  - (b) contends that the premises were not abandoned or were only abandoned on a day after the day stated.
- (3) The lessor or tenant—
  - (a) must take all reasonable steps to mitigate the loss or expense; and
  - (b) is not entitled to receive compensation for any loss or expense that could have been avoided by taking the steps.

## **Division 10**                      **Goods and documents left behind on premises**

### **363**      **Goods left on premises**

- (1) This section applies if—
  - (a) an agreement ends; and
  - (b) goods that are not personal documents or money are left on the premises.
- (2) The person who was the lessor (the *former lessor*) may sell the goods, or dispose of them in another way, if the former lessor believes on reasonable grounds that—
  - (a) the market value of the goods is less than the amount prescribed under a regulation; or
  - (b) storage of the goods—
    - (i) would be unhealthy or unsafe; or
    - (ii) would cause the market value of the goods to be completely or substantially depreciated; or
  - (c) the cost of removing, storing and selling the goods would be more than the proceeds of the sale of the goods.
- (3) If subsection (2) does not apply, the former lessor must store the goods safely for the period prescribed under a regulation (the *storage period*).
- (4) If, at the end of the storage period, the goods have not been reclaimed, the former lessor may—
  - (a) sell the goods by auction; or
  - (b) if, on an application made to a tribunal by the former lessor, the tribunal makes an order authorising the sale or disposal of the goods—sell or dispose of the goods under the order.

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- (5) For subsection (4)(a), if procedures for selling goods by auction are prescribed under a regulation, the former lessor must sell the goods under the procedures.
- (6) The former lessor or the former lessor's agent must not sell or dispose of the goods except as provided under subsections (2), (4) and (5), unless the former lessor or agent has a reasonable excuse.

Maximum penalty—40 penalty units.

- (7) If, before the goods are disposed of, the person entitled to the goods (the *owner*) claims possession of them by written notice given to the former lessor or the former lessor's agent, the former lessor or agent must let the owner reclaim possession of the goods on paying the reasonable removal and storage costs to the former lessor or agent.

Maximum penalty—40 penalty units.

- (8) If the former lessor sells the goods, the former lessor—
- (a) may keep out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods; and
  - (b) must pay any balance to the public trustee within 10 days after the sale.
- (9) The public trustee must pay the balance into the unclaimed moneys fund (the *fund*) kept under the *Public Trustee Act 1978*.

- (10) If, on application made to a tribunal by the former lessor, the tribunal is satisfied an amount (the *owed amount*) is owed to the former lessor by the tenant under the agreement, the tribunal may make an order conferring on the lessor an entitlement to receive an amount in the fund (the *fund amount*) that is equal to the smaller of the following amounts—
- (a) the owed amount;
  - (b) the balance paid to the public trustee under subsection (8).

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- (11) The former lessor or the former lessor's agent does not incur any liability for removing, selling or disposing of the goods if the former lessor or agent acts under this section without negligence.
- (12) A person who acquires the goods (whether as buyer or in another way) acquires a good title to the goods, and the interest of anyone else in the goods ends, unless the person acquiring the goods did not act honestly.

### **364 Documents left on premises**

- (1) This section applies if—
  - (a) an agreement ends; and
  - (b) a document is left at the premises.
- (2) The person who was the lessor (the *former lessor*) or who is the former lessor's agent must, within the required period—
  - (a) if the former lessor or agent knows the former tenant is the owner of the document—give the document to the former tenant; or
  - (b) if the former lessor or agent knows the former tenant is not the owner of the document and knows who the owner of the document is—give the document to the owner; or
  - (c) if neither paragraph (a) nor paragraph (b) applies—give the document to the public trustee.

Maximum penalty—10 penalty units.

- (3) Despite subsection (2)(a) and (b), if the former lessor or the former lessor's agent does not know where the former tenant or owner is, the former lessor or agent must, within the required period, give the document to the public trustee.

Maximum penalty—10 penalty units.

- (4) Money given to the public trustee under subsection (3) must be dealt with under the *Public Trustee Act 1978* as unclaimed moneys.

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- (5) A personal document given to the public trustee under subsection (3)—
- (a) must be retained by the public trustee for at least 6 months, unless reclaimed by the owner; and
  - (b) at the end of the 6 months, may be disposed of by the public trustee in any way the public trustee considers appropriate.
- (6) In this section—
- document* means a personal document or money.
- required period* means the period ending 7 days after the first of the following to happen—
- (a) the agreement ends;
  - (b) the person finds the document.

### **365 Application about goods left on premises**

- (1) This section applies if an interested person is dissatisfied with the way a former lessor dealt with, or is dealing with, goods left on premises after a residential tenancy agreement for the premises ended.
- (2) The interested person may apply to a tribunal for an order under this section.
- (3) On an application under this section, the tribunal may—
- (a) make an order requiring the former lessor to pay to the interested person an amount it considers appropriate as compensation for any loss or expense incurred by the interested person because of the former lessor's action in dealing with the goods; or
  - (b) make any other order it considers appropriate.
- (4) In this section—
- interested person* means—
- (a) the former tenant under an agreement; or

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- (b) a person, other than the former tenant under an agreement, who is the owner of goods left on premises to which a residential tenancy agreement applied.

## **Part 2                      Ending of rooming    accommodation agreements**

### **Division 1                General**

#### **366    Ending of rooming accommodation agreements**

- (1) A rooming accommodation agreement ends only in a way mentioned in this section.
- (2) A rooming accommodation agreement ends by written agreement of the provider and resident.
- (3) If a provider gives a resident a notice under this part requiring the resident to leave the rental premises by a stated day—
  - (a) the agreement ends on the stated day if the resident leaves on or before that day; or
  - (b) otherwise, the agreement ends on the day the resident leaves.
- (4) If a party to a rooming accommodation agreement gives a notice under this part terminating the agreement on a stated day, the agreement ends on the stated day.
- (5) A rooming accommodation agreement ends if the resident has abandoned the resident's room and the period for which the rent has been paid has ended.

*Editor's note—*

See section 509 (Indications a resident has abandoned a room).



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- (6) A rooming accommodation agreement ends if, after receiving a notice from a mortgagee under section 384, the resident vacates, or is removed from, the premises.
  - (7) If a sole resident dies, the rooming accommodation agreement ends on the earliest of the following—
    - (a) 7 days after the resident’s personal representative or relative gives the provider or provider’s agent written notice that the agreement ends because of the resident’s death;
    - (b) 7 days after the provider or provider’s agent gives the resident’s personal representative or relative written notice that the agreement ends because of the resident’s death;
    - (c) the day agreed between the provider or provider’s agent and the resident’s personal representative or relative;
    - (d) the day decided by the tribunal on application by the provider or provider’s agent.
  - (8) However, if no notice is given, or agreement or application made, under subsection (7), the rooming accommodation agreement ends 2 weeks after the resident’s death.
  - (9) Nothing prevents the withdrawal of a notice or application under subsection (7) so that a day may be agreed under subsection (7)(c).
  - (10) A rooming accommodation agreement ends if the tribunal makes an order terminating the agreement.

### **367 Purporting to terminate agreement in unauthorised way**

A person must not purport to terminate a rooming accommodation agreement other than in a way the agreement may be terminated under this part.

Maximum penalty—40 penalty units.

## **Division 2                    Action by provider**

### **Subdivision 1            Notices to remedy breach given by provider**

#### **368    Notice to remedy resident's breach**

- (1) This section applies if a provider reasonably believes that a resident has breached the rooming accommodation agreement and that the breach has not been remedied.
- (2) The provider may give the resident a notice requiring the resident to remedy the breach.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) give particulars of the breach; and
  - (c) state the day (the *due day*) by which the resident must remedy the breach; and
  - (d) be signed by the provider.
- (4) The notice may also state the steps that the provider reasonably believes are necessary to remedy the breach or avoid a further breach of the rooming accommodation agreement.
- (5) The due day must not be earlier than—
  - (a) if the breach is nonpayment of rent and, at the time the rent was due, the resident had been a resident of the rental premises for less than 28 days—2 days after the notice is given; or
  - (b) if the breach is nonpayment of rent and paragraph (a) does not apply—4 days after the notice is given; or
  - (c) otherwise—5 days after the notice is given.
- (6) This section does not apply to a breach comprising nonpayment of rent if—

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

## **Subdivision 2 Notices to leave given by provider**

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

- (1) A provider may give to a resident a notice requiring the resident to leave the rental premises if—
  - (a) the provider reasonably believes the resident has breached the rooming accommodation agreement; and
  - (b) the provider has given the resident a notice under section 368 requiring the resident to remedy the breach by a stated due day; and
  - (c) the due day has passed; and
  - (d) the provider reasonably believes that—
    - (i) the breach has not been remedied; or
    - (ii) after the notice was given and before the due day, the resident repeated the breach and has not remedied the repeated breach.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the premises; and
  - (c) state the day by which the resident must leave the premises; and
  - (d) be signed by the provider.
- (3) If the breach is nonpayment of rent and, at the time the rent was due, the resident had been a resident of the rental

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premises for less than 28 days, the resident may be required to leave immediately.

- (4) Otherwise, the day by which the resident is required to leave the premises must not be less than—
  - (a) if the breach is nonpayment of rent—4 days after the notice is given; or
  - (b) otherwise—2 days after the notice is given.
- (5) The provider may withdraw the notice at any time before the resident leaves.

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

- (1) A provider may give to a resident a written notice requiring the resident to leave the rental premises immediately if the provider reasonably believes—
  - (a) the resident has used the resident's room or common areas for an illegal purpose; or
  - (b) the resident, or a guest of the resident, has intentionally or recklessly—
    - (i) destroyed or seriously damaged a part of the rental premises or a facility in the rental premises; or
    - (ii) endangered another person in the rental premises; or
    - (iii) significantly interfered with the reasonable peace, comfort or privacy of another resident or another resident's appropriate use of the other resident's room or common areas.
- (2) The notice must—
  - (a) state why the resident is being required to leave the premises; and
  - (b) be signed by the provider.

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

- (1) A provider may give to a resident a notice requiring the resident to leave the rental premises because the premises—
  - (a) have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the rooming accommodation agreement by the provider; or
  - (b) no longer may be used lawfully as a residence; or
  - (c) have been appropriated or acquired compulsorily under a law.
- (2) The notice may only be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the premises; and
  - (c) state the day by which the resident must leave the premises; and
  - (d) be signed by the provider.
- (4) If the notice is given under subsection (1)(a) or (b), the resident may be required to leave immediately.
- (5) If the notice is given under subsection (1)(c), the day by which the resident must leave the premises must not be less than 2 months after the notice is given.

**372 Terminating of agreement by provider without ground**

- (1) A provider may terminate a periodic agreement by giving at least 30 days written notice to the resident.
- (2) A provider may terminate a fixed term agreement by giving the resident a notice stating the day, not before the end of the term and not less than 14 days after the notice is given, on which the agreement ends.

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- (3) A notice under this section must state the day the resident is required to leave the rental premises.
- (4) However, the provider may not give a notice to a resident under this section because—
  - (a) the resident has applied, or is proposing to apply, to a tribunal for an order under this Act; or
  - (b) the resident has complained to a government entity about an act or omission of the provider adversely affecting the resident or another resident of the rental premises; or
  - (c) the resident has taken some other action to enforce the resident's rights or the rights of another resident of the rental premises; or
  - (d) an order of a tribunal is in force relating to the provider and resident.
- (5) Also, the provider may not give a notice to a resident under this section if the giving of the notice constitutes taking retaliatory action against the resident.

### **373 Application to tribunal about terminating agreement without ground**

- (1) This section applies if—
  - (a) the resident is given a notice terminating an agreement without ground; and
  - (b) the resident reasonably believes the notice was given in contravention of section 372.
- (2) The resident may apply to a tribunal for an order to set aside the notice.
- (3) The application must be made within 2 weeks after the notice was given.
- (4) On an application under this section, the tribunal may make the order sought if it is satisfied the notice was given in contravention of section 372.

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**374 Notice to leave if resident's employment ends or entitlement to occupy under employment ends**

- (1) A provider may give to a resident a notice requiring the resident to leave the rental premises if—
  - (a) the resident occupies the rental premises under the resident's terms of employment; and
  - (b) either—
    - (i) the resident's employment ends; or
    - (ii) the resident's entitlement to occupy the rental premises ends under the resident's terms of employment.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the premises; and
  - (c) state the day by which the resident must leave the premises; and
  - (d) be signed by the provider.
- (3) The day by which the resident must leave the premises must not be less than 1 month after the notice is given.
- (4) This section applies subject to an industrial award or agreement or contract of employment.

**375 Power to remove resident**

- (1) This section applies if—
  - (a) a provider has given a resident a notice under this part requiring the resident to leave the rental premises and the due day for leaving has passed; or
  - (b) a provider has given a resident a notice under this part terminating the rooming accommodation agreement and the agreement has ended.

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- (2) If the resident refuses to leave the premises, it is lawful for the provider and anyone helping the provider to use necessary and reasonable force to remove the resident and the resident's property from the rental premises.
- (3) However, the provider or someone helping the provider may use force under subsection (2) only while a police officer is present.

*Editor's note—*

See the *Police Powers and Responsibilities Act 2000*, section 611 (Attendance at rental premises while person or property is removed).

- (4) For exercising a power under subsection (2), the provider or other person may enter the resident's room.
- (5) The force that may be used under subsection (2) does not include force that is likely to cause bodily harm to the resident or damage the resident's property.
- (6) In this section—

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

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

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

### **Subdivision 3      Applications for termination by provider**

#### **376      Application by provider for termination for repeated breaches by resident**

- (1) This section applies if—



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- (a) the provider gives 2 notices to remedy breach to the resident for breaches of a particular provision in relation to the agreement; and
  - (b) each notice relates to a separate breach of the particular provision; and
  - (c) the resident remedies each breach within the relevant allowed remedy period; and
  - (d) the resident commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
  - (e) all breaches happen within the period prescribed under a regulation for this section.
- (2) The provider may apply to a tribunal for a termination order.
  - (3) An application under this section is called an application made because of *repeated breaches*.
  - (4) In this section—  
*provision* means—
    - (a) a provision of section 253, other than paragraph (i); or
    - (b) a provision of an agreement providing for the payment of rent.

*Editor's note—*

See sections 335(1) (Applications for termination orders) and 347 (Repeated breaches) for other provisions about the application.

### **377 Application by provider to terminate fixed term agreement because of excessive hardship**

- (1) The provider under a fixed term agreement may apply to a tribunal for an order terminating the agreement because the applicant would suffer excessive hardship if the agreement were not terminated.
- (2) The tribunal may make the order if it is satisfied the applicant has established the ground of the application.

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

## **Division 3                    Action by resident**

### **Subdivision 1            Notices to remedy breach given by resident**

#### **378      Notice to remedy provider's breach**

- (1) This section applies if a resident reasonably believes that the provider has breached the rooming accommodation agreement and that the breach has not been remedied.
- (2) The resident may give the provider a notice requiring the provider to remedy the breach.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) give particulars of the breach; and
  - (c) state the day (the *due day*), not earlier than 5 days after the notice is given, by which the provider must remedy the breach; and
  - (d) be signed by the resident.

### **Subdivision 2            Notices terminating agreement given by resident**

#### **379      Notice terminating fixed term agreement because of failure to remedy breach**

- (1) A resident under a fixed term agreement may give the provider a notice terminating the agreement before the end of

the fixed term if—

- (a) the resident reasonably believes the provider has breached the agreement; and
- (b) the resident has given the provider a notice under section 378 requiring the provider to remedy the breach by a stated due day; and
- (c) the due day has passed; and
- (d) the resident reasonably believes that—
  - (i) the breach has not been remedied; or
  - (ii) after the notice was given and before the due day, the provider repeated the breach and has not remedied the repeated breach.

(2) The notice must—

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

### **380 Notice terminating agreement if premises destroyed etc.**

- (1) A resident may give the provider a notice terminating the rooming accommodation agreement because the resident's room or common areas have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the rooming accommodation agreement by the resident.
- (2) The notice may only be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) The notice must—
  - (a) be in the approved form; and

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- (b) state why the resident is terminating the agreement; and
  - (c) state the day on which the agreement is ended; and
  - (d) be signed by the resident.
- (4) The notice may end the agreement immediately.

### **381 Terminating of agreement by resident without ground**

- (1) A resident may terminate a periodic agreement by giving at least 7 days written notice to the provider.
- (2) A resident may terminate a fixed term agreement by giving the provider a written notice stating the day, not before the end of the term and not less than 7 days after the notice is given, on which the agreement ends.

## **Subdivision 3 Applications for termination by resident**

### **382 Application by resident for termination for repeated breaches by provider**

- (1) This section applies if—
  - (a) the resident gives 2 notices to remedy breach to the provider for breaches of a particular provision in relation to the agreement; and
  - (b) each notice relates to a separate breach of the particular provision; and
  - (c) the provider remedies each breach within the relevant allowed remedy period; and
  - (d) the provider commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
  - (e) all breaches happen within the period prescribed under a regulation for this section.

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- (2) The resident may apply to a tribunal for a termination order.
  - (3) An application under this section is called an application made because of *repeated breaches*.
  - (4) In this section—  
*provision* means—
    - (a) section 247 (Provider’s obligations generally); or
    - (b) section 249 (Quiet enjoyment); or
    - (c) section 265 (Unlawful entry of resident’s room); or
    - (d) a provision of a section mentioned in paragraphs (a) to (c); or
    - (e) a provision of an agreement providing for the payment of rent.

*Editor’s note—*

See sections 335(2) (Applications for termination orders) and 347 (Repeated breaches) for other provisions about the application.

**383 Application by resident to terminate fixed term agreement because of excessive hardship**

- (1) The resident under a fixed term agreement may apply to a tribunal for an order terminating the agreement because the applicant would suffer excessive hardship if the agreement were not terminated.
- (2) The tribunal may make the order if it is satisfied the applicant has established the ground of the application.
- (3) If the tribunal makes the order, it may also make any other order it considers appropriate including, for example, an order that the applicant pay compensation to the other party.

## **Division 4                      Action by mortgagees**

### **384      Notice about proposed action of mortgagee**

- (1) This section applies if—
  - (a) rental premises are subject to a mortgage; and
  - (b) after the rental premises become subject to the mortgage, a rooming accommodation agreement is entered into for a room in the rental premises; and
  - (c) the mortgagee under the mortgage does not consent to the rooming accommodation agreement; and
  - (d) the mortgagee, or another person appointed under the mortgage (the *appointed person*), has become entitled to obtain possession of the rental premises.
- (2) The mortgagee must not obtain possession of the rental premises unless, at least 30 days before obtaining possession, the mortgagee or the appointed person gives the resident notice in the approved form informing the resident that possession is to be obtained.

Maximum penalty—50 penalty units.
- (3) The appointed person must not obtain possession of the rental premises unless, at least 30 days before obtaining possession, the appointed person or mortgagee gives the resident notice in the approved form informing the resident that possession is to be obtained.

Maximum penalty—50 penalty units.
- (4) In this section—

*obtain* includes take.

### **385      Acceptance of rent does not operate as consent**

- (1) This section applies if—
  - (a) rental premises are subject to a mortgage; and

- (b) after the rental premises become subject to the mortgage, a rooming accommodation agreement is entered into for the rental premises; and
  - (c) the mortgagee under the mortgage does not consent to the rooming accommodation agreement.
- (2) If the mortgagee, or another person appointed under the mortgage, makes a demand for, takes a proceeding for the recovery of, or accepts, rent payable under the rooming accommodation agreement, the mortgagee's or person's action does not operate as a consent to the agreement.

**386 Resident not liable for loss if resident vacates or is removed from premises after receiving notice under s 384**

- (1) This section applies if the resident of rental premises is given a notice by a mortgagee under section 384 and vacates, or is removed from, the premises.
- (2) The resident is not liable for rent or for any other loss or expense incurred by the provider merely because the resident vacates, or is removed from, the rental premises.

**387 Resident not liable for loss if rent paid to mortgagee**

- (1) This section applies if a mortgagee of rental premises gives the resident written notice that the resident must pay rent to the mortgagee.
- (2) The resident is not liable for rent or for any other loss or expense incurred by the provider merely because the resident pays rent to the mortgagee.

## **Division 5                      Procedural requirements and orders of tribunal**

### **388      Applications for termination orders**

- (1) An application may be made to a tribunal for a termination order by the provider without giving a notice to leave the rental premises to the resident if the application is made because of—
  - (a) excessive hardship; or
  - (b) repeated breaches.
- (2) An application may be made to a tribunal for a termination order by the resident without giving a notice terminating the agreement to the provider for the rental premises if the application is made because of—
  - (a) excessive hardship; or
  - (b) repeated breaches.

### **389      Orders relating to repeated breaches**

- (1) If an application is made to a tribunal by the provider or resident for an order to terminate a fixed term agreement because of repeated breaches, the tribunal may make the order if it is satisfied—
  - (a) the applicant has established the ground of the application; and
  - (b) the person in relation to whom the order is sought committed each breach stated in the 2 notices to remedy breach on which the application is based.
- (2) In deciding the application, the tribunal must have regard to the following—
  - (a) the seriousness of each breach associated with the application, having regard to the extent of any



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- inconvenience or financial or other disadvantage suffered by the applicant;
- (b) the period for which the agreement has been in existence;
  - (c) the period in which the breaches were committed;
  - (d) the remaining period of the agreement;
  - (e) anything else the tribunal considers relevant.

## **Division 6                    Goods or money left behind in premises**

### **390    Application of div 6**

This division applies if—

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

### **391    Unauthorised dealing with lost property**

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

Maximum penalty—40 penalty units.

### **392    Personal document or money**

- (1) This section applies if the lost property is a personal document or money.
- (2) The provider must—
  - (a) make reasonable efforts to contact the former resident about the property; and

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- (b) store the property safely for at least 28 days, unless it is reclaimed before that time.
- (3) If, at the end of 28 days, the property has not been reclaimed, the provider must give it to the public trustee.
- (4) However, if the lost property is money and has not been reclaimed after 28 days, the provider may deduct any outstanding amount owed by the former resident under the rooming accommodation agreement before giving the remainder to the public trustee.

### **393 Item other than personal document or money**

- (1) This section applies if the lost property is not a personal document or money.
- (2) The provider may sell the property, or dispose of it in another way, if the provider reasonably believes—
  - (a) it is perishable; or
  - (b) its market value is less than the amount prescribed under a regulation for this subsection; or
  - (c) storage of the goods would be unhealthy or unsafe.
- (3) Otherwise, the provider must—
  - (a) make reasonable efforts to contact the former resident about the property; and
  - (b) store the property safely for at least 28 days, unless it is reclaimed within that time.
- (4) If, at the end of 28 days, the property has not been reclaimed, the provider must—
  - (a) continue to store the property for the former resident; or
  - (b) sell the property after advertising it in a newspaper circulating generally in the area in which the rental premises are situated.
- (5) However, if the provider reasonably believes the market value of the property is less than the amount prescribed under a

regulation for this subsection, the provider may donate the property to charity instead of selling it under subsection (4)(b).

- (6) If the person entitled to the property claims it before it is disposed of under this section, and pays the reasonable costs incurred by the provider under this section, the provider must give the property to the person.
- (7) If the provider sells the property under this section, the proceeds must be applied—
  - (a) in payment of the reasonable costs incurred by the provider under this section; and
  - (b) in payment of any outstanding amount owed by the former resident under the rooming accommodation agreement; and
  - (c) in payment of any balance—
    - (i) if the person entitled to the property has been located by the time of the sale—to the person; or
    - (ii) otherwise—to the public trustee.

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

- (1) This section applies if a provider gives a personal document to the public trustee under section 392.
- (2) The public trustee must keep the document for at least 6 months, unless it is reclaimed within that time.
- (3) If, at the end of the 6 months, the document has not been reclaimed, the public trustee may deal with it in any way the public trustee considers appropriate.

### **395 Money given to public trustee**

- (1) This section applies if a provider gives an amount to the public trustee under section 392 or 393.

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- (2) The public trustee must pay the amount into the unclaimed moneys fund kept under the *Public Trustee Act 1978*.
- (3) The public trustee may, on application by the provider, pay an amount to the provider from the fund—
  - (a) in payment of the reasonable expenses incurred by the provider under this division relating to the lost property; or
  - (b) in payment of any outstanding amount owed by the former resident under the rooming accommodation agreement.
- (4) On application made to a tribunal by the provider, the tribunal may make an order conferring on the provider an entitlement to receive, from the fund, an amount mentioned in subsection (3)(a) or (b).
- (5) An amount paid by the public trustee under subsection (3) or an amount to which an order relates under subsection (4) may not be more than the amount given to the public trustee under section 392 or 393.

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

- (1) This section applies if the person entitled to the lost property is dissatisfied with the way the provider has dealt with it or is dealing with it.
- (2) The person may apply to a tribunal for an order under this section.
- (3) On an application under this section, the tribunal may—
  - (a) make an order requiring the provider to pay to the person an amount it considers appropriate as compensation for any loss or expense incurred by the person because of the provider's action in dealing with the property; or
  - (b) make any other order it considers appropriate.

## Chapter 6 Dispute resolution

### Part 1 Conciliation process for residential tenancy disputes and rooming accommodation disputes

#### Division 1 Preliminary

##### 397 Application of pt 1

- (1) This part applies if there is an issue in dispute relating to a residential tenancy agreement (a *tenancy dispute*) and the lessor and tenant have been unable to resolve the dispute through negotiation.
- (2) This part also applies if there is an issue in dispute relating to a rooming accommodation agreement (a *rooming accommodation dispute*) and the provider and resident have been unable to resolve the dispute—
  - (a) through negotiation; or
  - (b) if there is a dispute resolution process operating for the rooming accommodation, by using that process.

#### Division 2 Conciliation

##### 398 Conciliation process

- (1) A *conciliation process* is a process of conciliation under which the parties are helped and encouraged to achieve a resolution of their dispute.

- (2) For division 6, a *conciliation process* includes all the steps involved in the process of conciliation, including, for example—
- (a) telephone conferencing; and
  - (b) joint sessions; and
  - (c) private sessions; and
  - (d) another step prescribed under a regulation.

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

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

*Example of a dispute that may be unsuitable for conciliation—*

a rooming accommodation dispute about the provision of a food service or a personal care service to the resident under a rooming accommodation agreement

- (2) The authority must publish guidelines about matters to be taken into account when deciding whether a dispute is unsuitable for conciliation.

### **400 Appointment of conciliators**

- (1) The chief executive officer may appoint conciliators for this Act.
- (2) The chief executive officer may appoint a person as a conciliator only if the chief executive officer is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.
- (3) Without limiting subsection (2), the chief executive officer may be satisfied a person has the necessary expertise or experience because the person has satisfactorily completed the training approved by the chief executive officer for this section.

## **401 Functions of conciliators**

The functions of a conciliator under this Act are—

- (a) to encourage the settlement of a dispute by facilitating, and helping to conduct, negotiations between parties to the dispute; and
- (b) to promote the open exchange of information relevant to the dispute by the parties; and
- (c) to provide to the parties information about the operation of this Act relevant to a settlement of the dispute; and
- (d) to help in the settlement of the dispute in any other appropriate way.

*Examples of facilitating and helping conduct negotiations—*

- 1 facilitating telephone conferencing
- 2 interviewing the parties, together or separately

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

### **402 Making dispute resolution request**

- (1) A lessor or tenant may make a request (a *dispute resolution request*) to the authority asking it to try to resolve a tenancy dispute.
- (2) Also, a provider or resident may make a request (also a *dispute resolution request*) to the authority asking it to try to resolve a rooming accommodation dispute.
- (3) The dispute resolution request must be in the approved form.

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

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

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

## **Division 4                      Conduct of conciliation process**

### **404      Conciliation fee**

- (1) This section applies if a conciliation fee is prescribed under a regulation.
- (2) If a dispute resolution request is made, the conciliator may start the conciliation process only if the prescribed fee has been paid to the authority by the person who made the dispute resolution request.
- (3) However, the authority may waive the fee if it is satisfied in all the circumstances it would be unreasonable to impose a fee.

### **405      Limited right of representation**

- (1) During the conciliation process, each party to the dispute must conduct the party's own case.
- (2) However, a party may be represented by a person if—
  - (a) the party is a corporation or the conciliator is satisfied, and continues to be satisfied, a person should be allowed to represent the party; and
  - (b) the representative is approved by the conciliator.

### **406      Parties' participation in conciliation process not compellable**

- (1) A party to the dispute can not be compelled to participate in the conciliation process.
- (2) A party may withdraw from the conciliation process at any time.



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

#### **407 Parties to conciliation process**

- (1) A person who is not a party to the dispute may take part in the conciliation process if the authority or conciliator is satisfied the person has a sufficient interest in the resolution of the dispute.
- (2) However, the person does not become a party to the dispute.

#### **408 Conciliation agreements**

- (1) This section applies if the parties to the dispute reach an agreement on resolving the dispute.
- (2) The agreement must be put into writing and signed by or for the parties.
- (3) The agreement must not be inconsistent with this Act.

*Editor's note—*

See also section 52(4) (Terms of agreements include duties under Act etc.) which provides that the terms of the conciliation agreement are taken to be included as terms of the residential tenancy agreement.

#### **409 No record of conciliation process**

- (1) A person must not make a record of anything said during the conciliation process.  
Maximum penalty—20 penalty units.
- (2) However, the conciliator may make notes of the conciliation process the conciliator considers appropriate.
- (3) The conciliator may destroy the notes after the conciliation process ends.

## **Division 5                      Withdrawal of disputes**

### **410      Withdrawal of disputes**

- (1) A person may, by written notice given to the authority, withdraw a dispute resolution request made by the person.
- (2) The notice may be given before or after a conciliator starts the conciliation process for the dispute.

## **Division 6                      Confidentiality, privilege and immunity**

### **411      Conciliators to maintain secrecy**

- (1) A conciliator involved in a conciliation process must not disclose information coming to the conciliator's knowledge during the conciliation process.

Maximum penalty—20 penalty units.

- (2) However, a conciliator may disclose information—
  - (a) with the agreement of all parties to the dispute; or
  - (b) for statistical purposes without revealing the identity of any person about whom the information is relevant; or
  - (c) for an inquiry or proceeding about an offence or other misconduct that happens during the conciliation process; or
  - (d) if the information is about injury or the threat of injury to any person; or
  - (e) under a requirement under this or another Act.
- (3) Also, if a person gives a document to a conciliator during the conciliation process and asks the conciliator to disclose the document to an authorised person, the conciliator may make the disclosure.

#### **412 Ordinary protection and immunity allowed**

- (1) A conciliator has, in performing the conciliator's functions, the same protection and immunity as a Supreme Court judge performing the functions of a judge.
- (2) A person who is a party, or the party's representative, appearing during the conciliation process for a dispute has the same protection and immunity the person would have if the dispute were being heard in the Supreme Court.
- (3) A document produced during, or used for, a conciliation process has the same protection during the process it would have if produced before the Supreme Court.

#### **413 Admissions made in conciliation process**

- (1) Evidence of anything said or an admission made during the conciliation process for a dispute is inadmissible—
  - (a) at the hearing before a tribunal of an application relating to an issue to which the conciliation process relates; or
  - (b) in another proceeding before a court or elsewhere.
- (2) In subsection (1)—

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

## **Part 2                      Application to tribunals**

### **Division 1                Application of part**

#### **414      Application of pt 2**

This part applies to applications to the tribunal by the following—

- (a) lessors and tenants under residential tenancy agreements;
- (b) providers and residents under rooming accommodation agreements;
- (c) the authority;
- (d) another person entitled to apply to the tribunal under this Act.

### **Division 2                Preliminary**

#### **414A    Applications to the tribunal**

An application to the tribunal under this Act must be made in the way provided under the QCAT Act.

#### **415      Meaning of *urgent application***

- (1) An application to a tribunal is an *urgent application* if it is an application for a termination order made because of—
  - (a) a failure to leave; or
  - (b) a failure to leave as intended; or
  - (c) excessive hardship; or
  - (d) damage; or
  - (e) injury; or

- (f) objectionable behaviour; or
  - (g) repeated breaches.
- (2) An application to a tribunal is an ***urgent application*** if it is an application for a termination order for moveable dwelling premises in a moveable dwelling park to which a short tenancy (moveable dwelling) applies.

*Editor's note—*

See sections 47 (Short tenancy statements) and 48 (Extending short tenancy statements) for provisions about short tenancies.

- (3) An application to a tribunal is an ***urgent application*** if—
- (a) it is an application made under section 227; and
  - (b) the notice to relocate on which the application is based was given because of an emergency or for health or safety reasons.
- (4) An application to a tribunal is an ***urgent application*** if—
- (a) it is an application for an order to restrain a person from causing damage or injury; and
  - (b) the applicant also has made, or makes, an application for a termination order on the ground of damage or injury.
- (5) An application to a tribunal is an ***urgent application*** if it is made under any of the following sections—
- (a) section 60 (Orders of tribunal relating to noncompliance with s 58 or 59);
  - (b) section 191 (Orders of tribunal);
  - (c) section 201 (Entry by lessor or lessor's agent under order of tribunal);
  - (d) section 220 (Orders of tribunal about reimbursement or payment for emergency repairs);
  - (e) section 221 (Orders of tribunal about carrying out emergency repairs);
  - (f) section 233 (Application to tribunal about proposal);

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- (g) section 245 (Injury to domestic associate);
- (h) section 246 (Injury or damage affecting occupants);
- (i) section 264 (Entry by provider or provider's agent under order of tribunal);
- (j) section 273 (Application to tribunal about proposed rule change);
- (k) section 277(7)(d) (Ending of residential tenancy agreements);
- (l) section 292 (Application to tribunal about notice to leave without ground);
- (m) section 309 (Application for termination for failure of lessor to remedy breach);
- (n) section 356 (Dispute about abandonment termination notice);
- (o) section 357 (Order about abandonment);
- (p) section 358 (Tenant remaining in possession);
- (q) section 359 (Compensation on abandonment termination notice);
- (r) section 361 (Review of abandonment order);
- (s) section 363 (Goods left on premises);
- (t) section 365 (Application about goods left on premises);
- (u) section 366(7)(d) (Ending of rooming accommodation agreements);
- (v) section 373 (Application to tribunal about terminating agreement without ground);
- (w) section 395(4) (Money given to public trustee);
- (x) section 418 (Application of Act to agreements);
- (y) section 455 (Application to tribunal for order to exclude person from park).

- (6) An application to a tribunal is an *urgent application* if it is made under chapter 9.

**416 Dispute resolution request required before applying to tribunal**

- (1) The lessor or tenant under a residential tenancy agreement, or provider or resident under a rooming accommodation agreement, may apply under this Act to a tribunal about an issue only if the applicant has first made a dispute resolution request about the issue and—
- (a) the conciliation process has ended without a conciliated resolution having been reached, because—
    - (i) the authority refuses to provide a conciliation service about the issue; or
    - (ii) a party refuses to participate, or continue to participate, in the conciliation process; or
    - (iii) the parties participate in the conciliation process but do not reach an agreement on resolving the dispute; or
  - (b) a conciliated resolution is reached but the applicant reasonably believes the other party has breached the conciliation agreement.
- (2) This section does not apply to an urgent application.

*Editor's notes—*

See section 399 (Some matters not suitable for conciliation).

See section 406 (Parties' participation in conciliation process not compellable).

**417 Reference to making of tribunal application includes making of dispute resolution request**

- (1) This section applies if—
- (a) an application about an issue (the *dispute issue*) may be made to a tribunal by—

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- (i) the lessor or tenant under a residential tenancy agreement; or
    - (ii) a provider or resident under a rooming accommodation agreement; and
  - (b) under a provision of this Act, the question whether the application has been made is relevant to an issue.
- (2) A reference in the provision to the making of an application about the dispute issue includes a reference to the making of a dispute resolution request to the authority about the dispute issue.

*Editor's note—*

Section 419 (Applications about breach of agreements) provides for the time in which the lessor or tenant, or provider or resident, may apply to the tribunal for an order about a breach of the agreement.

## **Division 3                      General powers of tribunals**

### **418      Application of Act to agreements**

- (1) A person or the authority may apply to a tribunal for an order, and the tribunal may make an order, declaring that a stated agreement is, or is not—
- (a) a residential tenancy agreement to which this Act applies; or
  - (b) a rooming accommodation agreement to which this Act applies.
- (2) The tribunal may allow the authority to intervene in, or support, an application by a person under subsection (1).

### **419      Applications about breach of agreements**

- (1) This section applies if any of the following claim there has been a breach of a term of a residential tenancy agreement or a rooming accommodation agreement—



- (a) a lessor or tenant under the residential tenancy agreement;
  - (b) a provider or resident under the rooming accommodation agreement.
- (2) The lessor or tenant, or provider or resident, may apply to a tribunal for an order about the breach.
- (3) The application must be made within 6 months after the lessor or tenant, or provider or resident, becomes aware of the breach.
- (4) For a residential tenancy, the application may be made—
- (a) during the term, or after the end, of the agreement; and
  - (b) whether or not an application for termination, or a termination order, has been made about the agreement; and
  - (c) whether or not a rental bond for the agreement is held by the authority when the application is made.
- (5) For rooming accommodation, the application may be made—
- (a) during the term of the agreement or after the agreement ends; and
  - (b) whether or not a rental bond for the agreement is held by the authority when the application is made.

#### **420 Orders about breach of agreements**

- (1) If an application about a breach of a residential tenancy agreement or a rooming accommodation agreement is made to a tribunal, the tribunal may make any 1 or more of the following orders—
- (a) an order restraining any action in breach of the agreement;
  - (b) an order for the payment of money;
  - (c) an order requiring an action in performance of the agreement;

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- (d) an order that a party to the agreement perform the work, or take the steps, stated in the order to remedy a breach of the agreement;
  - (e) an order for compensation;
  - (f) an order requiring payment of all or part of the rent under the agreement to the tribunal until—
    - (i) the whole or part of the agreement has been performed; or
    - (ii) an application for compensation has been decided;
  - (g) an order requiring payment (from rent paid to the tribunal) towards—
    - (i) the cost of remedying a breach of the agreement; or
    - (ii) an amount for compensation.
- (2) An order under subsection (1)(a) may be made even if it provides a remedy in the nature of an injunction or order for specific performance in circumstances where the remedy would not otherwise be available.

#### **421 Matters to which tribunal must have regard for orders for compensation**

- (1) Without limiting section 420(1), in making an order for compensation in favour of a lessor, a tribunal must have regard to the following—
- (a) rent required to be paid but not paid for the period starting when the agreement is terminated because of the tenant's action and ending—
    - (i) when the period fixed as the term of the tenancy ends; or
    - (ii) if the premises are relet before the end of the period mentioned in subparagraph (i)—when the premises are relet;

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- (b) advertising expenses incurred by the lessor for reletting the premises;
  - (c) other expenses incurred by the lessor for work carried out by the lessor for reletting the premises;
  - (d) whether the lessor has met the lessor's duty under section 362 to mitigate loss or expense.
- (2) Also, without limiting section 420(1), in making an order for compensation in favour of a provider, a tribunal must have regard to the following—
- (a) rent required to be paid but not paid for the period starting when the agreement is ended because of the resident's action and ending—
    - (i) when the period fixed as the term of the accommodation ends; or
    - (ii) if the resident's room is relet before the end of the period mentioned in subparagraph (i)—when the room is relet;
  - (b) advertising expenses incurred by the provider for reletting the resident's room;
  - (c) other expenses incurred by the provider for work carried out by the provider for reletting the resident's room;
  - (d) whether the provider has taken all reasonable steps to mitigate the loss or expense.

## **422 Application of Aboriginal tradition**

- (1) This section applies if—
- (a) the lessor is—
    - (i) an indigenous local government, including an indigenous regional council, under the *Local Government Act 2009*; or
    - (ii) Aurukun Shire Council; or
    - (iii) Mornington Shire Council; or

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- (iv) an entity prescribed under a regulation; and
  - (b) the tenant is an Aborigine.
- (2) In deciding an application for a termination order, a tribunal must have regard to the lessor's practice (the ***lessor's Aboriginal tradition practice***) in observing Aboriginal tradition in dealing with similar breaches of other residential tenancy agreements by other tenants of the lessor.
- (3) In considering Aboriginal tradition, the tribunal may hear evidence from, and the opinions of—
- (a) persons recognised under Aboriginal tradition as respected persons; or
  - (b) other persons with special knowledge of, or expertise in, Aboriginal tradition.
- (4) The opinion of persons mentioned in subsection (3) are not inadmissible as evidence merely because they are hearsay.
- (5) The tribunal may decide not to make the termination order if it would be inconsistent with the lessor's Aboriginal tradition practice.

#### **423 Application of Island custom**

- (1) This section applies if—
- (a) the lessor is—
    - (i) an indigenous regional council under the *Local Government Act 2009*; or
    - (ii) an entity prescribed under a regulation; and
  - (b) the tenant is a Torres Strait Islander.
- (2) In deciding an application for a termination order, a tribunal must have regard to the lessor's practice (the ***lessor's Island custom practice***) in observing Island custom in dealing with similar breaches of other residential tenancy agreements by other tenants of the lessor.

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- (3) In considering Island custom, the tribunal may hear evidence from, and the opinions of—
    - (a) persons recognised under Island custom as respected persons; or
    - (b) other persons with special knowledge of, or expertise in, Island custom.
  - (4) The opinions of persons mentioned in subsection (3) are not inadmissible as evidence merely because they are hearsay.
  - (5) The tribunal may decide not to make the termination order if it would be inconsistent with the lessor's Island custom practice.

#### **424 Disputes about tenants' notices**

- (1) If a lessor disputes the ground stated in a notice to remedy breach, or notice of intention to leave premises, given to the lessor by the tenant under an agreement, the lessor may apply to a tribunal for an order about the notice.
- (2) If the tribunal is satisfied the tenant was not entitled to give the notice on the ground stated, it may make an order under this section.
- (3) If the tribunal decides the application before the agreement is terminated, it may make any order it considers appropriate.
- (4) If the tribunal decides the application after the agreement is terminated because of the tenant's action, it may make an order requiring the tenant to pay to the lessor an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the lessor by the tenant leaving the premises.
- (5) This section does not apply to a notice of intention to leave without ground.

#### **425 Dispute about residents' notices**

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

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- (a) a notice under section 378 requiring the provider to remedy a breach; or
  - (b) a notice under this Act terminating the rooming accommodation agreement, other than a notice under section 381.
- (2) If the provider disputes the ground stated in the notice, the provider may apply to a tribunal for an order about the notice.
  - (3) If the tribunal is satisfied the resident was not entitled to give the notice on the ground stated, it may make an order under this section.
  - (4) If the tribunal decides the application before the agreement ends, it may make any order it considers appropriate.
  - (5) If the tribunal decides the application after the agreement is ended because of the resident's action, it may make an order requiring the resident to pay to the provider an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the provider by the resident terminating the agreement.

#### **426 Disputes about lessors' notices**

- (1) If a tenant disputes the ground stated in a notice to remedy breach or a notice to leave premises given to the tenant by the lessor under an agreement, the tenant may apply to a tribunal for an order about the notice.
- (2) If the tribunal is satisfied the lessor was not entitled to give the notice on the ground stated, it may make an order under this section.
- (3) If the tribunal decides the application before the agreement is terminated, it may make any order it considers appropriate.
- (4) If the tribunal decides the application after the agreement is terminated because of the lessor's action, it may make an order requiring the lessor to pay to the tenant an amount it considers appropriate as compensation for any loss or expense incurred by the tenant for having to leave the premises.

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- (5) This section does not apply to a notice to leave without ground.

#### **427 Dispute about providers' notices**

- (1) This section applies if a provider gives to a resident—
- (a) a notice under section 368 requiring the resident to remedy a breach; or
  - (b) a notice requiring the resident to leave the rental premises, other than a notice under section 372.
- (2) If the resident disputes the ground stated in the notice, the resident may apply to a tribunal for an order about the notice.
- (3) If the tribunal is satisfied the provider was not entitled to give the notice on the ground stated, it may make an order under this section.
- (4) If the tribunal decides the application before the agreement ends, it may make any order it considers appropriate.
- (5) If the tribunal decides the application after the agreement is ended because of the provider's action, it may make an order requiring the provider to pay to the resident an amount it considers appropriate as compensation for any loss or expense incurred by the resident for having to leave the rental premises.

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

- (1) This section applies if a resident claims the provider or someone helping the provider has—
- (a) unlawfully entered the resident's room; or
  - (b) unlawfully removed the resident or the resident's property from the rental premises.
- (2) The resident may apply to a tribunal for an order.

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- (3) The application may only be made within 6 months after the happening of the event mentioned in subsection (1).
- (4) The application may be made during the term of the agreement or after the agreement has ended.
- (5) The tribunal may make any order it considers appropriate, including an order for compensation.

**429 General disputes between lessors and tenants or providers and residents**

- (1) If there is a dispute between the lessor and tenant, or provider and resident, about an agreement, either party may apply to a tribunal for an order, and the tribunal may make any order it considers appropriate, to resolve the dispute.
- (2) An application under subsection (1) may be made by a cotenant.

**430 Disputes between cotenants or coresidents about rental bonds**

- (1) If there is a dispute between cotenants or coresidents about a rental bond for an agreement, any cotenant or coresident may apply to a tribunal for an order, and the tribunal may make any order it considers appropriate, to resolve the dispute.
- (2) The tribunal may not make an order under this section without giving the lessor or provider an opportunity to be heard on the application.

**431 Different applications may be decided together**

If different applications about an agreement are made to a tribunal by the parties or either party, the tribunal may consider and decide the applications at the same time.



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### **432 Joining applications**

A tribunal may allow an application of a subtenant to be joined with an application of the lessor or tenant.

### **433 Relevant matters for deciding whether a person is a boarder or lodger**

- (1) Subsection (2) applies if, in relation to an application for an order under this Act, the tribunal is required to decide whether a person is a boarder or a lodger.
- (2) The tribunal must have regard to the following—
  - (a) the extent to which the person has control over premises;
  - (b) the extent to which another person, receiving an amount from the person for the right to reside at the premises, has control of the premises;
  - (c) whether another person, receiving an amount from the person for the right to reside at the premises, also resides at the premises;
  - (d) the provision of services to the person;
  - (e) whether the person shares facilities, including the bathroom and kitchen facilities;
  - (f) anything else the tribunal considers relevant.

### **433A Particular applications to be heard in private**

- (1) A proceeding before the tribunal about an application made to the tribunal must be held in private if—
  - (a) the application is made under section 245 or 321; or
  - (b) the application is made under section 312 and the applicant is the domestic associate of the other cotenant or another cotenant; or
  - (c) the application is made under section 323 and the applicant is the domestic associate of the tenant.

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- (2) In this section—
- domestic associate* means a person in any of the following relationships—
- (a) an intimate personal relationship;
  - (b) a family relationship;
  - (c) an informal care relationship.
- (3) A term used in subsection (2)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.

## Chapter 7 Enforcement

### Part 1 Authorised persons

#### 434 Authorised persons under this chapter

- (1) This chapter includes provision for the appointment of authorised persons, and gives authorised persons certain powers.
- (2) The purpose of these provisions is to ensure that the authority has available to it suitably qualified persons who can help the authority properly deal with issues about compliance with this Act.

#### 435 Appointment

- (1) The authority may appoint any of the following persons as authorised persons—
  - (a) officers of the authority;

- (b) officers or employees of a department;
  - (c) other persons prescribed under a regulation.
- (2) The authority may appoint a person as an authorised person only if—
- (a) in the authority’s opinion, the person has the necessary expertise or experience to be an authorised person; or
  - (b) the person has satisfactorily finished training approved by the authority.

#### **436 Limitation of authorised person’s powers**

- (1) The powers of an authorised person may be limited—
- (a) under a regulation; or
  - (b) under a condition of appointment; or
  - (c) by written notice of the authority given to the authorised person.
- (2) Notice under subsection (1)(c) may be given orally, but must be confirmed in writing as soon as practicable.

#### **437 Authorised person’s conditions of appointment**

- (1) An authorised person holds office on the conditions stated in the instrument of appointment.
- (2) An authorised person—
- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
  - (b) may resign by signed notice of resignation given to the authority; and
  - (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the *main office*).

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- (3) However, an authorised person may not resign from the office of authorised person (the *secondary office*) under subsection (2)(b) if a term of the authorised person's employment to the main office requires the authorised person to hold the secondary office.

#### **438 Authorised person's identity card**

- (1) The authority must give each authorised person an identity card.
- (2) The identity card must—
  - (a) contain a recent photograph of the authorised person; and
  - (b) be signed by the authorised person; and
  - (c) include an expiry date; and
  - (d) identify the person as an authorised person under this Act.
- (3) A person who ceases to be an authorised person must return his or her identity card to the authority within 21 days after the person ceases to be an authorised person, unless the person has a reasonable excuse for not returning it.

Maximum penalty—20 penalty units.

- (4) This section does not prevent the giving of a single identity card to a person under this section and for other provisions, Acts or purposes.

#### **439 Production or display of authorised person's identity card**

- (1) An authorised person may exercise a power under this Act in relation to someone else (the *other person*) only if the authorised person—
  - (a) first produces his or her identity card for the other person's inspection; or

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- (b) has the identity card displayed so it is clearly visible to the other person.
  - (2) However, if for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.

## **Part 2 Powers of authorised persons for places**

### **440 Entry to places**

- (1) An authorised person may enter a place under this part if—
  - (a) its occupier agrees to the entry; or
  - (b) the entry is permitted by a warrant.
- (2) An authorised person, without the occupier's agreement or a warrant, may—
  - (a) enter a place when it is open to the public; or
  - (b) enter land to ask for the occupier's agreement to the authorised person entering the land or a building or structure on the land.
- (3) Unless an entry under this part is made under the authority of a warrant, the entry must be made at a reasonable time.

### **441 Warrants for entry**

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and must state the grounds on which the warrant is sought.

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- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application be given by statutory declaration.

- (4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity (the *evidence*) that may provide evidence of the commission of an offence against this Act; and
  - (b) the evidence is at the place, or may be at the place within the next 7 days.
- (5) The warrant must state—
- (a) the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this Act; and
  - (b) the evidence for which the warrant is issued; and
  - (c) the hours of the day or night when entry may be made; and
  - (d) the day (within 14 days after the warrant’s issue) when the warrant ends.
- (6) The magistrate must record the reasons for issuing the warrant.

#### **442 Warrants—applications made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person’s remote location.

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- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
  - (3) The authorised person may apply for the warrant before the application is sworn.
  - (4) After issuing a warrant, the magistrate must immediately fax a copy (the *facsimile warrant*) to the authorised person if it is reasonably practicable to fax the copy.
  - (5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person—
    - (a) the magistrate must—
      - (i) record on the warrant the reasons for issuing the warrant; and
      - (ii) tell the authorised person the date and time the warrant was signed; and
      - (iii) tell the authorised person the warrant's terms; and
    - (b) the authorised person must write on a form of warrant (the *warrant form*)—
      - (i) the magistrate's name; and
      - (ii) the date and time the magistrate signed the warrant; and
      - (iii) the warrant's terms.
  - (6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the magistrate.
  - (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
    - (a) the sworn application; and
    - (b) if a warrant form was completed by the authorised person—the completed warrant form.

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- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) Unless the contrary is proved, a court must presume a power exercised by an authorised person was not authorised by a warrant issued under this section if—
  - (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence.

#### **443 Authorised person's general powers for places**

- (1) An authorised person who enters a place under this part may—
  - (a) search any part of the place; or
  - (b) examine, inspect, test, photograph or film anything at the place; or
  - (c) copy a document at the place; or
  - (d) seize a document at the place if the authorised person reasonably believes the document is evidence of an offence against this Act and the seizure is necessary to prevent the document—
    - (i) being hidden, lost or destroyed; or
    - (ii) being used to commit, continue or repeat the offence; or
  - (e) take into the place any persons, equipment and materials the authorised person reasonably requires for exercising a power in relation to the place; or
  - (f) require a person at the place or the occupier of the place, to give the authorised person reasonable help for the exercise of the powers mentioned in paragraphs (a) to (e).



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- (2) A person who is required by an authorised person under subsection (1)(f) to give the authorised person reasonable help for the exercise of a power must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

- (3) If the help is required to be given by—
- (a) answering a question; or
  - (b) producing a document (other than an authority or other document required to be kept by the person under this Act or another Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

- (4) This section applies to an authorised person who enters a place to get the occupier's agreement only if the agreement is given or the entry is otherwise authorised.

## Part 3 Other enforcement matters

### 444 Procedure after document seized

- (1) As soon as practicable after a document is seized by an authorised person under section 443, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) Until the document is returned, the authorised person must allow a person who would be entitled to the seized document if it were not in the authorised person's possession to copy it.
- (3) The authorised person must return the seized document to the person—
- (a) at the end of 1 year; or

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- (b) if a proceeding for an offence involving it is started within 1 year—at the end of the proceeding and any appeal from the proceeding.
- (4) Despite subsection (3), the authorised person must return the seized document to the person if the authorised person—
  - (a) stops being satisfied its continued retention as evidence is necessary; and
  - (b) is satisfied its return is not likely to result in its use in repeating the offence.

#### **445 Power to require information from certain persons**

- (1) This section applies if an authorised person suspects, on reasonable grounds, that—
  - (a) an offence against this Act has been committed; and
  - (b) a person (the *nominated person*) may be able to give information about the offence.
- (2) The authorised person may, by written notice given to the nominated person, require the nominated person to give information about the offence to the authorised person at a reasonable time and place stated in the notice.
- (3) When making the requirement, the authorised person must warn the nominated person it is an offence to fail to give the information, unless the person has a reasonable excuse.
- (4) The nominated person must comply with the requirement, unless the person has a reasonable excuse.  
Maximum penalty—10 penalty units.
- (5) It is a reasonable excuse for the nominated person to fail to give information if giving the information might tend to incriminate the person.
- (6) The nominated person does not commit an offence against this section if—

- (a) the information sought by the authorised person is not in fact relevant to the offence; or
- (b) an offence is not proved to have been committed.

#### **446 False or misleading information**

- (1) A person must not—
  - (a) state anything to an authorised person the person knows is false or misleading in a material particular; or
  - (b) omit from a statement made to an authorised person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—20 penalty units.

- (2) It is enough for a complaint for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.

#### **447 False or misleading documents**

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

Maximum penalty—20 penalty units.

- (2) However, the person does not commit an offence against subsection (1) if, when giving the document, the person—
  - (a) informs the authorised person, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the authorised person if the person has, or can reasonably obtain, the correct information.
- (3) It is enough for a complaint for an offence against subsection (1) to state that the document was false or misleading to the person's knowledge.

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#### **448 Authorised person to give notice of damage**

- (1) This section applies if—
  - (a) an authorised person damages anything in the exercise of a power under part 2; or
  - (b) a person who is authorised by an authorised person to take action under this Act damages anything in taking the action.
- (2) The authorised person must promptly give written notice of the particulars of the damage to the person who appears to the authorised person to be the thing's owner.
- (3) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the authorised person's control, the authorised person may state this in the notice.
- (4) If, for any reason, it is not practicable to comply with subsection (2), the authorised person must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure the notice is left in a reasonably secured way in a conspicuous position.
- (5) This section does not apply to damage the authorised person believes, on reasonable grounds, is trivial.

#### **449 Compensation**

- (1) A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under part 2, including, for example, in complying with a requirement made of the person under the part.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or

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- (b) an offence against this Act brought against the person making the claim for compensation.
  - (3) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
  - (4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

#### **450 Agreement to entry**

- (1) This section applies if an authorised person seeks the agreement of an occupier of a place to an authorised person entering the place under part 2.
- (2) In seeking the agreement, the authorised person must inform the occupier—
  - (a) of the purpose of the entry; and
  - (b) that information obtained by the authorised person may be used in evidence in court; and
  - (c) that the occupier is not required to agree to the entry.
- (3) If the agreement is given, the authorised person may ask the occupier to sign an acknowledgement of the occupier's agreement.
- (4) The acknowledgement must—
  - (a) state the occupier was informed—
    - (i) of the purpose of the entry; and
    - (ii) that information obtained by the authorised person may be used in evidence in court; and
    - (iii) that the occupier was not required to agree to the entry; and
  - (b) state the occupier agreed to the authorised person entering the place and exercising powers under this Act; and

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- (c) state the time and date the agreement was given.
- (5) If the occupier signs an acknowledgement of agreement, the authorised person must immediately give a copy to the occupier.

#### **451 Evidence of agreement**

- (1) This section applies to a proceeding if—
  - (a) a question arises whether an occupier of a place agreed to the entry of the place by an authorised person under part 2; and
  - (b) an acknowledgement of the occupier's agreement is not produced in evidence.
- (2) In a proceeding to which this section applies, the court may presume the occupier did not agree to the entry, unless the contrary is proved.

#### **452 Obstruction of authorised person**

- (1) In this section—

*authorised person* includes a person who is authorised by an authorised person to take action under part 2.
- (2) A person must not obstruct an authorised person in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

#### **453 Impersonation of authorised person**

A person must not pretend to be an authorised person.

Maximum penalty—80 penalty units.

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## Chapter 8      **Causing nuisance in moveable dwelling parks**

### **454      Behaviour in moveable dwelling park causing serious nuisance**

A person causes a serious nuisance in a moveable dwelling park if, while in the park, the person causes a serious nuisance to residents of, or anyone else in, the park.

*Editor's note—*

For the power to give directions to persons causing a serious nuisance and remove persons from a moveable dwelling park see the *Police Powers and Responsibilities Act 2000*, chapter 19 (Other powers), part 4 (Powers relating to nuisance in moveable dwelling parks).

*Examples of serious nuisance—*

- 1    A person assaults a resident or someone else.
- 2    A person uses threatening or abusive language towards a resident or someone else.
- 3    A person behaves in a riotous, violent, disorderly, indecent, offensive or threatening way towards a resident or someone else.
- 4    A person causes substantial, unreasonable annoyance to a resident or someone else.
- 5    A person causes substantial, unreasonable disruption to the privacy of a resident or someone else.
- 6    A person wilfully damages property of a resident or someone else.

### **455      Application to tribunal for order to exclude person from park**

- (1)   The owner of a moveable dwelling park may apply to a tribunal for an order excluding a person from the park because of the person's behaviour in the park.
- (2)   The application may be made in a proceeding for an offence for contravention of a final nuisance direction or at any other time.

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- (3) If the application is not made in a proceeding for an offence mentioned in subsection (2), the applicant must give written notice of the application to the person at least 21 days before the application is heard.
- (4) The notice must state particulars of the claimed behaviour.

#### **456 Order of tribunal excluding person from park**

- (1) If an application is made to a tribunal for an order excluding a person from a moveable dwelling park because of the person's behaviour in the park, the tribunal may make an order prohibiting a person from entering, or being in, the park in a stated period (not longer than 1 year).
- (2) The tribunal may make the order only if it is satisfied—
  - (a) the person's behaviour justifies being excluded from the park; and
  - (b) it is appropriate to exclude the person from the park.
- (3) In deciding whether the person's behaviour justifies being excluded from the park, the tribunal may have regard to—
  - (a) the nature of the behaviour, including, in particular, whether the behaviour involved violence and, if violence is involved, the degree of the violence; and
  - (b) whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences; and
  - (c) the number of persons adversely affected by the behaviour; and
  - (d) whether persons adversely affected by the behaviour have acted in a reasonable way; and
  - (e) the time of day the behaviour was engaged in; and
  - (f) whether any nuisance directions have been given to the person about the person's behaviour in the park and, if directions have been given—
    - (i) the nature of the behaviour for which the directions were given; and



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- (ii) the number and type of directions given; and
  - (iii) the frequency of the directions.
- (4) In deciding whether it is appropriate to exclude the person from the park, the tribunal may have regard to—
- (a) whether the person is residing in a moveable dwelling in the park; and
  - (b) if the person is residing in the park—
    - (i) whether the person’s spouse resides with the person; and
    - (ii) whether any dependant of the person (including, in particular, any child of the person) resides with the person; and
    - (iii) whether the person has access to other accommodation; and
  - (c) the person’s general health and welfare.
- (5) Subsections (3) and (4) do not limit the issues to which the tribunal may have regard.
- (6) A person must not contravene an order of a tribunal prohibiting the person from entering, or being in, a moveable dwelling park, unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (6)—20 penalty units.

## Chapter 9 Tenancy databases

### 457 Definitions for ch 9

In this chapter—

*list*, a person on a tenancy database, means—

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- (a) enter personal information about the person into the database; or
- (b) give personal information about the person to someone else for entry into the database.

***personal information*** means—

- (a) an individual's name; or
- (b) information or an opinion, whether true or not, about an identified individual.

***tenancy database*** means a database (whether or not stored in a computer) containing personal information—

- (a) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or
- (b) entered into the database for reasons relating to, or arising from, the occupation of residential premises under a residential tenancy agreement.

#### **458 Non-application to internal databases**

- (1) This chapter does not apply to a tenancy database kept by an entity for use only by that entity or its employees or agents.
- (2) In this section—  
***entity*** includes a department.

#### **459 Restriction on listing**

- (1) A person (the ***listing person***) must not list another person on a tenancy database unless—
  - (a) the other person was named as a tenant in a residential tenancy agreement; and
  - (b) the agreement has ended; and
  - (c) there is a reason prescribed under a regulation for listing the other person; and
  - (d) the listing person has—

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- (i) given written notice to the other person about the personal information it is proposed to enter, or give for entry, into the database (the *information to be entered*); or
  - (ii) taken other reasonable steps to disclose to the other person the information to be entered; and
- (e) the listing person has given the other person a reasonable opportunity to review the information to be entered.
- (2) Subsection (1)(d) and (e) do not apply if the listing person can not locate the other person after making reasonable enquiries.
  - (3) Subsection (1)(e) does not apply to personal information that, at the time of the listing, is publicly available.

*Example of publicly available information—*

personal information obtained from publicly available court records

#### **460 Application to tribunal about breach**

- (1) A person (the *tenant*) who claims there has been a breach of section 459, relating to the listing of the tenant on a tenancy database, may apply to a tribunal about the breach.
- (2) The application may only be made within 6 months after the tenant becomes aware of the breach.
- (3) If the tribunal decides there has been a breach, it may—
  - (a) order a person to take stated steps to remedy the breach; or
  - (b) make another order it considers appropriate.

#### **461 Application to tribunal about incorrect or unjust listing**

- (1) A person (the *tenant*) who has been listed on a tenancy database may apply to a tribunal for an order under this section.
- (2) The tribunal may order a person to take stated steps to—

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- (a) have the tenant's name or other personal information about the tenant omitted from the database; or
  - (b) have stated changes made to the personal information about the tenant that is included in the database.
- (3) The tribunal may make the order only if it is satisfied—
- (a) the database includes personal information about the tenant that is incorrect or misleading; or

*Example for paragraph (a)—*

X is listed on a tenancy database for a reason relating to a minor matter. The database does not give details of the matter but includes a notation implying that X may be responsible for a serious breach of the Act.

- (b) the inclusion of the tenant's name or other personal information about the tenant in the database is unjust in the circumstances, having regard to—
  - (i) the reason for the listing; and
  - (ii) the tenant's involvement in the acts or omissions giving rise to the reason for the listing; and
  - (iii) the adverse consequences suffered, or likely to be suffered, by the tenant because of the listing; and
  - (iv) any other relevant matter.

*Examples for paragraph (b)—*

- 1 Y is listed on a tenancy database for a reason relating to damage caused to premises by Y's spouse in the course of an incident of domestic violence. Because of the listing, Y can not obtain appropriate and affordable accommodation.
- 2 Z is listed on a tenancy database for a reason relating to an amount of rent that remained unpaid for 2 months after it was payable. During that period, Z was in hospital recovering from a serious accident and unable to make arrangements for payment.

- (4) To remove doubt, a tribunal may make an order under this section against any person including the following—
- (a) a person who owns or operates a tenancy database;
  - (b) a person who lists another person on a tenancy database.

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**462 Application to tribunal about proposed listing**

- (1) A person (the *tenant*) who is aware of a proposed listing of the tenant on a tenancy database may apply to a tribunal for an order under this section.
- (2) The tribunal may—
  - (a) order a person not to make the proposed listing; or
  - (b) order a person not to make the proposed listing except with stated changes or on stated conditions; or
  - (c) make another order it considers appropriate.
- (3) The tribunal may make the order only if it is satisfied that, if the proposed listing were made, the tribunal could make an order about the listing under section 460 or 461.

**463 Offence of contravening tribunal order**

- (1) A person must comply with an order of a tribunal made under this chapter.

Maximum penalty—50 penalty units.

- (2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—5 penalty units.

**464 Order for compensation**

- (1) This section applies if a court convicts a person of an offence against section 463.
- (2) The court may also make an order requiring the convicted person to pay to a stated person, within a stated period, an amount the court considers appropriate as compensation for loss or damage caused by the relevant listing.

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- (3) The person who is entitled to payment under the order may enforce the order by filing with a court of competent jurisdiction—
  - (a) a copy of the order, certified as a true copy by the registrar of the convicting court; and
  - (b) an affidavit stating the amount remaining unpaid.
- (4) The order is then enforceable as if it were an order of the court in which the copy and affidavit are filed.

## **Chapter 10 Residential Tenancies Authority**

### **Part 1 Establishment of authority**

#### **465 Establishment of authority**

The Residential Tenancies Authority is established.

#### **466 Legal status of authority**

The authority—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

#### **467 Authority represents the State**

- (1) The authority represents the State.
- (2) Without limiting subsection (1), the authority has all the privileges and immunities of the State.

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## **Part 2**                              **Functions and powers of authority**

### **468 Authority's functions**

The authority's functions are—

- (a) to ensure the proper administration and enforcement of this Act; and
- (b) to receive, hold and pay rental bonds under this Act; and
- (c) to give advice to the Minister about—
  - (i) residential tenancy issues and rooming accommodation issues generally; and
  - (ii) the operation of this Act in particular; and
- (d) without limiting paragraph (c), to give advice to the Minister about—
  - (i) the application of this Act to residential tenancy agreements, premises or entities; and
  - (ii) the application of this Act to rooming accommodation agreements, rental premises or entities; and
- (e) to provide information, educational and advisory services about the operation of this Act; and
- (f) to collect and analyse information about residential tenancy issues and rooming accommodation issues; and
- (g) to provide a conciliation service to parties to disputes about residential tenancy agreements and rooming accommodation agreements; and
- (h) to intervene in, or support, proceedings about the application of this Act to residential tenancy agreements and rooming accommodation agreements; and

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- (i) to perform other functions given to the authority under this Act or another Act; and
- (j) to perform functions incidental to its other functions.

#### **469 Authority's powers**

- (1) The authority has all the powers of an individual and may, for example—
  - (a) enter into contracts; and
  - (b) acquire, hold, deal with and dispose of property; and
  - (c) appoint agents and attorneys; and
  - (d) charge for, and fix conditions for the supply of, goods, services and information it supplies; and
  - (e) engage consultants; and
  - (f) do anything else necessary or convenient to be done in performing its functions.
- (2) Without limiting subsection (1), the authority has the powers given to it under this or another Act.
- (3) The authority may exercise its powers inside and outside Queensland, including outside Australia.

#### **470 Reserve power of Minister to give directions in public interest**

- (1) The Minister may give the authority a written direction if the Minister is satisfied it is necessary to give the direction in the public interest because of exceptional circumstances.
- (2) The authority must ensure the direction is complied with.
- (3) Before giving a direction, the Minister must consult with the authority.
- (4) The Minister must cause a copy of the direction to be gazetted within 21 days after it is given.



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## **Part 3                      The board**

### **471      The board**

The authority has a board of directors.

### **472      Role of the board**

- (1) The board is responsible for the way the authority performs its functions and exercises its powers.
- (2) Without limiting subsection (1), it is the board's role to ensure the authority performs its functions in an appropriate, effective and efficient way.

### **473      Composition of board**

- (1) The board consists of the chairperson and 6 other directors.
- (2) The members must include representatives of industry and consumer organisations.
- (3) The Governor in Council appoints the chairperson and other directors.

### **474      Duration of appointment**

- (1) The appointment of a director is for the term (not longer than 3 years) decided by the Governor in Council.
- (2) The office of a director becomes vacant if—
  - (a) the director resigns by signed notice of resignation given to the Minister; or
  - (b) the director is found guilty of an indictable offence or an offence against this Act; or
  - (c) the director becomes—
    - (i) an employee of the employing office or of another government entity performing work for the

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- authority under a work performance arrangement;  
or
  - (ii) an employee or contractor of the authority; or
  - (d) the director's appointment is ended by the Governor in Council under subsection (3).
- (3) The Governor in Council may, at any time, end the appointment of a director for any reason or none.

#### **475 Conditions of appointment**

- (1) A director is appointed on a part-time basis.
- (2) A director is entitled to be paid the remuneration and allowances fixed by the Governor in Council.

## **Part 4 Proceedings of the board**

#### **476 Time and place of meetings**

- (1) The board may hold its meetings when and where it decides.
- (2) However, the board must meet at least once every 3 months.
- (3) The chairperson—
  - (a) may at any time call a meeting of the board; and
  - (b) must call a meeting if asked by at least 25% of the other directors.

#### **477 Conduct of proceedings**

- (1) The chairperson presides at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent, the director chosen by the directors present presides.

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- (3) At a meeting of the board—
    - (a) a quorum is at least half the directors appointed; and
    - (b) a question is decided by a majority of the votes of the directors present and voting; and
    - (c) each director present has a vote on each question to be decided and, if the votes are equal, the director presiding has a casting vote.
  - (4) The board may otherwise conduct its proceedings (including its meetings) as it considers appropriate.
  - (5) The board may hold meetings, or permit directors to take part in meetings, by telephone, closed-circuit television or another form of communication.
  - (6) A director who takes part in a meeting of the board under subsection (5) is taken to be present at the meeting.
  - (7) A resolution is a valid resolution of the board, even though it is not passed at a meeting of the board, if—
    - (a) at least half the directors give written agreement to the resolution; and
    - (b) notice of the resolution is given under procedures approved by the board.

#### **478 Disclosure of interests**

- (1) A director must disclose to a meeting of the board a direct or indirect financial interest in an issue being considered or about to be considered by the board if—
  - (a) the director, or a person who, under a regulation, is related to the director, has the interest; and
  - (b) the interest could conflict with the proper performance of the director's duties about the consideration of the issue.
- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise directs, the director must not be

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present when the board considers the issue, or take part in a decision of the board on the issue.

- (3) Another director who also has, or who is, under a regulation, related to a person who also has, a direct or indirect financial interest in the issue must not—
  - (a) be present when the board is considering its decision under subsection (2); or
  - (b) take part in making the decision.
- (4) If, because of this section, a director is not present at a meeting of the board for the deliberation of the board about an issue, but there would be a quorum if the director were present, the remaining directors present are a quorum for the board's deliberation or decision about the issue at the meeting.

#### **479 Minutes**

The board must keep minutes of its proceedings.

## **Part 5 Financial matters**

### **480 Application of Financial Administration and Audit Act**

The authority is a statutory body within the meaning of the *Financial Administration and Audit Act 1977*.

*Editor's note—*

*Financial Administration and Audit Act 1977—see the Financial Accountability Act 2009, section 93.*

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**481 Authority is statutory body for Statutory Bodies Financial Arrangements Act 1982**

- (1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the authority is a statutory body.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

**482 Administration budget**

- (1) For each financial year, the authority must develop, adopt and submit to the Minister an administration budget within the time the Minister directs.
- (2) An administration budget has no effect until approved by the Minister.
- (3) During a financial year the authority may develop, adopt and submit to the Minister amendments to its administration budget.
- (4) An amendment has no effect until approved by the Minister.

## **Part 6 Other things about the authority**

**483 Authority may enter into work performance arrangements**

- (1) The authority may enter into, and give effect to, a work performance arrangement with—
  - (a) the employing office; or
  - (b) the appropriate authority of another government entity.

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- (2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (3) For example, a work performance arrangement may provide for—
  - (a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and
  - (b) the authorising of a person to exercise powers for the arrangement; and
  - (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.
- (4) A person performing work for the authority under a work performance arrangement entered into under subsection (1)—
  - (a) is not employed by the authority; and
  - (b) remains an employee of the employing office, or an employee of the other government entity whose appropriate authority is a party to the arrangement.
- (5) To remove any doubt, it is declared that the authority does not have power to employ a person performing work for the authority under a work performance arrangement entered into under subsection (1).

#### **484 Seal**

Judicial notice must be taken of the imprint of the authority's seal appearing on a document, and the document must be presumed to have been properly sealed unless the contrary is proved.

#### **485 Application of certain Acts**

The authority is—

- (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
- (b) a relevant EEO agency under the *Public Service Act 2008*, chapter 2.

#### **486 Delegation**

The authority may delegate its powers to a director or an officer of the authority.

## **Part 7 Chief executive officer**

#### **487 Chief executive officer**

- (1) The authority must have a chief executive officer (however called).
- (2) The chief executive officer is responsible for ensuring the authority is managed as required by the policies of the board.
- (3) The chief executive officer is appointed by the Governor in Council.
- (4) A director must not be appointed as chief executive officer.
- (5) The chief executive officer is to be appointed under this Act and not under the *Public Service Act 2008*.
- (6) The chief executive officer holds office for the term (not longer than 5 years) decided by the Governor in Council.
- (7) The chief executive officer holds office on the conditions (including conditions for remuneration, allowances and remuneration when the appointment ends) fixed by the authority.

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**488 Chief executive officer not to engage in other paid employment**

The chief executive officer must not, without the board's approval—

- (a) engage in paid employment outside the duties of the office of chief executive officer; or
- (b) actively take part in the activities of a business, or in the management of a corporation carrying on business.

**489 Acting chief executive officer**

The Governor in Council may appoint a person, who is eligible for appointment as chief executive officer, to act in the office of chief executive officer during—

- (a) any vacancy, or all vacancies, in the office; or
- (b) any period, or all periods, when the chief executive officer is absent from duty, or can not, for another reason, perform the duties of the office.

**490 Delegation by chief executive officer**

- (1) The chief executive officer may delegate the chief executive officer's powers under this Act to another appropriately qualified officer of the authority.
- (2) In this section—

*appropriately qualified*, for a power, means having qualifications, experience or standing appropriate to exercise the power.



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## **Chapter 11 Residential Tenancies Employing Office**

### **Part 1 Establishment and functions of employing office**

#### **491 Establishment of employing office**

- (1) The Residential Tenancies Employing Office is established.
- (2) The employing office consists of—
  - (a) the executive officer; and
  - (b) the employees of the employing office.
- (3) The employing office is a separate entity from the authority.

#### **492 Employing office represents the State**

- (1) The employing office represents the State.
- (2) Without limiting subsection (1), the employing office has the status, privileges and immunities of the State.

#### **493 Functions of employing office**

- (1) The main functions of the employing office are—
  - (a) entering into, for the State, a work performance arrangement with the authority under which employees of the employing office perform work for the authority; and
  - (b) employing, for the State, staff to perform work for the authority under the work performance arrangement; and
  - (c) doing anything incidental to the discharge of the functions mentioned in paragraphs (a) and (b).

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- (2) Also, the employing office has any other function conferred on the employing office under this or another Act.
- (3) This section does not limit the employing office's power to enter into and give effect to a work performance arrangement under section 498 with a government entity other than the authority.

## **Part 2                      Executive officer**

### **494      Appointment of executive officer**

- (1) There is to be an executive officer of the employing office.
- (2) The executive officer is to be appointed by the Governor in Council.
- (3) The executive officer is appointed under this Act and not under the *Public Service Act 2008*.

### **495      Executive officer acting for employing office**

- (1) The employing office acts through the executive officer.
- (2) Anything done by the executive officer in the name of, or for, the employing office is taken to have been done by the employing office.

### **496      Delegation by executive officer**

- (1) The executive officer may delegate the executive officer's powers under this Act to another appropriately qualified officer of the employing office.
- (2) In this section—  
*appropriately qualified*, for a power, means having qualifications, experience or standing appropriate to exercise the power.

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## Part 3                      Staff of employing office

### 497      **Employing office may employ staff**

- (1) The employing office may, for the State, employ staff.
- (2) A person employed under subsection (1) is an *employee of the employing office*.
- (3) The employing office may decide the terms of employment of the employees of the employing office.
- (4) Subsection (3) applies subject to any relevant industrial instrument.
- (5) Employees of the employing office are employed under this Act and not under the *Public Service Act 2008*.

### 498      **Employing office may enter into work performance arrangements**

- (1) The employing office may, for the State, enter into and give effect to a work performance arrangement with—
  - (a) the authority; or
  - (b) the appropriate authority of another government entity.
- (2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (3) For example, a work performance arrangement may provide for—
  - (a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and
  - (b) the authorising of a person to exercise powers for the arrangement; and
  - (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.

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- (4) A person performing work for the authority or other government entity under a work performance arrangement entered into under subsection (1)—
  - (a) is not employed by the authority or other government entity; and
  - (b) remains an employee of the employing office.
- (5) To remove any doubt, it is declared that the authority or another government entity does not have power to employ a person performing work for the authority or other government entity under a work performance arrangement entered into under subsection (1).

## Part 4 Other provisions

### 499 Employing office is statutory body

- (1) The employing office is a statutory body under—
  - (a) the *Financial Administration and Audit Act 1977*; and
  - (b) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) For applying the *Financial Administration and Audit Act 1977* to the employing office as a statutory body—
  - (a) the executive officer is taken to be the chairperson of the employing office; and
  - (b) section 46G(4) of that Act is taken to require the executive officer to consider the annual financial statements and the auditor-general's report mentioned in the subsection as soon as practicable after they are received by the employing office; and
  - (c) section 46H of that Act is taken to require the executive officer to consider any observations, suggestions or comments given to the executive officer under section

93(4) of that Act as soon as practicable after the executive officer receives them.

*Editor's note—*

*Financial Administration and Audit Act 1977—see the Financial Accountability Act 2009, section 93.*

## **500 Application of Crime and Misconduct Act 2001**

The employing office is a unit of public administration under the *Crime and Misconduct Act 2001*.

# **Chapter 12 Legal proceedings**

## **Part 1 Application**

### **501 Application of ch 12**

This chapter applies to a proceeding under this Act.

## **Part 2 Evidence**

### **502 Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive officer's appointment;
- (b) an authorised person's appointment;
- (c) the chairperson's appointment;

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- (d) the authority of the chief executive officer, an authorised person or the chairperson, to do anything under this Act.

### **503 Signatures**

A signature purporting to be the signature of the chief executive officer, the chairperson or an authorised person is evidence of the signature it purports to be.

### **504 Other evidentiary aids**

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

- (a) a stated document is—
  - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or
  - (ii) a notice, or a copy of a notice, given under this Act; or
  - (iii) a record, or a copy of a record, kept under this Act; or
  - (iv) a document, or a copy of a document, kept under this Act;
- (b) on a stated day, a stated person was given a stated notice, order, requirement or direction under this Act.

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

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

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**506 Condition reports for residential tenancy**

- (1) In a proceeding before a tribunal, a copy of a condition report stating the condition of stated premises and its inclusions, is evidence of the condition of the premises and inclusions—
  - (a) if the report is signed by the tenant—when the report was signed; or
  - (b) if the report is not signed by the tenant—when the report was made.
- (2) However, if the report is signed by the tenant and marked to show the tenant's disagreement with the statement, the report is evidence of the condition of the premises and inclusions when the report was signed by the tenant only as far as its contents are unmarked.

**507 Condition report for rooming accommodation**

- (1) In a proceeding before a tribunal, a copy of a condition report stating the condition of a room in rental premises and the facilities in the room is evidence of the condition of the room and facilities—
  - (a) if the report is signed by the resident—when the report was signed; or
  - (b) if the report is not signed by the resident—when the report was made.
- (2) However, if the report is signed by the resident and marked to show the resident's disagreement with the statement, the report is evidence of the condition of the room and facilities when the report was signed by the resident only as far as its contents are unmarked.

**508 Rental bonds**

In a proceeding, a certificate purporting to be signed for the authority stating that at a stated time, or during a stated period, the authority held, or did not hold, a rental bond for a stated

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residential tenancy agreement or rooming accommodation agreement is evidence of the matter stated.

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

- (1) A tribunal may have regard to the matters stated in subsection (2) in—
  - (a) deciding under section 260(b) whether, at a particular time, a provider held a reasonable belief that a resident had abandoned the resident's room; or
  - (b) deciding under section 366(5) whether, at a particular time, a resident had abandoned the resident's room.
- (2) Indications that a resident has abandoned the resident's room include the following—
  - (a) a failure of the resident to pay rent under the rooming accommodation agreement;
  - (b) the presence at the rental premises of uncollected mail, newspapers or other material for the resident;
  - (c) reports from other residents or other persons indicating the resident has abandoned the room;
  - (d) the absence of household goods in the room;
  - (e) a failure of the resident to respond to a notice given to the resident under chapter 4, part 2 about a proposed entry to the room.

## **Part 3 Proceedings**

### **510 Summary offences**

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



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- (2) The proceeding must start within the later of the following periods to end—
- (a) 1 year after the commission of the offence;
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **511 Attempts to commit offences**

- (1) A person who attempts to commit an offence against this Act commits an offence.

Maximum penalty—half the maximum penalty for committing the attempted offence.

- (2) Section 4 of the Criminal Code applies to the attempt.

### **512 Responsibility for act or omission of representative**

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

- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

- (4) In this section—

*representative* means—

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

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

### **513 Executive officers must ensure corporation complies with Act**

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

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

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

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## **Part 4                      Offence about giving false or misleading document to authority**

### **514    False or misleading documents**

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

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the authority, to the best of the person’s ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.
- (3) It is enough for a complaint for an offence against subsection (1) to state that the document was false or misleading to the person’s knowledge.

## **Chapter 13      Miscellaneous**

### **515    Authority may provide addresses to tribunal**

- (1) This section applies if—
- (a) an application is made to the tribunal; and
  - (b) the address of a party to the application is not provided or the tribunal is satisfied the address provided for the party is not the party’s current address.
- (2) The tribunal may request the authority to provide the tribunal with the address for the party held by the authority.

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- (3) The authority may provide the address requested to the tribunal.

## **516 Applications for more than prescribed amount**

- (1) This section applies to an application if—
  - (a) a provision of this Act provides that the application may be made to a tribunal; and
  - (b) the application seeks the payment of an amount (the *application amount*) greater than the prescribed amount under the QCAT Act.
- (2) In a provision of this Act about the application, a reference to a tribunal is taken to be a reference to a court with jurisdiction for the application amount.
- (3) A provision of this Act about the application applies with necessary changes as if the tribunal were the court.

## **517 Protection from liability**

- (1) In this section—

*official* means—

  - (a) the chief executive officer; and
  - (b) an authorised person; and
  - (c) an employee of the employing office or of another government entity who performs work for the authority under a work performance arrangement; and
  - (d) an employee of the authority; and
  - (e) a person acting under the direction of the chief executive officer or an authorised person.
- (2) An official does not incur civil liability for an act or omission done honestly and without negligence under this Act.
- (3) A liability that would, apart from this section, attach to an official attaches instead to the State.

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**518 Disclosure of interests**

- (1) This section applies to a relevant employee if—
  - (a) the employee, or a person who, under a regulation, is related to the employee, has a direct or indirect financial interest in an issue being decided, or about to be decided by the authority (whether or not under a delegation from the authority); and
  - (b) the interest could conflict with the proper performance of the employee's duties about the decision.
- (2) As soon as practicable after the employee becomes aware of the facts causing this section to apply to the employee, the employee must disclose the nature of the interest to the authority.
- (3) In this section—

*relevant employee* means—

  - (a) an employee of the employing office or of another government entity who performs work for the authority under a work performance arrangement; or
  - (b) an employee of the authority.

**519 Approved forms**

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

**520 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
  - (a) impose a fee; or
  - (b) impose a penalty of not more than 20 penalty units for a contravention of a regulation.

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## **521 Non-application of Act to long-term leases on Hamilton Island**

- (1) From the commencement day, this Act does not apply to a long-term lease entered into in relation to premises on Hamilton Island even if the lease is for, or for purposes that include, residential purposes.
- (2) To remove any doubt, it is declared that subsection (1) does not apply to a sublease of a long-term lease mentioned in subsection (1) if the sublease is not a long-term lease.
- (3) This section applies to a long-term lease mentioned in subsection (1) even if the lease was entered into before the commencement day.
- (4) In this section—

*commencement day* means the day this section commences.

*long-term lease* means a lease or sublease for a term, including renewal options, of at least 99 years.

*sublease* includes a sub-sublease and sub-sub-sublease.

## **522 Non-application of Act to long-term leases for Hayman Island**

- (1) From the commencement day, this Act does not apply to a long-term lease entered into in relation to premises on Hayman Island even if the lease is for, or for purposes that include, residential purposes.
- (2) To remove any doubt, it is declared that subsection (1) does not apply to a sublease of a long-term lease mentioned in subsection (1) if the sublease is not a long-term lease.
- (3) This section applies to a long-term lease mentioned in subsection (1) even if the lease was entered into before the commencement day.
- (4) In this section—

*commencement day* means the day this section commences.

*long-term lease* means a lease or sublease for a term, including renewal options, of at least 99 years.

*sublease* includes a sub-sublease and sub-sub-sublease.

### **523 Non-application of Act to long-term leases for Pacific Mirage**

- (1) From the commencement day, this Act does not apply to a long-term lease entered into in relation to premises within Pacific Mirage land even if the lease is for, or for purposes that include, residential purposes.
- (2) To remove any doubt, it is declared that subsection (1) does not apply to a sublease of a long-term lease mentioned in subsection (1) if the sublease is not a long-term lease.
- (3) This section applies to a long-term lease mentioned in subsection (1) even if the lease was entered into before the commencement day.
- (4) In this section—

*commencement day* means the day this section commences.

*long-term lease* means a lease or sublease for a term, including renewal options, of at least 99 years.

*Pacific Mirage* means Perpetual Suburban Lease No. 06/2508 N. C. L. Part A situated in the County of Ward, Parish of Gilston, District of Brisbane, described at Lot 286 on Plan Wd 6317, containing 7796m<sup>2</sup> more or less.

*sublease* includes a sub-sublease and sub-sub-sublease.

### **524 Non-application of Act to long-term leases within prescribed land**

- (1) This Act does not apply to a long-term lease entered into in relation to premises within prescribed land even if the lease is for, or for purposes that include, residential purposes.
- (2) To remove any doubt, it is declared that, subsection (1) does not apply to a sublease of a long-term lease entered into in

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relation to premises within prescribed land if the sublease is not a long-term lease.

(3) This section applies to a long-term lease entered into in relation to premises within prescribed land even if the lease was entered into before the commencement of the regulation under which the land became prescribed land.

(4) In this section—

*long-term lease* means a lease or sublease for a term, including renewal options, of at least 99 years.

*prescribed land* means land prescribed under a regulation.

*sublease* includes a sub-sublease and sub-sub-sublease.

## **525 Giving notice to resident with impaired or limited capacity**

(1) This section applies if—

(a) the provider for rooming accommodation knows that 1 or more administrators for a financial matter have been appointed under the *Guardianship and Administration Act 2000* for a resident of the rooming accommodation; or

(b) the provider for rooming accommodation—

(i) reasonably considers a resident of the rooming accommodation is a person with impaired capacity for a financial matter; and

(ii) knows that 1 or more attorneys for a financial matter have been appointed by the resident under an enduring power of attorney under the *Powers of Attorney Act 1998*; or

(c) a resident, or a person acting for a resident, gives the provider for rooming accommodation written notice—

(i) that the resident has limited capacity to manage the resident's affairs because of language, literacy or other factors; and



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- (ii) in that notice appoints a person to act for the resident in matters arising under the agreement.
- (2) If subsection (1)(a) or (b) applies and a provision of this Act requires the provider to give a notice to the resident—
- (a) the provider must instead give the notice to the person appointed or, if more than 1 person has been appointed, to any 1 of the persons appointed; and
  - (b) the giving of a notice under paragraph (a) is sufficient compliance with the provision.
- (3) If subsection (1)(c) applies and a provision of this Act requires the provider to give a notice to the resident—
- (a) the provider must give the notice to both the resident and the person appointed; and
  - (b) notice under paragraph (a) must be given for compliance with the provision to be sufficient.
- (4) In this section—
- financial matters* see the *Guardianship and Administration Act 2000*, schedule 2, section 1.
- person with impaired capacity*, for a financial matter, means a person who is incapable of—
- (a) understanding the nature and effect of decisions about the matter; or
  - (b) freely and voluntarily making decisions about the matter; or
  - (c) communicating the decisions in some way.

## **526 Reporting a matter relating to the Residential Services (Accreditation) Act**

- (1) This section applies to a person if—
- (a) the person is an authorised person, a public service officer in the department or an officer of the authority; and

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- (b) in the course of carrying out a function or exercising a power under this Act, the person becomes aware of a matter that the person reasonably believes is a contravention of the *Residential Services (Accreditation) Act 2002* or is relevant to a decision under that Act about the registration or accreditation of a residential service.
- (2) The person must report the matter to the chief executive of the department within which that Act is administered, unless—
- (a) the person knows, or reasonably supposes, that the chief executive of that department is aware of the matter; or
  - (b) the person reasonably believes the matter is a trivial contravention of the *Residential Services (Accreditation) Act 2002* or of minor relevance to a decision under that Act about the registration or accreditation of a residential service.

## **527 Confidentiality**

- (1) This section applies to a person—
- (a) who is, or has been, the chief executive officer, a member of the authority's board of directors, an employee of the authority or the employing office, or an authorised person; and
  - (b) who, in the course of administering this Act or because of opportunity provided by involvement in administering this Act—
    - (i) acquired confidential information about someone else; or
    - (ii) gained access to a document containing confidential information about someone else.
- (2) The person must not make a record of the information, disclose the information to anyone else or give access to the document containing the information to anyone else, other than—

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

Maximum penalty—50 penalty units.

- (3) In this section—

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

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

## Chapter 14      **Repeal, savings and transitional provisions**

### Part 1              **Repeal provisions**

#### **528      Repeal of Residential Tenancies Act 1994**

The Residential Tenancies Act 1994 No. 86 is repealed.

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**529 Repeal of Residential Services (Accommodation) Act 2002**

The Residential Services (Accommodation) Act 2002 No. 19 is repealed.

**Part 2 Savings and transitional provisions**

**Division 1 Interpretation**

**530 Definitions for pt 2**

In this part—

*commencement* means the day on which the provision in which the word is used commences.

*corresponding provision*, for a previous provision, means a provision of this Act that is substantially the same as the previous provision.

*existing agreement* means—

- (a) a residential tenancy agreement under the *Residential Tenancies Act 1994*, in force at the commencement, that is a residential tenancy agreement under this Act; or
- (b) a residential service agreement under the *Residential Services (Accommodation) Act 2002*, in force at the commencement, that is either of the following under this Act—
  - (i) a rooming accommodation agreement;
  - (ii) a residential tenancy agreement.

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***previous provision*** means a provision of either of the following as in force immediately before the commencement—

- (a) the *Residential Tenancies Act 1994*;
- (b) the *Residential Services (Accommodation) Act 2002*.

***repealed Act*** means either of the following in force immediately before the commencement—

- (a) the *Residential Tenancies Act 1994*;
- (b) the *Residential Services (Accommodation) Act 2002*.

## **Division 2                      Transitional references**

### **531      Application of div 2**

This division applies to references in Acts or documents in existence at the commencement.

### **532      References to Residential Tenancies Act 1994**

In an Act or document, a reference to the *Residential Tenancies Act 1994* may, if the context permits, be taken as a reference to this Act.

### **533      References to Residential Services (Accommodation) Act 2002**

In an Act or document, a reference to the *Residential Services (Accommodation) Act 2002* may, if the context permits, be taken as a reference to this Act.

## **Division 3                    The authority**

### **534     Authority continues under this Act**

The Residential Tenancies Authority established under the *Residential Tenancies Act 1994* continues under this Act.

### **535     Continuation of appointment of chief executive officer**

- (1) The chief executive officer of the authority immediately before the commencement continues as the chief executive officer of the authority for the balance of the chief executive officer's term of appointment by the Governor in Council.
- (2) The chief executive officer continues to hold office on the conditions fixed by the authority.
- (3) The chief executive officer continues to be appointed under this Act and not under the *Public Service Act 2008*.

### **536     Existing employees of authority**

- (1) An employee of the authority immediately before the commencement continues as an employee of the authority.
- (2) The employee remains entitled to all existing and accruing rights of employment.
- (3) The employee continues to be appointed under this Act and not under the *Public Service Act 2008*.

## **Division 4                    The authority's board**

### **537     The board**

- (1) The chairperson and directors of the authority's board immediately before the commencement continue as chairperson and directors of the board after the commencement.

- (2) The chairperson and directors continue for the balance of the term of each member's appointment on the conditions applying to appointment.

## **Division 5                      Employing office**

### **538      Employing office continues under this Act**

The employing office established under the *Residential Tenancies Act 1994* continues under this Act.

### **539      Continuation of appointment of executive officer**

- (1) The executive officer of the employing office immediately before the commencement continues as the executive officer of the employing office for the balance of the executive officer's term of appointment by the Governor in Council.
- (2) The executive officer continues to be appointed under this Act and not under the *Public Service Act 2008*.

### **540      Existing employees of employing office**

- (1) An employee of the employing office immediately before the commencement continues as an employee of the employing office.
- (2) The employee remains entitled to all existing and accruing rights of employment.
- (3) The employee continues to be appointed under this Act and not under the *Public Service Act 2008*.

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## **Division 6                      Authorised persons and conciliators**

### **541      Authorised persons**

A person who held an appointment as an authorised person under the *Residential Tenancies Act 1994* immediately before the commencement is taken to hold the appointment under this Act.

### **542      Conciliators**

A person who held an appointment as a conciliator under the *Residential Tenancies Act 1994* immediately before the commencement is taken to hold the appointment under this Act.

## **Division 7                      Existing agreements**

### **543      Existing agreements continue under this Act**

- (1) This section applies to an existing agreement if the existing agreement continues after the commencement.
- (2) The existing agreement is taken to continue under this Act and the provisions of this Act apply to the agreement—
  - (a) for a residential tenancy agreement under the *Residential Tenancies Act 1994* that is a residential tenancy agreement under this Act—as a residential tenancy agreement under this Act; or
  - (b) for a residential service agreement under the *Residential Services (Accommodation) Act 2002* that is a rooming accommodation agreement under this Act—as a rooming accommodation agreement under this Act; or
  - (c) for a residential service agreement under the *Residential Services (Accommodation) Act 2002* that is a residential



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tenancy agreement under this Act—as a residential tenancy agreement under this Act.

*Example for subsection (2)—*

An existing agreement is taken to include the standard terms prescribed after commencement and the duties and obligations imposed, or entitlements given, under this Act.

- (3) Despite subsection (2), parties to the existing agreement do not have to enter into a new written agreement under this Act for the existing agreement.
- (4) Also despite subsection (2), the provisions of this Act do not apply to a process started by notice, application or request under a repealed Act.

*Note—*

Section 550 states that a process started by a person by giving a notice or making an application or request under a repealed Act before the commencement must be completed or continued under the repealed Act.

## **Division 8                      Agreements to which repealed Acts would not have applied**

### **544      Agreements to which repealed Acts did not apply or would not have applied**

- (1) This section applies to an agreement, whether entered into before or after the commencement (a *prescribed agreement*), if—
  - (a) a repealed Act did not apply, or would not have applied, to the agreement; and
  - (b) the agreement is an agreement to which this Act would apply except for this section.
- (2) The provisions of this Act do not apply to the prescribed agreement until a day prescribed by regulation.
- (3) Despite subsection (2), the provisions of this Act apply to a prescribed agreement if—

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- (a) the agreement is entered into between the commencement and the day prescribed under subsection (2); and
- (b) the agreement states that it is made under this Act.

#### **545 Contracts of sale—s 30**

This Act does not apply to an agreement for a tenancy of residential premises if the tenancy—

- (a) was created or arose before the commencement of section 30; and
- (b) is between the parties to a contract of sale of the premises under a term of the contract.

### **Division 9 Rental bonds**

#### **546 Existing rental bonds**

An amount that was a rental bond under the *Residential Tenancies Act 1994* or *Residential Services (Accommodation) Act 2002* immediately before the commencement is taken to be a rental bond under this Act.

#### **547 Rental bond held for agreements to which repealed Acts did not apply or would not have applied**

- (1) This section applies to a person who holds a rental bond for an agreement on the day prescribed by regulation if—
  - (a) a repealed Act did not apply, or would not have applied, to the agreement; and
  - (b) the agreement is an agreement to which this Act would apply but for section 544(2).
- (2) For section 116, the person is taken to have received the rental bond on the day prescribed under subsection (1).

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- (3) This section does not apply to an agreement mentioned in section 548.

**548 Rental bonds held for premises or rooming accommodation on university campus**

- (1) This section applies to the following agreements (each a *prescribed agreement*)—
- (a) a residential tenancy agreement for premises within the external boundary of a university's campus mentioned in section 33(1)(b);
  - (b) a rooming accommodation agreement for a room in rental premises within the external boundary of a university's campus mentioned in section 44(1)(f).
- (2) The provisions of this Act that apply to a prescribed agreement do not apply until a day prescribed by regulation.
- (3) If a person holds a rental bond for a prescribed agreement on the day prescribed under subsection (2), the person is taken, for section 116, to have received the rental bond on that day.

**549 Payment of rental bond held when agreement under s 544(3) entered into**

- (1) Subsection (2) applies if a person holds a rental bond when an agreement mentioned in section 544(3) is entered into.
- (2) For section 116, the person is taken to have received the rental bond on the day the agreement is entered into.

*Editor's note—*

See section 116 (Duty to pay rental bond).

## **Division 10                      Notices given, or applications or requests made, by parties to agreements**

### **550      Notices given, or applications or requests made, under repealed Act continue under that Act**

- (1) This section applies to a process started by a person by giving a notice or making an application or request under a repealed Act before the commencement.
- (2) If the person decides to continue the process it must be continued and completed under the repealed Act despite its repeal.
- (3) Without limiting subsection (1), a notice, application or request includes the following—
  - (a) an entry notice;
  - (b) a dispute resolution request given to the authority;
  - (c) a notice to remedy breach;
  - (d) a notice to leave;
  - (e) a notice of intention to leave;
  - (f) a notice given by a party to a rooming accommodation agreement terminating the agreement;
  - (g) a notice by a mortgagee informing a tenant or resident that possession is to be obtained;
  - (h) an abandonment termination notice;
  - (i) an application to a tribunal;
  - (j) an application for payment of a rental bond.

*Examples for this section—*

- 1 A lessor gives a tenant a notice to remedy breach under the *Residential Tenancies Act 1994* before the commencement and the period under the notice to remedy breach expires after the commencement. If the tenant does not remedy the breach, the lessor may give the tenant a notice to leave under the *Residential*

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*Tenancies Act 1994*. If the tenant does not hand over possession, the lessor may apply to the tribunal for a termination order under the *Residential Tenancies Act 1994* despite its repeal.

- 2 A party to an agreement makes a dispute resolution request before the commencement but conciliation does not take place before the commencement. Any conciliation process for the dispute and any subsequent application to the tribunal after the commencement continues under the *Residential Tenancies Act 1994* despite its repeal.
- 3 A lessor gives an entry notice to a tenant under section 109(a) of the *Residential Tenancies Act 1994* before the commencement. The entry notice specifies the minimum notice period of 7 days under section 110 of the *Residential Tenancies Act 1994*. The entry and any application to the tribunal relating to the entry continues under the *Residential Tenancies Act 1994* despite its repeal.

## **551 Notices given, or applications or requests made, under this Act for matters happening before commencement**

Nothing prevents a person giving a notice, or making an application or request under this Act, for a matter that happened before the commencement.

*Example—*

A lessor or tenant gives the other a notice to remedy breach after the commencement under this Act for damage to premises that happened before the commencement.

## **Division 11 Other transitional provisions**

### **552 Period stated in previous provision**

- (1) This section applies if, in a previous provision, there is a period for doing something, and the period for doing the thing started before the commencement.
- (2) If there is a corresponding provision to the previous provision and both the corresponding provision and the previous provision state the same period, the period for the thing continues under the corresponding provision and is taken to

[s 552]

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have started from when the period started under the previous provision.

*Example—*

Section 59 of the *Residential Tenancies Act 1994* and section 116 of this Act each state that a person who receives a rental bond must pay it to the authority within 10 days of receiving it. If a person receives a rental bond less than 10 days before the commencement of this Act the time for paying the rental bond to the authority continues to run after the commencement of this Act.

- (3) However, this section does not apply to a process mentioned in section 550.

*Note—*

Section 550 states that a process started by a person by giving a notice, or making an application or request, under a repealed Act before commencement must be completed or continued under the repealed Act.

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## Schedule 2 Dictionary

## section 6

***abandonment termination notice*** see section 355(1).

***affordable housing scheme*** means NRAS or a scheme under which the Commonwealth, the State, a local government or a non-profit corporation provides accommodation assistance, other than—

- (a) as approved supported accommodation; or
- (b) under a subletting mentioned in section 38.

***agent***—

- (a) of a lessor, means a person employed, or otherwise authorised, by the lessor to act as the lessor's agent; or
- (b) of a provider, means a person employed, or otherwise authorised, by the provider to act as the provider's agent.

***agreement*** see section 19.

***allowed remedy period*** means the period stated in a notice to remedy breach as the period within which a party to an agreement is required to remedy the breach of the agreement stated in the notice.

***approved form*** see section 519.

***approved supported accommodation*** means accommodation provided under an agreement between the Commonwealth and the State under—

- (a) the program known as the 'Crisis Accommodation Program', or, if the program is continued under another name, the program as continued under the other name; or
- (b) the program known as the 'Supported Accommodation Assistance Program', or, if the program is continued under another name, the program as continued under the other name.

***approved way***—

- (a) for payment of rent by a tenant, see section 83(4); or
- (b) for payment of rent by a resident, see section 98(4).

***arrangement*** includes a promise, scheme, transaction (with or without consideration), understanding and undertaking (whether expressed or implied).

***authorised person*** means a person who is appointed under this Act as an authorised person.

***authority*** means the Residential Tenancies Authority.

***base period*** see section 47(1).

***board*** means the authority's board of directors.

***bond loan contributor*** see section 114.

***caravan*** see section 7.

***chairperson*** means the chairperson of the board.

***chief executive officer*** means the authority's chief executive officer.

***common areas***, for a resident of rental premises, means the parts of the rental premises other than the resident's room that the resident may use under the rooming accommodation agreement.

***compulsory acquisition***—

- (a) for a notice to leave, see section 284(4); or
- (b) for a notice of intention to leave, see section 305(4).

***compulsory park closure***, for a notice to leave, see section 287(5).

***conciliation agreement*** means an agreement mentioned in section 408.

***conciliation process*** see section 398.

***conciliator*** means a person appointed as a conciliator under section 400.

***condition report***—



- 
- (a) for residential premises and inclusions, means a report describing the physical condition of the premises and inclusions; or
- (b) for a room in rental premises and the facilities in the room, means a report describing the physical condition of the room and facilities.

**contributor**, for a rental bond, see section 113.

**coresident** means 1 of 2 or more residents who occupy the same room or rooms in the rental premises under the same rooming accommodation agreement.

**damage**, for an application for a termination order, see sections 296(3), 311(2) and 312(2).

**director** means a director of the board, and includes the chairperson.

**dispute**, for chapter 6, part 1, means a tenancy dispute or a rooming accommodation dispute.

**dispute resolution request** see section 402.

**domestic violence** has the meaning given by the *Domestic and Family Violence Protection Act 2012*.

**domestic violence issues** see sections 245(4) and 344(2).

**domestic violence order** has the meaning given by the *Domestic and Family Violence Protection Act 2012*.

**education department** means the department in which the *Education (General Provisions) Act 2006* is administered.

**emergency repairs** see section 214.

**employee of the employing office** see section 497(2).

**employing office** means the Residential Tenancies Employing Office established under section 491.

**ending of accommodation assistance**, for a notice to leave, see section 289(3).

**ending of entitlement under employment**, for a notice to leave, see section 288(2).

**ending of housing assistance**, for a notice to leave, see section 290(3).

**enforcement warrant** means an enforcement warrant under the *Civil Proceedings Act 2011*.

**entry notice** see section 193(1)(a).

**excessive hardship**, for an application for a termination order, see sections 295(2), 310(2), 377 and 383.

**executive officer**, of a corporation, means—

- (a) if the corporation is the Commonwealth or a State—a chief executive of a department or a person who is concerned with, or takes part in, the management of a department, whatever the person's position is called; or
- (b) if the corporation is a local government—
  - (i) the local government's chief executive officer; or
  - (ii) a person who is concerned with, or takes part in, the local government's management, whatever the person's position is called; or
- (c) if paragraphs (a) and (b) do not apply—a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

**executive officer**, of the employing office, means the executive officer appointed under section 494.

**facilities**, for rooming accommodation, includes furniture and equipment.

**failure to leave**, for an application for a termination order, see section 293(3).

**failure to leave as intended**, for an application for a termination order, see section 294(3).

**final nuisance direction** see the *Police Powers and Responsibilities Act 2000*.

**fixed term agreement**—

- 
- (a) for a residential tenancy, means a residential tenancy agreement for a residential tenancy for a fixed term; or
- (b) for rooming accommodation, means a rooming accommodation agreement under which accommodation is provided to a resident for a fixed term.

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

**general service charge**, for premises that are not moveable dwelling premises in a moveable dwelling park, means a service charge that is not a water service charge.

**goods** include animals, plants, money, documents and anything else of value.

**government entity** see the *Public Service Act 2008*, section 24.

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

**handover day**, for premises, means the day stated in a notice to leave, or notice of intention to leave, as the day vacant possession of the premises is required to be, or will be, handed over to the lessor.

**holding deposit**, for premises, means an amount paid as consideration for an option to enter into an agreement for the premises.

**home owner** see the *Manufactured Homes (Residential Parks) Act 2003*, section 8.

**house rules**, for rental premises, means the rules in force for the premises under chapter 4, part 3.

**inclusions**, for premises, means everything supplied with the premises for the tenant's use (whether or not the things are supplied under an agreement).

**incompatibility**, for an application for a termination order, see sections 298(3) and 314(3).

**individually metered**, for premises, means there is, for the premises, a meter that—

- (a) has been installed or approved by a supply authority; and
- (b) measures, for the premises only, the quantity of something supplied to, or used at, the premises under a service or facility made available by the authority.

***industrial instrument*** see the *Industrial Relations Act 1999*, schedule 5.

***initial nuisance direction*** see the *Police Powers and Responsibilities Act 2000*.

***injury***, for an application for a termination order, see sections 296(4), 311(3) and 312(3).

***intention to sell***, for a notice of intention to leave, see section 307(4).

***interested person***, for a rental bond, for chapter 2, part 3, division 3, see section 136(7) and sections 143 and 144.

***key***, of a lock, means a device or information normally used to operate the lock.

***key deposit*** see section 156.

***lessor*** see sections 8 and 20.

***list***, a person on a tenancy database, for chapter 9, see section 457.

***lock*** means a device for securing a door, gate, window or another part of premises.

***long tenancy (moveable dwelling)*** see section 51.

***lost property***, for chapter 5, part 2, division 6, see section 390.

***manufactured home*** see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

***maximum rental bond***—

- (a) for a residential tenancy agreement, see section 112(1); or
- (b) for a rooming accommodation agreement, see section 112(2).

**mortgagee**, for a mortgage, includes any person from time to time deriving title to the mortgage under a previous mortgagee.

**moveable dwelling** means a caravan or manufactured home.

**moveable dwelling park** means a place where moveable dwellings are situated for occupation on payment of consideration.

**moveable dwelling premises** means premises consisting of—

- (a) for a moveable dwelling that is a caravan—the dwelling or its site, or both the dwelling and site; or
- (b) for a moveable dwelling that is a manufactured home in, or intended to be situated in, a moveable dwelling park—the dwelling or its site, or both the dwelling and site.

**nominated repairer** see section 216(1).

**noncompliance (moveable dwelling relocation)**, for a notice to leave, see section 283(3).

**noncompliance (tribunal order)**—

- (a) for a notice to leave, see section 282(2); or
- (b) for a notice of intention to leave, see section 304(2).

**non-livability**—

- (a) for a notice to leave, see sections 284(3) and 285(5); or
- (b) for a notice of intention to leave, see sections 305(3) and 306(5).

**non-profit corporation** means a corporation formed for a purpose other than the purpose of making a profit.

**non-resolution notice**, for park rules for a moveable dwelling park, see section 231(6).

**notice of intention to leave** means a notice given by the tenant to the lessor indicating the tenant's intention to hand over vacant possession of the premises to the lessor on the handover day.

***notice to leave*** means a notice given by the lessor to the tenant requiring the tenant to hand over vacant possession of the premises to the lessor on the handover day.

***notice to relocate*** see section 223(1).

***notice to remedy breach*** means a notice given by a party to an agreement to the other party requiring the other party to remedy a breach of the agreement stated in the notice.

***NRAS*** means the National Rental Affordability Scheme or a similar scheme by whatever name called.

***nuisance direction*** means an initial or final nuisance direction.

***objectionable behaviour***, for an application for a termination order, see sections 297(2) and 313(2).

***objection closing day***, for park rules for a moveable dwelling park, see section 229(1)(a).

***objector***, for park rules for a moveable dwelling park, see section 231(2).

***obstruct*** includes hinder, resist and attempt to obstruct.

***occupant***, of premises, means a person who resides at the premises.

***officer***, of the authority, means any of the following—

- (a) the chief executive officer;
- (b) an employee of the employing office or of another government entity performing work for the authority under a work performance arrangement;
- (c) an employee of the authority, whether or not there is a written contract of employment between the authority and the employee;
- (d) an individual performing services for the authority—
  - (i) under a contract, other than a contract of employment, between the individual and the authority; or

- (ii) under an arrangement, other than a work performance arrangement, between the authority and a person other than the individual.

***option period***, for chapter 2, part 4, division 2, see section 159(3).

***park liaison committee***, for a moveable dwelling park, see section 231(2).

***park rules*** means rules made by the owner of a moveable dwelling park about the use, enjoyment, control and management of the park.

***party***, to a dispute, for chapter 6, part 1, means—

- (a) for a tenancy dispute—the lessor or tenant; or
- (b) for a rooming accommodation dispute—the provider or resident.

***periodic agreement***—

- (a) for a residential tenancy—means a residential tenancy agreement that is not a fixed term agreement; or
- (b) for rooming accommodation—means a rooming accommodation agreement that is not a fixed term agreement.

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

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

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

*Examples—*

passport, birth certificate, marriage certificate, photograph

***personal information***, for chapter 9, see section 457.

***premises*** see sections 9 and 22.

***prescribed rules*** see section 267.

***proposal***, for park rules for a moveable dwelling park, see section 229(1)(a).

***proposed commencement day***, for a rule change, see section 270(1)(b).

***protection order*** means an order under the *Domestic and Family Violence Protection Act 2012*, section 37.

***provider*** see sections 17 and 21.

***registrar*** means the principal registrar under the QCAT Act.

***registry*** means the registry under the QCAT Act.

***relative*** of a person—

- (a) means the person's spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, cousin, niece, nephew, parent-in-law, daughter-in-law, son-in-law, sister-in-law or brother-in-law; and
- (b) for an Aboriginal person—includes a person who, under Aboriginal tradition, is regarded as a relative of the Aboriginal person; and
- (c) for a Torres Strait Islander person—includes a person who, under Island custom, is regarded as a relative of the Torres Strait Islander person.

***rent*** means—

- (a) an amount payable by a tenant under a residential tenancy agreement for the right to occupy residential premises as a residence; or
- (b) an amount payable by a resident under a rooming accommodation agreement for the provision of



accommodation and any other service provided under the agreement.

**rental bond** see section 111.

**rental bond account** see section 149.

**rental bond instalments**—

- (a) for a residential tenancy agreement, see section 117(1)(c); or
- (b) for a rooming accommodation agreement, see section 118(1).

**rental bond interest account** see section 149.

**rental bond notice** means a notice about a rental bond given to the authority under section 116.

**rental bond supplier** see section 138.

**rental premises** means the premises in which rooming accommodation is provided.

**rental purchase plan agreement** means an agreement entered into between the State and someone else (the **buyer**) about residential premises—

- (a) under which the buyer agrees to buy, or after the buyer has bought, a part interest (a **share**) in the premises; and
- (b) under which the State gives the buyer the right to occupy the premises; and
- (c) under which the buyer is required to make payments to the State and—
  - (i) if the buyer is buying a share—the payments are divided by the State between the amount owing for the purchase of the share and rent for the right to occupy the premises; or
  - (ii) if the buyer has bought a share and is not buying a further share—the payments are payments of rent for the right to occupy the premises.

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

***rent payment record***—

- (a) for a residential tenancy agreement, see section 88(5)(a); or
- (b) for a rooming accommodation agreement, see section 102(5)(a).

***repeated breaches***, for an application for a termination order, see sections 299(3), 315(3), 376(3) and 382(3).

***representative***, of a person, means—

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

***resident***, in rooming accommodation, see sections 14 and 21.

***resident***, of a moveable dwelling park, means a person occupying moveable dwelling premises in the park as the tenant under an agreement.

***residential premises*** see section 10.

***residential tenancy*** see section 11.

***residential tenancy agreement*** see section 12.

***resident's room***, for a resident of rental premises, means a room in the premises that the resident occupies as his or her residence under the rooming accommodation agreement.

***retirement village*** has the meaning given by the *Retirement Villages Act 1999*.

***rooming accommodation*** see section 15.

***rooming accommodation agreement*** see section 16.

***rooming accommodation dispute*** see section 397(2).

***routine repairs*** see section 215.

***rule change***, in relation to the house rules for rental premises, see section 269.

***rules of entry***—

- (a) for a residential tenancy agreement, see section 200; or
- (b) for a rooming accommodation agreement, see section 263.

***sale contract***, for a notice to leave, see section 286(2).

***school*** means—

- (a) a State school within the meaning of the *Education (General Provisions) Act 2006*; or
- (b) a school that is accredited, or provisionally accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*.

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

***self-contained unit*** means a part of a building, forming a self-contained residence, that is under the exclusive possession of the occupier and includes kitchen, bathroom and toilet facilities.

***selling agent*** means—

- (a) for a lessor—the agent appointed to sell the lessor's premises; or
- (b) for a provider—the agent appointed to sell the provider's premises.

***service charge*** see section 164.

***share***, of a rental bond, see section 115.

***short tenancy (extension) statement*** see section 48(1).

***short tenancy (moveable dwelling)*** see section 50.

***short tenancy statement*** see section 47(1).

***site***, of a moveable dwelling, means the site where the moveable dwelling is, or is intended to be, situated.

***site agreement*** see the *Manufactured Homes (Residential Parks) Act 2003*, section 14.

***special terms***—

- (a) of a residential tenancy agreement, see section 56; or

(b) of a rooming accommodation agreement, see section 74.

**standard terms**—

(a) of a residential tenancy agreement, see section 55(2); or

(b) of a rooming accommodation agreement, see section 73(2).

**state of mind**, of a person, includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

**structural change** to premises or rental premises means any renovation, alteration or addition to the premises or rental premises.

**tenancy database**, for chapter 9, see section 457.

**tenancy dispute** see section 397(1).

**tenant** see sections 13 and 20.

**termination order** means an order of a tribunal terminating a residential tenancy agreement or rooming accommodation agreement.

**tribunal** means QCAT.

**university** means a higher education institution established or recognised as a university under an Act.

**unremedied breach**—

(a) for a notice to leave, see section 281(2); or

(b) for a notice of intention to leave, see section 302(2).

**urgent application** see section 415.

**voluntary park closure**, for a notice to leave, see section 287(4).

**water service charge**, for premises, means a service charge for water supplied to the premises.

**without ground**—

- (a) for a notice to leave, see section 291(4); or
- (b) for a notice of intention to leave, see section 308(2).

***work performance arrangement*** means an arrangement under which an employee of a government entity performs work for another government entity.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the *Reprints Act 1992*, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 July 2013. Future amendments of the *Residential Tenancies and Rooming Accommodation Act 2008* may be made in accordance with this reprint under the *Reprints Act 1992*, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised version
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments included	Effective	Notes
0A	none	30 April 2009	certain provs commenced
1	none	1 July 2009	majority of provs commenced
1A	2009 Act No. 24	1 December 2009	
1B	—	2 July 2010	prov exp 1 July 2010

## Endnotes

Reprint No.	Amendments included	Effective	Notes
1C	2011 Act No. 13	1 July 2011	
1D	2011 Act No. 26	9 September 2011	
1E	2011 Act No. 45	1 September 2012	
1F	2012 Act No. 5	17 September 2012	R1F withdrawn, see R2
2	—	17 September 2012	

Current as at	Amendments included	Notes
1 July 2013	2013 Act No. 29	

## 5 List of legislation

### **Residential Tenancies and Rooming Accommodation Act 2008 No. 73**

date of assent 11 December 2008

ss 1–2 commenced on date of assent

s 554 sch 1 amdt 5 of the Property Agents and Motor Dealers Act 2000 commenced 1 July 2009 (2009 SL No. 40) (amdt could not be given effect)

s 554 sch 1 amdts of the Residential Tenancies Act 1994 commenced 30 April 2009 (2009 SL No. 40)

remaining provisions commenced 1 July 2009 (2009 SL No. 40)

amending legislation—

### **Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 2 pt 9**

date of assent 26 June 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (2009 SL No. 252)

### **Forensic Disability Act 2011 No. 13 ch 1 pt 1, ch 14 pt 17**

date of assent 19 May 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2011 (2011 SL No. 121 item 1)

### **Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011 No. 26 pts 1, 10**

date of assent 29 August 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 9 September 2011 (2011 SL No. 173)

### **Civil Proceedings Act 2011 No. 45 ss 1–2, 217 sch 1A**

date of assent 6 December 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 2012 (2012 SL No. 146)

### **Domestic and Family Violence Protection Act 2012 No. 5 ss 1–2, 230 sch 1 pt 2**

date of assent 17 February 2012



ss 1–2 commenced on date of assent  
 remaining provisions commenced 17 September 2012 (see s 2)

**Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013 No. 29 ss 1, 2(2), pt 3A**

date of assent 20 June 2013  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2013 (see s 2(2))

## 6 List of annotations

**Intensive drug rehabilitation order**

s 42 om 2013 No. 29 s 69B

**Rooming accommodation agreements to which Act does not apply**

s 44 amd 2011 No. 13 s 267

**Injury to domestic associate**

s 245 amd 2012 No. 5 s 230 sch 1 pt 2

**Application by tenant’s domestic associate for termination for damage or injury**

s 321 amd 2012 No. 5 s 230 sch 1 pt 2

**Application for interim order about damage or injury**

s 323 amd 2012 No. 5 s 230 sch 1 pt 2

**Damage or injury**

s 344 amd 2012 No. 5 s 230 sch 1 pt 2

**Review of abandonment order**

s 361 amd 2009 No. 24 s 88

**Application of pt 2**

s 414 amd 2009 No. 24 s 89

**Applications to the tribunal**

s 414A ins 2009 No. 24 s 90

**Application of Aboriginal tradition**

s 422 amd 2011 No. 26 s 129

**Application of Island custom**

s 423 amd 2011 No. 26 s 130

**Particular applications to be heard in private**

s 433A ins 2009 No. 24 s 91  
 amd 2012 No. 5 s 230 sch 1 pt 2

**Other evidentiary aids**

s 504 amd 2009 No. 24 s 92

**Applications for more than prescribed amount**

s 516 amd 2009 No. 24 s 93

**Transitional regulations**

s 553 exp 1 July 2010 (see s 553(3))

**CHAPTER 15—CONSEQUENTIAL AMENDMENTS**

ch 15 (ss 554–555) om R1 (see RA ss 7(1)(k) and 40)

**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS**

amd R0A (see RA s 40)

om R1 (see RA s 40)

**SCHEDULE 2—DICTIONARY**

def *domestic violence* amd 2012 No. 5 s 230 sch 1 pt 2

def *domestic violence order* amd 2012 No. 5 s 230 sch 1 pt 2

def *enforcement warrant* amd 2011 No. 45 s 217 sch 1A

def *protection order* amd 2012 No. 5 s 230 sch 1 pt 2

def *registrar* sub 2009 No. 24 s 94

def *registry* sub 2009 No. 24 s 94

def *tribunal* sub 2009 No. 24 s 94

## 7 Forms notified or published in the gazette

Lists of forms are no longer included in reprints. Now see the separate forms document published on the website of the Office of the Queensland Parliamentary Counsel at <[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)> under Information—Current annotations. This document is updated weekly and the most recent changes are marked with a change bar.

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