

Queensland



RESIDENTIAL TENANCIES AMENDMENT BILL 1998



RESIDENTIAL TENANCIES AMENDMENT BILL 1998

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1998

A BILL

FOR

**An Act to amend the *Residential Tenancies Act 1994* and for other
purposes**

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

Clause **1.** This Act may be cited as the *Residential Tenancies Amendment Act 1998*.

4

5

Commencement

6

Clause **2.** This Act commences on a day to be fixed by proclamation.

7

PART 2—AMENDMENT OF RESIDENTIAL TENANCIES ACT 1994

8

9

Act amended in pt 2

10

Clause **3.** This part amends the *Residential Tenancies Act 1994* .

11

Insertion of new ss 3A and 3B

12

Clause **4.** Chapter 1, part 2, division 2—
 insert—

13

14

‘Caravan

15

‘**3A.(1)** A “**caravan**” is a trailer—

16

(a) designed principally for residential purposes; and

17

(b) designed to be attached to and towed by a self-propelled vehicle;
and

18

19

(c) that, as originally designed, was capable of being registered under

20

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a law of the State about the use of vehicles on public roads.	1
‘(2) Also, a “ caravan ” is something—	2
(a) not fitted with wheels; and	3
(b) not designed for permanent attachment to land but designed for attachment to a motor vehicle and for use for residential purposes.	4 5
‘(3) In addition, a “ caravan ” is a self-propelled vehicle—	6
(a) that—	7
(i) is designed to be used both as a vehicle and for residential purposes; or	8 9
(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	10 11 12
(b) that, as originally designed, was capable of being registered under a law of the State about the use of vehicles on public roads.	13 14
‘ Conciliator	15
‘3B.(1) A “ conciliator ” is a person who—	16
(a) is, or has been, accredited under the <i>Dispute Resolution Centres Act 1990</i> , section 19 ¹ as a mediator for a dispute resolution centre; and	17 18 19
(b) has satisfactorily finished training approved by the authority relating to conciliation processes.	20 21
‘(2) Also, a “ conciliator ” is a person who—	22
(a) has satisfactorily finished training approved by the authority relating to dispute resolution; and	23 24
(b) is employed by the authority as a dispute resolution officer.’.	25

¹ Section 19 (Mediators)

Amendment of s 8 (Residential tenancy agreement)

Clause	5. Section 8(2)—	2
	<i>omit, insert—</i>	3
	‘(2) Subsection (1) applies whether or not the right is a right of exclusive occupation.	4
	’	5
	‘(3) Subsection (1) also applies whether the agreement is—	6
	(a) wholly in writing, wholly oral or wholly implied; or	7
	(b) partly in a form mentioned in paragraph (a) and partly in 1 or both of the other forms.’.	8
		9

Amendment of s 15 (Act binds all persons)

Clause	6. Section 15, examples 1 and 2—	10
	<i>omit, insert—</i>	11
	‘1. Section 53 (Rent increases)	12
	2. Section 53A (Tenant’s application to tribunal about rent increase)	13
	3. Section 89 (Outgoings other than service charges).’.	14
		15

Amendment of s 17 (Application of Property Law Act to agreements)

Clause	7. Section 17—	16
	<i>insert—</i>	17
	‘(3) Nothing in subsection (1) affects the application of the <i>Property Law Act 1974</i> to an agreement about a tenancy if the agreement is not a residential tenancy agreement.’.	18
		19
		20
		21

Replacement of s 19 (Minors)

Clause	8.(1) Section 19—	22
	<i>omit, insert—</i>	23
	‘Minors	24
	’	25
	‘19.(1) A minor has the capacity to enter into a residential tenancy	26

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agreement.

‘(2) A residential tenancy agreement entered into by a minor is enforceable in the same way as if the agreement had been entered into by an adult.’.

Amendment of s 21 (Premises used for holidays)

Clause 9. Section 21(2), from ‘evidence’—

omit, insert—

‘taken not to be given for holiday purposes unless the contrary is proved.’.

Insertion of new ss 25A and 25B

Clause 10. After section 25—

insert—

‘Headleases for employee housing

‘25A.(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.’.

‘Headleases for affordable housing agreements

‘25B.(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 nonprofit 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

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lets the premises to a person whose right of occupancy arises under an affordable housing scheme.

‘(3) This section applies only to a headlease entered into after the commencement of this section.’.

Amendment of s 30 (Short tenancy statements)

Clause 11. Section 30(1), ‘30 days’—
omit, insert—
‘42 days’.

Amendment of s 31 (Extending short tenancy statements)

Clause 12.(1) Section 31(1), ‘or another period’—
omit, insert—
‘for another period’.
(2) Section 31(4), ‘30 days’—
omit, insert—
‘42 days’.

Amendment of s 35 (Terms of agreements include duties under Act etc.)

Clause 13. Section 35(3), ‘mediation agreement’—
omit, insert—
‘conciliation agreement’.

Amendment of s 37 (Inconsistency between Act and agreements)

Clause 14.(1) Section 37, heading—
omit, insert—
‘Inconsistency’

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(2) Section 37—

insert—

‘(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.’.

Replacement of s 38 (Essential terms)

Clause 15. Section 38—

omit, insert—

‘Standard terms

‘38.(1) A regulation may prescribe terms for inclusion in a residential tenancy agreement.

‘(2) The terms prescribed for this section are the “**standard terms**” for a residential tenancy agreement.

‘Lessor to give proposed agreement to tenant

‘38A.(1) Before entering into a residential tenancy agreement, the lessor must give the tenant a written copy of—

(a) the proposed standard terms; and

(b) any proposed special terms.

‘(2) This section does not apply to an agreement for a short tenancy (moveable dwelling).’.

Amendment of s 39 (Written agreements required)

Clause 16.(1) Section 39(2) to (4)—

omit, insert—

‘(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.’.

(2) Section 39(7)—

omit, insert—

‘(7) 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.

‘(8) This section does not apply to—

(a) an agreement for a short tenancy (moveable dwelling); or

(b) a periodic tenancy mentioned in section 46(3)².’.

Replacement of ss 40 and 41

Clause 17. Sections 40 and 41—

omit, insert—

‘Giving and signing written agreement

‘40.(1) The lessor must give the document prepared for section 39 to the tenant for signing.

‘(2) Within 5 days after the tenant receives the document, the tenant must sign the document and return it to the lessor.

‘(3) Within 14 days after the lessor receives the document signed by the tenant, the lessor 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).

² Section 46 (Continuation of fixed term agreements)

‘Orders of tribunal about giving and signing written agreement

‘**41.(1)** If the tenant reasonably believes the lessor has contravened section 38A, the tenant may apply to a tribunal for an order that the lessor give a copy of the proposed written agreement to the tenant by a stated day.

‘**(2)** If the tenant reasonably believes the lessor has contravened section 40(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.

‘**(3)** If the tenant reasonably believes the lessor has contravened section 40(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.

‘**(4)** If the lessor reasonably believes the tenant has contravened section 40(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.

‘**(5)** 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 the provision the subject of the application, the tribunal may make the order sought.

‘**(6)** 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 40(2), the tribunal may order the tenant to sign and return the relevant document to the lessor by a stated day.’.

Amendment of s 42 (Condition report)

Clause **18.(1)** Section 42, heading—

omit, insert—

‘Condition report at start of tenancy’.

(2) Section 42(2)—

omit, insert—

‘**(2)** The lessor must—

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

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	(b) sign the report; and	1
	(c) give 2 copies of the report to the tenant as required by this section.	2
	Maximum penalty—20 penalty units.’.	3
	(3) Section 42—	4
	<i>insert—</i>	5
	‘ (3A) Despite subsection (3), if a written agreement is not given to the	6
	tenant for signing before the day (also the “ occupation day ”) the tenant	7
	becomes entitled to occupy the premises under the agreement, the lessor	8
	must give the copies to the tenant on the occupation day.’.	9
	(4) Section 42(5)(b), ‘subsection (3)(b)’—	10
	<i>omit, insert—</i>	11
	‘subsection (3)(b) or (3A)’.	12
	(5) Section 42(7)—	13
	<i>omit, insert—</i>	14
	‘ (7) If the lessor is the State, this section does not apply until a date	15
	prescribed under a regulation.’.	16
	Insertion of new s 42A	17
Clause	19. After section 42—	18
	<i>insert—</i>	19
	‘Condition report at end of tenancy	20
	‘ 42A.(1) The tenant must—	21
	(a) prepare, in the approved form, a condition report for the premises	22
	and any inclusions; and	23
	(b) sign the report; and	24
	(c) as soon as practicable after the agreement ends, give 2 copies of	25
	the report to the lessor or lessor’s agent.	26
	‘ (2) The lessor must, within 3 business days after receiving the copies of	27
	the report—	28
	(a) sign the copies; and	29

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

(c) either—

(i) if the tenant has given a forwarding address to the lessor or lessor’s agent—return a copy to the tenant at the address; or

(ii) if subparagraph (i) does not apply—keep the copies.

‘(3) The lessor must keep a copy of the condition report signed by both parties for at least 6 months after the agreement ends.

‘(4) If the lessor is the State, this section does not apply until a date prescribed under a regulation.’.

Amendment of s 43 (Information statement)

Clause 20.(1) Section 43(1)—

omit.

(2) Section 43(2)—

renumber as section 43(1).

(3) Section 43(3), ‘(2)’—

omit, insert—

‘(1)’.

(4) Section 43(3)—

renumber as section 43(2).

(5) Section 43(4)—

omit, insert—

‘(3) The statement must be given to the tenant—

(a) for an agreement other than an agreement mentioned in paragraph (b)—when a copy of the signed agreement is given to the tenant; or

(b) for an agreement for a short tenancy (moveable dwelling)—when the tenancy commences.’.

	Amendment of s 49 (Rent in advance)	1
Clause	21.(1) Section 49(1)—	2
	<i>insert—</i>	3
	‘Maximum penalty—20 penalty units.’	4
	(2) Section 49, penalty—	5
	<i>omit, insert—</i>	6
	‘Maximum penalty for subsection (2)—10 penalty units.’	7
	Amendment of s 50 (Receipts and other records)	8
Clause	22. Section 50(9)—	9
	<i>omit.</i>	10
	Amendment of s 53 (Rent increases)	11
Clause	23.(1) Section 53(3)—	12
	<i>omit, insert—</i>	13
	‘(3) The day stated must not be earlier than—	14
	(a) for a periodic agreement—2 months after the notice is given; or	15
	(b) for a fixed term agreement—1 month after the notice is given.’	16
	(2) Section 53(4), ‘The increased rent’—	17
	<i>omit, insert—</i>	18
	‘Subject to an order of a tribunal under section 53A, the increased rent’.	19
	Insertion of new s 53A	20
Clause	24. After section 53—	21
	<i>insert—</i>	22
	‘Tenant’s application to tribunal about rent increase	23
	‘53A.(1) If the lessor gives the tenant notice of a proposed rent increase	24
	under section 53 and the tenant considers the increase is excessive, the	25

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tenant may apply to a tribunal for an order under this section.	1
‘(2) The application must be made—	2
(a) within 30 days after the tenant receives the notice; and	3
(b) if the agreement is a fixed term agreement—before the term of the agreement ends.	4 5
‘(3) The tribunal may make either of the following orders on an application under this section—	6 7
(a) an order reducing the amount of the proposed increase of rent by a stated amount;	8 9
(b) an order setting aside the amount of the proposed increase of rent.	10
‘(4) In deciding the application, the tribunal must have regard to the following—	11 12
(a) the range of market rents usually charged for comparable premises;	13 14
(b) the proposed increased rent compared to the current rent;	15
(c) the state of repair of the premises;	16
(d) the term of the tenancy;	17
(e) the period since the last rent increase (if any);	18
(f) anything else the tribunal considers relevant.	19
‘(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.	20 21 22
‘(6) This section does not apply if the lessor is the State.’	23

Amendment of s 54 (Rent decreases)	24
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Clause	25.(1) Section 54—	25
	<i>insert—</i>	26
	‘(1A) This section also applies if—	27
	(a) services, facilities or goods to be provided to the tenant under the agreement are no longer available or are withdrawn other than	28 29

Residential Tenancies Amendment

	because the tenant failed to meet the tenant's obligations under the agreement; or	1 2
	(b) the amenity or standard of the premises decreases substantially other than because of malicious damage caused by the tenant.'	3 4
	(2) Section 54(3)—	5
	<i>omit, insert—</i>	6
	'(3) A tribunal may make an order for a rent decrease only if—	7
	(a) the tenant applies to the tribunal for the order; and	8
	(b) if this section applies because of subsection (1)—the premises are partly unfit to live in.'	9 10
	Amendment of s 55 (Seizure of tenant's goods for rent etc.)	11
Clause	26.(1) Section 55(1), 'payment of, rent payable under an agreement'—	12
	<i>omit, insert—</i>	13
	'payment of any of the following—	14
	(a) rent payable under an agreement;	15
	(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;	16 17 18
	(c) a claim for loss or damage caused by the tenant's breach of the agreement.'	19 20
	(2) Section 55(1), penalty, '10'—	21
	<i>omit, insert—</i>	22
	'40'.	23
	(3) Section 55(2), 'section 223'—	24
	<i>omit,insert—</i>	25
	'section 230A, or a writ or warrant of execution issued by a court,'.	26

Amendment of s 57 (Meaning of “rental bond”)

Clause

27.(1) Section 57(1)(b)—*omit, insert—*

‘(b) intended to be available for the financial protection of the lessor against the tenant breaching the agreement.’.

(2) Section 57—*insert—*

‘**(1A)** However, a “**rental bond**” does not include rent paid in advance.’.

(3) Section 57(2)—*insert—*

(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.’.

Replacement of s 58 (Meaning of “key money”)

Clause

28. Section 58—*omit, insert—***‘Meaning of “rental bond contributor”**

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

(a) the person is the tenant and there are no cotenants; and

(b) the person paid the rental bond.

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

(a) the rental bond notice for the agreement indicates that the cotenant paid, or contributed to the payment of, the rental bond; or

(b) for a replacement cotenant—written notice about the change of cotenants is given to the authority by the replacement cotenant and former cotenant; or

(c) the authority is otherwise satisfied the cotenant paid, or contributed to the payment of, the rental bond.’.

	Insertion of new s 60A	1
Clause	29. After section 60—	2
	<i>insert—</i>	3
	‘Acknowledging receipt of rental bond	4
	‘60A. As soon as practicable after receiving a rental bond, the authority	5
	must give separate written acknowledgments of the receipt to the lessor and	6
	tenant.’.	7
	Amendment of s 65 (Application for payment)	8
Clause	30. Section 65—	9
	<i>insert—</i>	10
	‘(2) If a notice to leave or notice of intention to leave has been given for	11
	premises, an application may only be made on or after the handover day for	12
	the notice.	13
	‘(3) However, subsection (2) does not apply if, on the making of the	14
	application, the authority would be required to deal with the application	15
	under section 66.’.	16
	Replacement of s 66 (Payment to party on joint application or other	17
	party’s direction)	18
Clause	31. Section 66—	19
	<i>omit, insert—</i>	20
	‘Payment to party on joint application or other party’s direction	21
	‘66. The authority must pay a rental bond in the way directed by an	22
	application—	23
	(a) if the application is made jointly by the lessor and tenant; or	24
	(b) if the application is made by the tenant and directs that payment	25
	be made to the lessor only; or	26
	(c) if—	27
	(i) there is only 1 rental bond contributor; and	28

- (ii) the application is made by the lessor and directs that payment be made to the contributor only.

‘Payment to cotenants on lessor’s direction

‘66A.(1) This section applies if—

- (a) an application for the payment of a rental bond is made to the authority by the lessor; and
- (b) there is more than 1 rental bond contributor; and
- (c) the application directs that payment be made to the contributors only.

‘(2) The authority must pay the rental bond to the rental bond contributors in the way directed if the direction states the rental bond is to be paid to the contributors—

- (a) in the proportions in which the contributors are shown on the rental bond notice to have contributed; or
- (b) in equal proportions.

‘(3) If subsection (2) does not apply, the authority—

- (a) must give each rental bond contributor written notice (the **“authority’s notice”**) of the application; and
- (b) may pay the rental bond to the contributors in the way directed.

‘(4) However, the authority may make a payment under subsection (3) only if—

- (a) a rental bond contributor does not, within the allowed period³—
 - (i) apply to a tribunal for an order about the payment; and⁴
 - (ii) give the authority a written notice (the **“contributor’s notice”**) informing it of the application; or

³ See section 69 (Allowed period for notices)

⁴ Under section 234, a reference to making an application to a tribunal includes a reference to making a dispute resolution request.

- (b) after the application is made, and the contributor's notice is given,
under paragraph (a)—the application is withdrawn.' 1
2

Insertion of new s 68A 3

Clause 32. After section 68— 4

insert— 5

'Payment on cotenant's direction 6

'68A.(1) This section applies if— 7

- (a) a rental bond notice for an agreement states there are 2 or more
cotenants under the agreement; and 8
9

- (b) an application for the payment of the rental bond is made to the
authority by— 10
11

(i) 1, or some only, of the cotenants; or 12

(ii) jointly by the lessor and 1, or some only, of the cotenants;
and 13
14

- (c) the application directs that a payment be made to 1 or more of the
applicants. 15
16

'(2) The authority must give written notice (the **"authority's notice"**) of
the application to— 17
18

- (a) any cotenant who is not an applicant (an **"associated person"**);
and 19
20

- (b) if the lessor is not an applicant—the lessor (also an **"associated
person"**). 21
22

'(3) If there is only 1 associated person and the application directs that a
payment be made to the associated person, the authority must make the
payment to the person. 23
24
25

'(4) The authority may make the payment or payments to the applicant or
applicants in the way directed by the application. 26
27

'(5) However, the authority may make a payment under subsection (4)
only if— 28
29

Residential Tenancies Amendment

-
- (a) an associated person does not, within the allowed period⁵— 1
- (i) apply to a tribunal for an order about the payment;⁶ and 2
- (ii) give the authority a written notice (the “**associated person’s notice**”) informing it of the application; or 3 4
- (b) after the application is made, and the associated person’s notice is 5 given, under paragraph (a)—the application is withdrawn.’ 6

Amendment of s 69 (Allowed period for tenant’s and lessor’s notices) 7

- Clause 33.(1) Section 69, heading— 8
- omit, insert—* 9
- ‘Allowed period for notices’.** 10
- (2) Section 69, ‘sections 67 and 68,’— 11
- omit, insert—* 12
- ‘sections 66A, 67, 68 and 68A,’⁷. 13

Omission of s 71 (Payment to cotenants) 14

- Clause 34.(1) Section 71— 15
- omit.* 16

Amendment of s 77 (Payments above maximum amount) 17

- Clause 35.(1) Section 77(2)(b)— 18
- omit, insert—* 19
- ‘(b) the amount equal to the rent payable under the agreement for the 20 relevant period.’ 21

⁵ See section 69 (Allowed period for notices)

⁶ Under section 234 a reference to making an application to a tribunal includes a reference to making a dispute resolution request.

⁷ Sections 66A (Payment to cotenants on lessor’s direction), 67 (Payment to lessor on lessor’s own direction), 68 (Payment to tenant on tenant’s own direction) and 68A (Payment on cotenant’s direction)

Residential Tenancies Amendment

- (2) Section 77— 1
- insert—* 2
- ‘(4) In this section— 3
- “**relevant period**”, for a residential tenancy agreement, means— 4
- (a) if the premises are not moveable dwelling premises—4 weeks; or 5
 - (b) if the premises are moveable dwelling premises and the tenancy 6
is a long tenancy (moveable dwelling) and electricity supplied to 7
the premises is supplied in the lessor’s name and individually 8
metered—3 weeks; or 9
 - (c) if the premises are moveable dwelling premises and 10
paragraph (b) does not apply—2 weeks.’. 11

**Amendment of s 82 (Other payments from rental bond interest 12
account) 13**

- Clause 36. Section 82(1)— 14
- insert—* 15
- ‘(d) facilitating the resolution of disputes about agreements by 16
tribunals.’. 17

Amendment of s 83 (Increase in rental bond) 18

- Clause 37. Section 83(c)(ii)— 19
- omit, insert—* 20
- ‘(ii) if the rental bond has been increased previously following 21
the giving of a notice under this section—the day stated in 22
the notice, or the last notice, for making the increase; and’. 23

	Amendment of ch 2, pt 4 (Holding deposits)	1
Clause	38. Chapter 2, part 4, heading—	2
	<i>omit, insert—</i>	3
	‘PART 4—KEY AND HOLDING DEPOSITS	4
	<i>‘Division 1—Key deposits</i>	5
	‘Payment of key deposits	6
	‘84A. A person may require a prospective tenant to pay an amount as a	7
	deposit for a key (a “key deposit”) to enable the prospective tenant to enter	8
	and inspect the premises to which the proposed tenancy relates.	9
	‘Receipts for key deposits	10
	‘84B.(1) A person receiving a key deposit must give a receipt for the	11
	deposit as required by this section.	12
	Maximum penalty—10 penalty units.	13
	‘(2) The receipt must—	14
	(a) be given to the person paying the deposit when the deposit is	15
	received; and	16
	(b) be signed by the person receiving the deposit.	17
	‘(3) The receipt must state the following—	18
	(a) the name of the person receiving the deposit;	19
	(b) the name of the person paying the deposit;	20
	(c) the address of the premises for which the key is given;	21
	(d) the date the deposit is received;	22
	(e) the amount of the deposit;	23
	(f) that the amount is a key deposit;	24
	(g) when the key is to be returned.	25

‘Refunding key deposit

1

‘84C. 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.

2

3

4

5

Maximum penalty—10 penalty units.

6

‘Division 2—Holding deposits’.

7

Insertion of new ch 2, pt 5, div 1 hdg

8

Clause **39.** Chapter 2, part 5, before section 89—

9

insert—

10

‘Division 1—Outgoings other than service charges’.

11

Insertion of new ch 2, pt 5, div 2 hdg

12

Clause **40.** Before section 90—

13

insert—

14

‘Division 2—Service charges’.

15

Amendment of s 90 (Meaning of “service charge”)

16

Clause **41.(1)** Section 90(1)(a), ‘excess’—

17

omit.

18

(2) Section 90—

19

insert—

20

‘(1A) 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.’.

21

22

23

24

	Amendment of s 91 (Service charges generally)	1
Clause	42.(1) Section 91, heading—	2
	<i>omit, insert—</i>	3
	‘General service charges for premises other than moveable dwelling premises’.	4
		5
	(2) Section 91(1), before ‘service charge’—	6
	<i>insert—</i>	7
	‘general’.	8
	Insertion of new s 91A	9
Clause	43. After section 91—	10
	<i>insert—</i>	11
	‘Water service charge for premises other than moveable dwelling premises	12
		13
	‘91A.(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 water service charges for the premises.	14
		15
		16
	‘(2) Also, this section applies despite anything in the agreement.	17
	‘(3) The tenant does not have to pay an amount for the outgoings for a quantity of water for which the lessor should reasonably be liable.	18
		19
	‘(4) The tenant has to pay an amount for the outgoings only if the premises are individually metered for the water supply.	20
		21
	‘(5) The tenant does not have to pay an amount for the outgoings that is more than the amount charged by the relevant supply authority for the quantity of water supplied to the premises.’.	22
		23
		24
	Amendment of s 94 (Orders of tribunal)	25
Clause	44. Section 94—	26
	<i>insert—</i>	27
	‘(3A) In deciding an amount payable by a tenant for outgoings for a	28

water service charge, the tribunal must have regard to the following—	1
(a) relevant available information about water usage and charges for premises in the local government area in which the relevant premises are situated;	2 3 4
(b) the area of the relevant land;	5
(c) any terms of the agreement affecting the amount of water used;	6
(d) the presence or absence of water saving devices in the premises;	7
(e) the number of persons occupying the premises;	8
(f) the quantity of water for which the lessor should reasonably be liable;	9 10
(g) anything else the tribunal considers relevant.’.	11

Insertion of new s 95A	12
-------------------------------	----

Clause 45. After section 95—	13
<i>insert—</i>	14

‘Incentive amounts prohibited	15
--------------------------------------	----

‘95A. The lessor 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 a fee or other amount required or permitted to be paid under this Act.	16 17 18 19
Maximum penalty—40 penalty units.’.	20

Amendment of s 96 (Terms requiring payment of penalty etc. void)	21
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Clause 46.(1) Section 96, heading—	22
<i>omit, insert—</i>	23

‘Certain terms about penalties and other payments void’.	24
---	----

(2) Section 96—	25
<i>insert—</i>	26

‘(1A) 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	27 28
---	----------

Residential Tenancies Amendment

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.

‘(1B) Subsection (1A) 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.’.

Amendment of s 103 (Lessor’s obligations generally)

Clause 47.(1) Section 103(2)(a), ‘reasonably’—

omit.

(2) Section 103(2)(c)—

omit, insert—

‘(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) Section 103(3)—

omit, insert—

‘(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.’.

Amendment of s 104 (Lessor’s obligations for facilities in moveable dwelling parks)

Clause 48.(1) Section 104(3) and (4)—

omit, insert—

‘(3) At the start of the tenancy, the lessor must ensure—

Residential Tenancies Amendment

-
- (a) the facilities in the park are clean; and 1
 - (b) the facilities are fit for the tenant to use; and 2
 - (c) the facilities are in good repair; and 3
 - (d) the lessor is not in breach of a law dealing with issues about the 4
health and safety of persons using or entering the facilities. 5
 - ‘(4) While the tenancy continues, the lessor— 6
 - (a) must keep the facilities clean; and 7
 - (b) must maintain the facilities in a way that the facilities remain fit 8
for the tenant to use; and 9
 - (c) must maintain the facilities in good repair; and 10
 - (d) must ensure any law dealing with issues about the health or safety 11
of persons using the facilities is complied with.’ 12

Amendment of s 105 (Lessor’s obligations for moveable dwelling site) 13

- Clause 49. Section 105(2), ‘reasonably’— 14
omit. 15

Amendment of s 106 (Tenant’s obligations generally) 16

- Clause 50. Section 106(2)— 17
omit, insert— 18
- ‘(1A) The tenant must keep the premises and inclusions clean, having 19
regard to their condition at the start of the tenancy. 20
- ‘(2) The tenant must not maliciously damage, or allow someone else to 21
maliciously damage, the premises or inclusions. 22
- Maximum penalty—40 penalty units.’ 23

Insertion of new s 108A 24

- Clause 51. Chapter 3, part 2, after section 108— 25
insert— 26

‘Orders of tribunal

‘108A.(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 103(3) or 104(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.’.

Amendment of s 110 (Notice of entry)

Clause 52. Section 110(4)—

omit, insert—

‘(4) Also, despite subsection (1), for premises that are a site only, or a site and a caravan, or a site and a mobile home, in a moveable dwelling park, the lessor or agent may enter the site under section 109(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.’.

Amendment of s 111 (General qualifications about entry)

Clause 53.(1) Section 111(1), ‘If the agent’ to ‘the agent may’—

omit, insert—

‘A secondary agent of the lessor may’.

(2) Section 111(3)—

omit, insert—

Residential Tenancies Amendment

‘(2A) Unless the tenant otherwise agrees, an entry under section 109(a) may not be made less than 3 months after a previous entry by the lessor, or the renting or a secondary agent, under the paragraph. 1
2
3

‘(3) The lessor or agent may enter the premises under section 109(c) only if— 4
5

(a) a condition mentioned in subsection (3A) is satisfied; and 6

(b) a reasonable time has elapsed since a previous entry by the lessor, or the renting or a secondary agent, under the paragraph; and 7
8

(c) for a secondary agent of the lessor—the secondary agent has given a copy of the entry notice to the renting agent. 9
10

‘(3A) For subsection (3), the conditions are that— 11

(a) 1 of the following notices is given to the tenant before, or when, the entry notice is given to the tenant— 12
13

(i) a notice in the approved form of the lessor’s intention to sell the premises; or 14
15

(ii) a notice to leave the premises; or 16

(b) a notice of intention to leave the premises has been given to the lessor by the tenant.’. 17
18

(3) Section 111— 19

insert— 20

‘(7) In this section— 21

“renting agent”, for a lessor, means the agent to whom the tenant normally pays the rent. 22
23

“secondary agent”, for a lessor, means an agent of the lessor who is not the renting agent.’. 24
25

Amendment of s 116 (Lessor’s or agent’s name and other details) 26

Clause 54. Section 116(1)(a), ‘service; and’— 27

omit, insert— 28

‘service; or’. 29

Amendment of s 121 (Changing locks)

Clause	55. Section 121(4)—	2
	<i>omit.</i>	3

Amendment of s 122 (Agreement about changing locks)

Clause	56. Section 122(3)—	5
	<i>omit.</i>	6

Amendment of s 123 (Orders of tribunal)

Clause	57.(1) Section 123, after ‘following orders’—	8
	<i>insert—</i>	9
	‘about locks or keys for the premises’.	10
	(2) Section 123(a)—	11
	<i>omit, insert—</i>	12
	‘(a) an order requiring the lessor to supply a lock, or a lock of a particular kind;	13
		14
	(aa) an order requiring the lessor to carry out stated maintenance of a lock;	15
		16
	(ab) an order authorising the lessor or tenant to change a lock;’.	17
	(3) Section 123(b) and (c), ‘of the premises’—	18
	<i>omit.</i>	19
	(4) Section 123—	20
	<i>insert—</i>	21
	‘(2) In making an order mentioned in subsection (1)(a) or (ab), the tribunal may have regard to the following—	22
		23
	(a) the likelihood of risk to the tenant’s personal safety;	24
	(b) the requirements of insurance companies for allowing the tenant to obtain insurance for property of the tenant kept at the premises;	25
		26
	(c) the likelihood of break-ins or other unlawful entry to the premises	27

- or nearby premises; 1
- (d) local community standards about adequate security for premises; 2
- (e) the physical characteristics of the premises and adjoining areas; 3
- (f) anything else the tribunal considers relevant.’. 4

Insertion of new ss 123A and 123B 5

Clause 58. Chapter 3, part 5, division 3— 6

insert— 7

‘Meaning of “emergency repairs” 8

‘123A. “Emergency repairs” are works needed to repair any of the 9
following— 10

- (a) a burst water service; 11
- (b) a blocked or broken lavatory system; 12
- (c) a serious roof leak; 13
- (d) a gas leak; 14
- (e) a dangerous electrical fault; 15
- (f) flooding or serious flood damage; 16
- (g) serious storm, fire or impact damage; 17
- (h) a failure or breakdown of the gas, electricity or water supply to 18
premises; 19
- (i) a failure or breakdown of an essential service or appliance on 20
premises for hot water, cooking or heating; 21
- (j) a fault or damage that makes premises unsafe or insecure; 22
- (k) a fault or damage likely to injure a person, damage property or 23
unduly inconvenience a resident of premises; 24
- (l) a serious fault in a staircase, lift or other common area of 25
premises that unduly inconveniences a resident in gaining access 26
to, or using, the premises. 27

‘Meaning of “routine repairs”

1

‘123B. “Routine repairs” are repairs that are not emergency repairs.’.

2

Replacement of ch 3, pt 6 hdg (Moveable dwelling premises)

3

Clause **59.** Chapter 3, part 6, heading—

4

omit, insert—

5

**‘PART 6—ADDITIONAL PROVISIONS FOR
MOVEABLE DWELLING PREMISES’.**

6

7

Amendment of s 130 (Notice to relocate)

8

Clause **60.(1)** Section 130(3), ‘The tenant may’ to ‘another site’—

9

omit, insert—

10

‘The notice to relocate to another site may be given’.

11

(2) Section 130(4), after ‘reasonable’—

12

insert—

13

‘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’.

14

15

Insertion of new s 130A

16

Clause **61.** After section 130—

17

insert—

18

‘Restriction against enforcing relocation

19

‘130A. The lessor must not take any action to enforce the tenant’s
relocation under a notice to relocate unless—

20

21

(a) the tenant agrees; or

22

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

23

24

Maximum penalty—20 penalty units.’.

25

Insertion of new s 132A

Clause **62.** Chapter 3, part 6, division 2—

insert—

‘Application to tribunal

‘132A.(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 relocation notice;

(b) an order setting aside the relocation notice.’.

Amendment of s 148 (Transfer by lessor)

Clause **63.** Section 148(5)—

omit.

Amendment of s 149 (End of tenant’s occupation)

Clause **64.** Section 149—

insert—

‘(7) The tribunal may not make an order under this section without giving the lessor an opportunity to be heard on the application.’.

	Insertion of new s 149A	1
Clause	65. After section 149—	2
	<i>insert—</i>	3
	‘Death of a cotenant	4
	‘149A.(1) This section applies if—	5
	(a) there are cotenants under an agreement; and	6
	(b) the cotenants are not stated under the agreement to be joint tenants; and	7 8
	(c) 1 of the cotenants dies.	9
	‘(2) On the deceased’s death—	10
	(a) the deceased’s interest in the tenancy ends; and	11
	(b) the agreement continues in force with the parties to the agreement being the lessor and the other cotenant or cotenants.	12 13
	‘(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.’.	14 15 16 17
	Amendment of s 150 (Injury to spouse)	18
Clause	66. Section 150(2), (6) and (7), ‘a tenant’—	19
	<i>omit, insert—</i>	20
	‘a cotenant’.	21
	Insertion of new s 150A	22
Clause	67. Chapter 3, part 7, division 3—	23
	<i>insert—</i>	24
	‘Injury or damage affecting occupants	25
	‘150A.(1) This section applies to a person (the “occupant”) who is an occupant of premises and who is not the tenant or a cotenant.	26 27

‘(2) The occupant may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement 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.’.

Amendment of s 152 (Acceptance of rent does not operate as waiver of breach)

Clause **68.(1)** Section 152, heading, ‘waiver of breach’—

omit, insert—

‘waiver of tenant’s breach’.

(2) Section 152—

insert—

‘(2) Despite subsection (1), if the lessor gives the tenant a notice to remedy breach under section 153 for a breach of the agreement relating to a

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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. 1
2
3

‘(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.’. 4
5
6

Insertion of new s 152A 7

Clause 69. Chapter 4, part 1— 8
insert— 9

‘Offer or payment of rent does not operate as waiver of lessor’s breach 10
11

‘152A. 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— 12
13

(a) a breach of the agreement by the lessor; or 14

(b) a notice of intention to leave for an unremedied breach given to the lessor by the tenant.’. 15
16

Amendment of s 153 (Notice to remedy tenant’s breach) 17

Clause 70. Section 153— 18
insert— 19

‘(3) This section does not apply to an agreement for a short tenancy (moveable dwelling).’ 20
21

Omission of s 154 (Tenant may dispute notice to remedy breach) 22

Clause 71. Section 154— 23
omit. 24

	Amendment of s 155 (Notice to leave for unremedied breach)	1
Clause	72. Section 155(2)—	2
	<i>omit.</i>	3
	Amendment of s 162 (Notice to leave if tenant’s employment ends)	4
Clause	73. Section 162(3), ‘award or agreement’—	5
	<i>omit, insert—</i>	6
	‘industrial award or agreement or contract of employment’.	7
	Amendment of s 163 (Notice to leave if tenant’s entitlement to supported accommodation ends)	8
		9
Clause	74.(1) Section 163(1)—	10
	<i>omit, insert—</i>	11
	‘163.(1) This section applies if—	12
	(a) the tenant’s right of occupancy of the premises arises out of approved supported accommodation; and	13
		14
	(b) the tenant ceases to be eligible—	15
	(i) to be provided with approved supported accommodation; or	16
	(ii) to continue to occupy the particular premises.’.	17
	(2) Section 163(3), ‘notice leave’—	18
	<i>omit, insert—</i>	19
	‘notice to leave’.	20
	Insertion of new s 163A	21
Clause	75. After section 163—	22
	<i>insert—</i>	23
	‘Notice to leave if tenant’s entitlement under affordable housing scheme	24
		25
	‘163A.(1) This section applies if—	26

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- (a) the tenant occupies the premises under an affordable housing scheme; and 1
2
- (b) the tenant ceases to be eligible under the scheme— 3
 - (i) to receive assistance; or 4
 - (ii) to continue to occupy the particular premises. 5

‘(2) The lessor may give a notice to leave the premises to the tenant. 6

‘(3) A notice to leave under this section is called a notice to leave for 7
“ending of housing assistance”.’. 8

Omission of s 164 (Tenant may dispute notice to leave) 9

Clause 76. Section 164— 10
omit. 11

Amendment of s 165 (Notice to leave without ground) 12

Clause 77. Section 165— 13
insert— 14

‘(1A) However, the lessor must not give a notice to leave under this 15
section because— 16

- (a) the tenant has applied, or is proposing to apply, to a tribunal for 17
an order under this Act; or 18
- (b) the tenant— 19
 - (i) has complained to a government entity about an act or 20
omission of the lessor adversely affecting the tenant; or 21
 - (ii) has taken some other action to enforce the tenant’s rights; or 22
- (c) an order of a tribunal is in force in relation to the lessor and 23
tenant. 24

‘(1B) Also, the lessor may not give a notice to leave under this section if 25
the giving of the notice constitutes taking retaliatory action against the 26
tenant.’. 27

	Insertion of new s 165A	1
Clause	78. After section 165—	2
	<i>insert—</i>	3
	‘Application to tribunal about notice to leave without ground	4
	‘165A.(1) This section applies if—	5
	(a) the tenant is given a notice to leave without ground; and	6
	(b) the tenant reasonably believes the notice was given in contravention of section 165.	7 8
	‘(2) The tenant may apply to a tribunal for an order to set aside the notice.	9
	‘(3) The application must be made within 4 weeks after the notice was given.	10 11
	‘(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 165.’.	12 13 14
	Amendment of s 166 (Application for termination for failure to leave)	15
Clause	79. Section 166(3)—	16
	<i>omit.</i>	17
	Insertion of new s 171A	18
Clause	80. After section 171—	19
	<i>insert—</i>	20
	‘Application for termination for repeated breaches	21
	‘171A.(1) This section applies if—	22
	(a) the lessor gives 2 notices to remedy breach to the tenant for breaches of a particular provision in relation to the agreement; and	23 24
	(b) each notice relates to a separate breach of the particular provision; and	25 26
	(c) the tenant remedies each breach within the relevant allowed remedy period; and	27 28

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- (d) the tenant commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
1
2
- (e) all breaches happen within the period prescribed under a regulation for this section.
3
4
- ‘(2) The lessor may apply to a tribunal for a termination order.
5
- ‘(3) An application under this section is called an application made because of “repeated breaches”.
6
7
- ‘(4) In this section—
8
- “provision” means—
9
- (a) section 102, 106, 107 or 108;⁸ or
10
- (b) a provision of a section mentioned in paragraph (a); or
11
- (c) a provision of an agreement providing for the payment of rent.’.
12

Amendment of s 173 (Notice to remedy lessor’s breach) 13

- Clause **81.** Section 173—
14
- insert—*
15
- ‘(2) This section does not apply to an agreement for a short tenancy (moveable dwelling).’.
16
17

Omission of s 174 (Lessor may dispute notice to remedy breach) 18

- Clause **82.** Section 174—
19
- omit.*
20

Omission of s 180 (Lessor may dispute notice of intention to leave) 21

- Clause **83.** Section 180—
22
- omit.*
23

⁸ Sections 102 (Tenant’s use of premises), 106 (Tenant’s obligations generally), 107 (Tenant’s obligations for facilities in moveable dwelling parks) and 108 (Tenant’s obligation for moveable dwelling site)

	Insertion of new s 186A	1
Clause	84. After section 186—	2
	<i>insert—</i>	3
	‘Application for termination for repeated breaches	4
	‘186A.(1) This section applies if—	5
	(a) the tenant gives 2 notices to remedy breach to the lessor for breaches of a particular provision in relation to the agreement; ⁹	6
	and	7
		8
	(b) each notice relates to a separate breach of the particular provision; and	9
		10
	(c) the lessor remedies each breach within the relevant allowed remedy period; and	11
		12
	(d) the lessor commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and	13
		14
	(e) all breaches happen within the period prescribed under a regulation for this section.	15
		16
	‘(2) The tenant may apply to a tribunal for a termination order.	17
	‘(3) An application under this section is called an application made because of “repeated breaches” .	18
		19
	‘(4) In this section—	20
	“provision” means—	21
	(a) section 101, 103, 105 or 114; or	22
	(b) a provision of a section mentioned in paragraph (a); or	23
	(c) a provision of an agreement providing for the payment of rent.’.	24

⁹ Sections 101 (Quiet enjoyment), 103 (Lessor’s obligations generally), 105 (Lessor’s obligations for moveable dwelling site) and 114 (Unlawful entry of premises)

	Insertion of new division and division heading	1
Clause	85. Chapter 4, part 4, before section 188—	2
	<i>insert—</i>	3
	<i>‘Division 1—Mortgagees</i>	4
	‘Notice about proposed action of mortgagee	5
	‘187A.(1) This section applies if—	6
	(a) residential premises are subject to a mortgage; and	7
	(b) after the premises become subject to the mortgage, a residential tenancy agreement is entered into for the premises; and	8 9
	(c) the mortgagee under the mortgage does not consent to the tenancy; and	10 11
	(d) the mortgagee, or another person appointed under the mortgage (the “appointed person”), has become entitled to obtain possession of the premises.	12 13 14
	‘(2) The mortgagee must not obtain possession of the premises unless, at least 4 weeks before obtaining possession, the mortgagee or the appointed person gives the tenant written notice informing the tenant that possession is to be obtained.	15 16 17 18
	Maximum penalty—50 penalty units.	19
	‘(3) The appointed person must not obtain possession of the premises unless, at least 4 weeks before obtaining possession, the appointed person or mortgagee gives the tenant written notice informing the tenant that possession is to be obtained.	20 21 22 23
	Maximum penalty—50 penalty units.	24
	‘(4) In this section—	25
	“obtain” includes take.	26
	‘Acceptance of rent does not operate as consent	27
	‘187B.(1) This section applies if—	28
	(a) residential premises are subject to a mortgage; and	29

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(b) after the premises becomes subject to the mortgage, a residential tenancy agreement is entered into for the premises; and 1
2

(c) the mortgagee under the mortgage does not consent to the tenancy. 3
4

‘(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. 5
6
7
8

‘Division 2—Other persons’. 9

Amendment of s 192 (Notice to remedy breach) 10

Clause 86. Section 192(3)— 11
omit. 12

Amendment of s 193 (Notice to leave) 13

Clause 87. Section 193(2)(c) 14
omit. 15

Omission of s 195 (Dispute notice) 16

Clause 88. Section 195— 17
omit. 18

Amendment of s 196 (Allowed remedy period) 19

Clause 89. Section 196(2), ‘premises are moveable dwelling premises’— 20
omit, insert— 21
‘agreement is an agreement for a long tenancy (moveable dwelling)’. 22

Amendment of s 197 (Handover day for notice to leave (premises generally))

		1
		2
Clause	90.(1) Section 197, heading, ‘(premises generally)’—	3
	<i>omit, insert—</i>	4
	‘for premises that are not moveable dwelling premises’.	5
	(2) Section 197, words before paragraph (a)—	6
	<i>omit, insert—</i>	7
	‘197.(1) This section applies only to notices to leave given for premises that are not moveable dwelling premises.	8
		9
	‘(2) The handover day for a notice to leave given by the lessor must not be earlier than—’.	10
		11
	(3) Section 197(a)—	12
	<i>omit, insert—</i>	13
	‘(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	14
		15
	(aa) 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’.	16
		17
		18
	(4) Section 197(e) and (f), ‘and the tenancy is not a short tenancy (moveable dwelling)’—	19
		20
	<i>omit.</i>	21
	(5) Section 197(g), ‘2 months’—	22
	<i>omit, insert—</i>	23
	‘4 weeks’.	24
	(6) Section 197—	25
	<i>insert—</i>	26
	‘(ga)if the notice is given because of ending of housing assistance—2 months after the notice is given; or’.	27
		28

(7) Section 197(h), ‘and the tenancy is not a short tenancy (moveable dwelling)’—

omit.

Replacement of s 198 (Handover day for notice to leave (moveable dwelling premises))

Clause 91. Section 198—

omit, insert—

‘Handover day for notice to leave for moveable dwelling premises

‘**198.(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 non-compliance (tribunal order)—7 days after the notice is given; or
- (c) if the notice is given because of non-compliance (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—2 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
- (i) if the notice is given because of employment termination—4 weeks after the notice is given; or

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-
- (j) if the notice is given because of ending of accommodation assistance—4 weeks after the notice is given; or 1
2
 - (k) if the notice is given because of ending of housing assistance—2 months after the notice is given; or 3
4
 - (l) if the notice is given without ground for a periodic agreement—2 months after the notice is given; or 5
6
 - (m) if the notice is given without ground for a fixed term agreement—the later of— 7
8
 - (i) 14 days after the notice is given; or 9
 - (ii) the day the term of the agreement ends. 10
- ‘(3) 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— 11
12
- (a) if neither paragraph (b) nor paragraph (c) applies—2 days after the notice is given; or 13
14
 - (b) if the notice is given because of non-livability—the day the notice is given; or 15
16
 - (c) if the notice is given because of compulsory park closure—the day the notice is given.’. 17
18

Amendment of s 199 (Handover day for notice of intention to leave (premises generally)) 19
20

- Clause 92.(1) Section 199, heading, ‘(premises generally)’— 21
omit, insert— 22
- ‘for premises that are not moveable dwelling premises’. 23
- (2) Section 199, words before paragraph (a)— 24
omit, insert— 25
- ‘199.(1) This section applies only to notices of intention to leave given for premises that are not moveable dwelling premises. 26
27
- ‘(2) The handover day for a notice of intention to leave given by the tenant must not be earlier than—’. 28
29
- (3) Section 199(a), ‘and the tenancy is not a short tenancy (moveable 30

dwelling)’—	1
omit.	2
(4) Section 199(d), ‘2 months’—	3
omit, insert—	4
‘3 weeks’.	5
(5) Section 199(e)—	6
omit, insert—	7
‘(e) if the notice is given without ground for a periodic agreement—3 weeks after the notice is given; or’.	8
	9
Replacement of s 200 (Handover day for notice of intention to leave (moveable dwelling premises))	10
	11
Clause 93. Section 200—	12
omit, insert—	13
‘Handover day for notice of intention to leave for moveable dwelling premises	14
	15
‘200.(1) This section applies only to notices of intention to leave given for moveable dwelling premises.	16
	17
‘(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—	18
	19
(a) if the notice is given because of an unremedied breach—2 days after the notice is given; or	20
	21
(b) if the notice is given because of non-compliance (tribunal order)—7 days after the notice is given; or	22
	23
(c) if the notice is given because of non-livability—the day the notice is given; or	24
	25
(d) if the notice is given because of compulsory acquisition—3 weeks after the notice is given; or	26
	27
(e) if the notice is given without ground for a periodic agreement—3 weeks after the notice is given; or	28
	29

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(f) if the notice is given without ground for a fixed term agreement—the later of— 1
2

(i) 14 days after the notice is given; or 3

(ii) the day the term of the agreement ends. 4

‘(3) If the tenancy is a short tenancy (moveable dwelling), the handover day for a notice of intention to leave must not be earlier than— 5
6

(a) if paragraph (b) does not apply—1 day after the notice is given; or 7

(b) if the notice is given because of non-livability—the day the notice is given.’. 8
9

Insertion of new s 200A 10

Clause **94.** After section 200— 11

insert— 12

‘Withdrawing notice to leave for unremedied breach 13

‘**200A.(1)** The lessor may withdraw a notice to leave for an unremedied breach given by the lessor if the tenant remedies the breach. 14
15

‘**(2)** The withdrawal— 16

(a) must be made before the handover day; and 17

(b) must be made by written notice given to the tenant; and 18

(c) may be made only with the tenant’s written agreement. 19

‘**(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.’. 20
21

Amendment of s 202 (Applications for termination orders) 22

Clause **95.(1)** Section 202(1), at the end— 23

insert— 24

• incompatibility 25

• repeated breaches.’. 26

	(2) Section 202(2), at the end—	1
	<i>insert—</i>	2
	• incompatibility	3
	• repeated breaches.’.	4
	Amendment of s 204 (Failure to leave for unremedied breach)	5
Clause	96.(1) Section 204(2), after ‘if it’—	6
	<i>insert—</i>	7
	‘is satisfied’.	8
	(2) Section 204(2)(a), ‘is satisfied’—	9
	<i>omit.</i>	10
	Amendment of s 213 (Incompatibility)	11
Clause	97. Section 213, ‘on the ground’—	12
	<i>omit.</i>	13
	Insertion of new s 213A	14
Clause	98. After section 213—	15
	<i>insert—</i>	16
	‘Repeated breaches	17
	‘213A.(1) If an application is made to a tribunal for a termination order	18
	because of repeated breaches, the tribunal may make the order if it is	19
	satisfied—	20
	(a) the applicant has established the ground of the application; and	21
	(b) the person in relation to whom the order is sought committed	22
	each breach stated in the 2 notices to remedy breach on which the	23
	application is based.	24
	‘(2) In deciding the application, the tribunal must have regard to the	25
	following—	26

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- (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; 1
2
3
- (b) the period for which the tenancy has been in existence; 4
- (c) the period in which the breaches were committed; 5
- (d) for a fixed term agreement—the remaining period of the tenancy; 6
- (e) anything else the tribunal considers relevant.’. 7

Amendment of s 214 (Interim order about damage or injury) 8

- Clause 99. Section 214, from ‘the tribunal may’— 9
- omit, insert—* 10
- ‘the tribunal— 11
- (a) may make the order if it is satisfied it is appropriate to make the order; and 12
13
 - (b) for supporting the order, may make an order restraining the party from entering premises.’. 14
15

Amendment of s 217 (Warrant of possession) 16

- Clause 100.(1) Section 217(1)(d)— 17
- omit, insert—* 18
- ‘(d) state the day the warrant ends.’. 19
- (2) Section 217— 20
- insert—* 21
- ‘(2A) 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.’. 22
23
24
- (3) Section 217(3)— 25
- omit, insert—* 26
- ‘(3) A warrant of possession takes effect on the day stated in the warrant for it to take effect and ends— 27
28

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- (a) if paragraph (b) does not apply—14 days after it takes effect; or 1
- (b) if the tribunal is satisfied that, because of special circumstances, 2
the warrant should continue until a later day stated in the 3
warrant—on the later day. 4

Examples of special circumstances under subsection (3)(b)— 5

1. Natural disasters, including floods, affecting the area in which the premises are 6
located. 7

2. The remoteness of the premises. 8

‘(4) However, the day on which the warrant takes effect must not be later 9
than 3 business days after it is issued. 10

‘(5) If a warrant of possession (the “**original warrant**”) is lost or 11
destroyed before it ends, the registrar may issue a copy of the warrant. 12

‘(6) A copy of a warrant issued under subsection (5)— 13

(a) has effect as if it were the original warrant; and 14

(b) is taken to have been issued when the original warrant was 15
issued; and 16

(c) ends when the original warrant ends.’. 17

**Amendment of s 221 (Termination of agreement by lessor if premises 18
abandoned) 19**

Clause **101.(1)** Section 221(4) and (5)— 20

omit, insert— 21

‘(4) If the tenant does not take action under section 221A about the notice 22
within 7 days after receiving the notice, the tenant is taken to have 23
abandoned the premises. 24

‘(5) For subsection (1), reasonable grounds include the following— 25

(a) a failure of the tenant to pay rent under the agreement; 26

(b) the presence at the premises of uncollected mail, newspapers or 27
other material; 28

(c) reports from neighbours of the tenant or from other persons 29
indicating the tenant has abandoned the premises; 30

- (d) the absence of household goods at the premises; 1
- (e) the disconnection of services (including gas, electricity and 2
telephone) to the premises; 3
- (f) a failure of the tenant to respond to an entry notice.’. 4

Insertion of new s 221A 5

Clause **102.** After section 221— 6
insert— 7

‘Dispute about abandonment termination notice 8

‘221A.(1) If the tenant disputes an abandonment termination notice, the 9
tenant may apply to a tribunal for an order— 10

- (a) setting aside the notice; or 11
- (b) for compensation. 12

‘(2) The application must be made within 28 days after the notice is 13
given. 14

‘(3) On an application under this section, the tribunal may— 15

- (a) if the application was made within 7 days after the notice was 16
given—make an order setting aside the notice; or 17
- (b) if paragraph (a) does not apply—make any of the following 18
orders— 19
 - (i) an order terminating the agreement; 20
 - (ii) an order requiring the lessor to pay to the tenant the amount 21
stated by the tribunal as compensation for loss or expense 22
incurred by the tenant because of the termination of the 23
agreement; 24
 - (iii) any other order it considers appropriate.’. 25

	Amendment of s 222 (Order about abandonment)	1
Clause	103.(1) Section 222(1), ‘declaring’ to ‘premises’—	2
	<i>omit, insert—</i>	3
	‘under this section’.	4
	(2) Section 222(5)—	5
	<i>omit, insert—</i>	6
	‘ (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. ¹⁰	7
		8
		9
	‘ (6) In deciding whether to make the order, the tribunal or registrar may have regard to the following—	10
		11
	(a) a failure of the tenant to pay rent under the agreement;	12
	(b) any presence at the premises of uncollected mail, newspapers or other material;	13
		14
	(c) any reports from neighbours of the tenant or from other persons indicating the tenant has abandoned the premises;	15
		16
	(d) any disconnection of services (including gas, electricity and telephone) to the premises;	17
		18
	(e) any absence from the premises of household goods;	19
	(f) a failure of the tenant to respond to an entry notice for the premises;	20
		21
	(g) anything else the tribunal or registrar considers relevant.’.	22
	Omission of s 223 (Abandoned goods)	23
Clause	104. Section 223—	24
	<i>omit.</i>	25

¹⁰ Under section 228 (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.

Omission of s 224 (Abandoned documents)

Clause **105.** Section 224—
omit.

Amendment of s 226 (Compensation on abandonment termination notice)

Clause **106.** Section 226(2), ‘or registrar’—
omit.

Amendment of s 227 (Compensation on termination by tribunal or registrar)

Clause **107.(1)** Section 227, heading, ‘or registrar’—
omit.
(2) Section 227, ‘or registrar also’—
omit.

Amendment of s 228 (Review of abandonment order)

Clause **108.** Section 228(2), ‘14’—
omit, insert—
‘28’.

Omission of s 229 (Abandoned goods)

Clause **109.** Section 229—
omit.

Insertion of new ch 4, pt 10

Clause **110.** Chapter 4, after section 230—
insert—

‘PART 10—GOODS AND DOCUMENTS LEFT BEHIND ON PREMISES

‘Goods left on premises

‘230A.(1) This section applies if—

- (a) an agreement is terminated; 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 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 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.

‘(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 must not sell or dispose of the goods except as provided under subsections (2), (4) and (5), unless the former lessor 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, the former lessor must let the owner reclaim possession of the goods on paying the reasonable removal and storage costs to the former lessor.

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).

‘(11) The former lessor does not incur any liability for removing, selling or disposing of the goods if the former lessor acts under this section without negligence.

‘(12) A person who acquires the goods (whether as purchaser 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.

‘Documents left on premises**‘230B.(1)** This section applies if—

- (a) an agreement is terminated; and
- (b) a document is left at the premises.

‘(2) The person who was the lessor must, within the required period—

- (a) if the person knows the former tenant is the owner of the document—give the document to the former tenant; or
- (b) if the person 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 person does not know where the former tenant or owner is, the person 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.

‘(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 is terminated;
- (b) the person finds the document.

‘Application about abandoned goods

‘230C.(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 was terminated.

‘(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

(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.’.

Replacement of headings

Clause **111.** Chapter 5, part 1 heading and part 1, division 1 heading—
omit, insert—

‘PART 1—CONCILIATION OF TENANCY DISPUTES

‘Division 1—Requirement for conciliation’.

Replacement of s 231 (Meaning of “urgent application”)

Clause **112.** Section 231—
omit, insert—

‘Meaning of “urgent application”

‘231.(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.

‘(3) An application to a tribunal is an **“urgent application”** if—

- (a) it is an application made under section 132A; 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—

- section 104A (Orders of tribunal)
- section 128 (Orders of tribunal about emergency repairs)
- section 138 (Application to tribunal about proposal)
- section 150 (Injury to spouse)
- section 150A (Injury or damage affecting occupants)

Residential Tenancies Amendment

-
- section 165A (Application to tribunal about notice to leave without ground) 1
2
 - section 221A (Dispute about abandonment termination notice) 3
 - section 225 (Tenant remaining in possession) 4
 - section 226 (Compensation on abandonment termination notice) 5
 - section 228 (Review of abandonment order) 6
 - section 230A (Goods left on premises) 7
 - section 230C (Application about abandoned goods) 8
 - section 248 (Application of Act to agreements) 9
 - section 283 (Application to tribunal for order to exclude person from park).’ 10
11

Amendment of s 232 (Applications to tribunal) 12

- Clause 113.(1) Section 232(1)(a) and (b), ‘mediation’— 13
omit, insert— 14
‘conciliation’. 15
- (2) Section 232(1)(a) and (b), ‘mediated’— 16
omit, insert— 17
‘conciliated’. 18
- (3) Section 232(1)(c)— 19
omit. 20

	Insertion of new ch 5, pt 1, div 1A	1
Clause	114. Chapter 5, part 1, after section 232—	2
	<i>insert—</i>	3
	‘Division 1A—Conciliation	4
	‘Conciliation process	5
	‘232A.(1) A “conciliation process” is a process of conciliation under which the parties are helped and encouraged to achieve a resolution of their dispute.	6 7 8
	‘(2) In division 5, ¹¹ a “conciliation process” includes all the steps involved in the process of conciliation, including, for example—	9 10
	(a) telephone conferencing; and	11
	(b) joint sessions; and	12
	(c) private sessions; and	13
	(d) another step prescribed under a regulation.	14
	‘Some matters not suitable for conciliation	15
	‘232B.(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.	16 17 18
	‘(2) The authority must publish guidelines about matters to be taken into account when deciding whether a dispute is unsuitable for conciliation.	19 20
	‘Functions of conciliators	21
	‘232C. The functions of a conciliator are—	22
	(a) to encourage the settlement of a tenancy dispute by facilitating, and helping to conduct, negotiations between parties to the dispute; and	23 24 25

¹¹ Division 5 (Confidentiality, privilege and immunity)

- (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.’.

Amendment of ch 5, pt 1, div 2 hdg (Starting the mediation process)

Clause 115. Chapter 5, part 1, division 2, heading, ‘mediation’—
omit, insert—
‘*conciliation*’.

Replacement of s 233 (Giving of notice of mediation)

Clause 116.(1) Section 233—
omit, insert—

‘Making dispute resolution request

‘233.(1) This section applies if an application about an issue may be made to a tribunal by the lessor or tenant only if a conciliated resolution is not reached about the issue.

‘(2) The lessor or tenant may make a request (a “**dispute resolution request**”) to the authority asking it to try to resolve the issue in dispute (the “**tenancy dispute**”).

‘(3) The party making the dispute resolution request must give a copy of the request to each other party to the tenancy dispute.

‘(4) The dispute resolution request must be in the approved form.’.

	Amendment of s 234 (Reference to making of tribunal application includes giving of mediation notice)	1 2
Clause	117.(1) Section 234, heading, ‘giving of mediation notice’—	3
	<i>omit, insert—</i>	4
	‘making of dispute resolution request’.	5
	(2) Section 234(2), ‘the giving of a mediation notice’—	6
	<i>omit, insert—</i>	7
	‘the making of a dispute resolution request¹²’.	8
	Replacement of s 235 (Action to be taken on mediation notice)	9
Clause	118. Section 235—	10
	<i>omit, insert—</i>	11
	‘Action to be taken on dispute resolution request	12
	‘235.(1) As soon as practicable after a dispute resolution request is made to the authority, the authority must start a conciliation process for the parties to the tenancy dispute.	13 14 15
	‘(2) However, if the authority considers the tenancy dispute is not suitable for conciliation, it may give written notice to the parties that the dispute is not suitable for conciliation.’.	16 17 18
	Amendment of ch 5, pt 1, div 3 hdg (Conduct of mediation conference)	19 20
Clause	119. Chapter 5, part 1, division 3, heading, ‘mediation conference’—	21
	<i>omit, insert—</i>	22
	‘conciliation process’.	23

¹² Section 249 (Applications about breach of agreements) provides for the time in which the lessor or tenant may apply to the tribunal for an order about a breach of the agreement.

Replacement of s 236 (Mediation fee)

Clause **120.** Section 236—

omit, insert—

‘Conciliation fee

‘**236.(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.’.

Amendment of s 237 (Limited right of representation)

Clause **121.(1)** Section 237, ‘At the mediation conference’—

omit, insert—

‘During the conciliation process’.

(2) Section 237(b)(ii), ‘mediator’—

omit, insert—

‘conciliator’.

Omission of s 238 (Conference to be held in private)

Clause **122.** Section 238—

omit.

Replacement of s 239 (Parties attendance at conference not compellable)

Clause **123.** Section 239—

omit, insert—

‘Parties’ participation in conciliation process not compellable

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

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

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

Amendment of s 240 (Parties to mediation conference)

Clause **124.(1)** Section 240, heading, ‘mediation conference’—

omit, insert—

‘conciliation process’.

(2) Section 240(1)—

omit, insert—

‘240.(1) A person who is not a party to the tenancy 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.’.

Amendment of s 241 (Mediation agreements)

Clause **125.(1)** Section 241, heading, ‘Mediation’—

omit, insert—

‘Conciliation’.

(2) Section 241(3)—

omit.

Replacement of s 242 (No record of mediation conference)

Clause **126.** Section 242—

omit, insert—

‘No record of conciliation process

‘242.(1) A person must not make a record of anything said during the

conciliation process.	1
Maximum penalty—20 penalty units.	2
‘(2) However, the conciliator may make notes of the conciliation process the conciliator considers appropriate.	3
	4
‘(3) The conciliator may destroy the notes after the conciliation process ends.’.	5
	6

Replacement of ch 5, pt 1, div 4 (Administration) 7

Clause 127. Chapter 5, part 1, division 4—	8
omit, insert—	9
‘Division 4—Withdrawal of disputes	10

‘Withdrawal of disputes 11

‘244.(1) A person may, by written notice given to the authority, withdraw a dispute resolution request made by the person.	12
	13
‘(2) The notice may be given before or after a conciliator starts the conciliation process for the tenancy dispute.’.	14
	15

Replacement of s 245 (Mediators to maintain secrecy) 16

Clause 128. Section 245—	17
omit, insert—	18
‘Conciliators to maintain secrecy	19
‘245.(1) A conciliator involved in a conciliation process must not disclose information coming to the conciliator’s knowledge during the conciliation process.	20
	21
	22
Maximum penalty—20 penalty units.	23
‘(2) However, a conciliator may disclose information—	24
(a) with the agreement of all parties to the tenancy dispute; or	25
(b) for statistical purposes without revealing the identity of any person about whom the information is relevant; or	26
	27

- (c) for an inquiry or proceeding about an offence or other misconduct that happens during the conciliation process; or 1
2
- (d) if the information is about injury or the threat of injury to any person; or 3
4
- (e) under a requirement under this or another Act. 5

‘Authority to maintain secrecy 6

‘**245A.** The authority must not use information disclosed during a 7
conciliation process and to which it has access for any inquiry it conducts.’. 8

Amendment of s 246 (Ordinary protection and immunity allowed) 9

Clause **129.(1)** Section 246(1), ‘A mediator’ to ‘mediator’s’— 10
omit, insert— 11

‘A conciliator has, in performing the conciliator’s’. 12

(2) Section 246(2), ‘at a mediation conference’— 13
omit, insert— 14

‘during the conciliation process’. 15

(3) Section 246(3), ‘at, or used for, a mediation conference’— 16
omit, insert— 17

‘during, or used for, a conciliation process’. 18

Replacement of s 247 (Admissions made during mediation conference) 19

Clause **130.** Section 247— 20
omit, insert— 21

‘Admissions made in conciliation process 22

‘**247.(1)** Evidence of anything done or said, or an admission made, 23
during the conciliation process for a tenancy dispute is inadmissible— 24

- (a) at the hearing before a tribunal of an application relating to an 25
issue to which the conciliation process relates; or 26

(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.’.

Amendment of s 249 (Applications about breach of agreements)

Clause **131.(1)** Section 249(2), ‘1 month’—

omit, insert—

‘6 months’.

(2) Section 249(3)—

insert—

‘(c) whether or not a rental bond for the agreement is held by the authority when the application is made.’.

Amendment of s 250 (Orders about breach of agreements)

Clause **132.** Section 250—

insert—

‘**(3)** Without limiting subsection (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;

(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 230 to mitigate loss or expense.'.

Amendment of s 253 (Disputes about tenants' notices)

Clause 133. Section 253—

insert—

'(5) This section does not apply to a notice of intention to leave without ground.'.

Insertion of new s 253A

Clause 134. After section 253—

insert—

'Disputes about lessors' notices

'253A.(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.

'(5) This section does not apply to a notice to leave without ground.'.

Amendment of s 267 (Authorised person's general powers for places)

Clause 135. Section 267(1)—

insert—

- ‘(ca) 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’.

Insertion of new ss 267A and 267B

Clause 136. Chapter 6, part 3, before section 268—
insert—

‘Procedure after document seized

‘267A.(1) As soon as practicable after a document is seized by an authorised person under section 267, 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
- (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.

‘Power to require information from certain persons

‘267B.(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.’.

Amendment of s 278 (Behaviour in moveable dwelling park causing serious nuisance)

Clause 137.(1) Section 278, ‘of’—

omit, insert—

‘of, or anyone else in,’.

(2) Section 278, examples 1 to 6, after ‘resident’—

insert—

‘or someone else’.

Amendment of s 289 (Authority's functions)

- Clause **138.** Section 289(g)— 2
omit, insert— 3
 '(g) to provide a conciliation service to parties to disputes about 4
 agreements; and'. 5

Amendment of s 294 (Composition of board)

- Clause **139.** Section 294— 7
insert— 8
 '(1A) The members must include representatives of industry and 9
 consumer organisations.'. 10

Insertion of new s 314A

- Clause **140.** Chapter 9, part 1, after section 314— 12
insert— 13
'Limitation on time for starting proceedings 14
'314A. A proceeding for an offence against this Act by way of summary 15
 proceeding under the *Justices Act 1886* may start at any time but, if started 16
 more than 1 year after the commission of the offence, must start within 17
 6 months after the offence comes to the complainant's knowledge.'. 18

Amendment of s 320 (Forms)

- Clause **141.** Section 320, 'chief executive'— 20
omit, insert— 21
 'chief executive officer'. 22

	Amendment of ch 11 (Transitional, repeals and amendments)	1
Clause	142.(1) Chapter 11, part 1, heading, after ‘PROVISIONS’—	2
	<i>insert—</i>	3
	‘FOR ACT NO. 86 OF 1994’.	4
	(2) Chapter 11—	5
	<i>insert—</i>	6
	‘PART 2—TRANSITIONAL PROVISIONS FOR RESIDENTIAL TENANCIES AMENDMENT ACT 1998	7 8
	‘Definitions for pt 2	9
	‘340. In this part—	10
	“amendment Act” means the <i>Residential Tenancies Amendment Act 1998</i> .	11
	“commencement day” means the day on which the provision in which the term is used commences.	12 13
	‘Fixed term agreements in force at commencement	14
	‘341.(1) This section applies to a fixed term agreement in force immediately before the commencement day.	15 16
	‘(2) This Act continues to apply to the agreement as if the amendment Act had not commenced.	17 18
	‘(3) However, if after the period fixed as the term of the tenancy ends, the agreement continues to apply because of section 46(3) ¹³ —	19 20
	(a) subsection (2) stops having effect for the agreement; and	21
	(b) this Act, as amended by the amendment Act, applies to the agreement.	22 23

¹³ Section 46 (Continuation of fixed term agreements)

‘Periodic agreements in force at commencement

‘342.(1) This section applies to a periodic agreement in force immediately before the commencement day.

‘(2) This Act continues to apply to the agreement as if the amendment Act had not commenced, but only until—

(a) 6 months after the commencement day; or

(b) if, within the 6 month period, the agreement is amended—the day the amendment of the agreement takes effect.

‘(3) This Act, as amended by the amendment Act, applies to the agreement when subsection (2) stops having effect for the agreement.

‘(4) However, if the lessor is the State, section 39¹⁴ does not apply to the agreement for 3 years after the commencement day.

‘Short tenancy (moveable dwelling) agreements in force at commencement

‘343.(1) This section applies to an agreement for a short tenancy (moveable dwelling) in force immediately before the commencement day.

‘(2) This Act continues to apply to the agreement as if the amendment Act had not commenced.’.

Amendment of sch 3 (Dictionary)

Clause **143.(1)** Schedule 3, definitions “**approved form**”, “**approved representative**”, “**approved supported accommodation**”, “**award**”, “**caravan**”, “**dispute notice**”, “**emergency repairs**”, “**essential terms**”, “**full term**”, “**industrial agreement**”, “**key money**”, “**mediation conference**”, “**mediation notice**”, “**mediator**”, “**non-essential terms**”, “**routine repairs**” and “**short form**”—

omit.

(2) Schedule 3—

insert—

¹⁴ Section 39 (Written agreements required)

- ‘ **“affordable housing scheme”** means 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 25A.
- “approved form”** see section 320.
- “approved representative”**, for a party to a tenancy dispute, means a person approved by the conciliator conducting the conciliation process for the dispute to represent the party in the dispute.
- “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.
- “caravan”** see section 3A.
- “conciliation agreement”** means an agreement mentioned in section 241.
- “conciliator”** see section 3B.
- “dispute resolution request”** see section 233.
- “emergency repairs”** see section 123A.
- “ending of housing assistance”**, for a notice to leave, see section 163A.
- “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.
- “key deposit”** see section 84A.
- “mortgagee”**, for a mortgage, includes any person from time to time deriving title to the mortgage under a previous mortgagee.
- “nonprofit corporation”** means a corporation formed for a purpose other than the purpose of making a profit.

“rental bond contributor” see section 58.	1
“rental bond notice” means a notice about a rental bond given to the authority under section 59.	2 3
“replacement cotenant” , for an agreement for which there is a rental bond, means a person who, after the rental bond notice for the agreement is given to the authority becomes a cotenant in place of a former cotenant who was a rental bond contributor (whether the person becomes a cotenant directly from the former cotenant or indirectly through another former cotenant who was, or other former cotenants each of whom was, a rental bond contributor).	4 5 6 7 8 9 10
“special terms” , of a residential tenancy agreement, means terms of the agreement that are not—	11 12
(a) standard terms; or	13
(b) terms included in the agreement under section 35(1).	14
“spouse” see <i>Domestic Violence (Family Protection) Act 1989</i> , section 12(1). ¹⁵	15 16
“standard terms” , of a residential tenancy agreement, see section 38.	17
“water service charge” , for premises, means a service charge for water supplied to the premises.’.	18 19

¹⁵ *Domestic Violence (Family Provision) Act 1989*—

Who is a “spouse”?

12.(1) A **“spouse”** means either one of a man and a woman—

- (a) who are or have been married to each other; or
- (b) who, although not married to each other, are residing or have resided together as husband and wife; or
- (c) who are the biological parents of a child (whether or not they are or have been married or are residing or have resided together).

PART 3—AMENDMENT OF MOBILE HOMES ACT 1989

Act amended in pt 3

Clause **144.** This part amends the *Mobile Homes Act 1989*.

Amendment of s 3 (Interpretation)

Clause **145.** Section 3, definition “**caravan**”—

omit, insert—

‘ “**caravan**” see the *Residential Tenancies Act 1998*, section 3A.¹⁶’.

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¹⁶ Section 3A (Caravan)