Western Australia

# Residential Tenancies Act 1987

Compare between:

[01 Mar 2009, 04-d0-02] and [28 Jun 2010, 04-e0-01]

Western Australia

# Residential Tenancies Act 1987

**An Act to regulate the relationship of owners and tenants under residential tenancy agreements, to consequentially amend certain Acts [2], and for connected purposes.**


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# Part I — Preliminary

## 1. Short title

This Act may be cited as the *Residential Tenancies Act 1987* [1].

## 2. Commencement

This Act shall come into operation on such day as is fixed by proclamation [1].

## 3. Terms used in this Act

In this Act, unless the contrary intention appears —

***Commissioner*** means the person for the time being designated as the Commissioner under section 7A;

***competent court***, in relation to an application made under this Act, means a court that under section 12A or 13 has jurisdiction to hear and determine the application;

***Department*** means the department of the Public Service principally assisting in the administration of this Act;

***owner*** means the grantor of a right of occupancy under a residential tenancy agreement or his successor succeeding subject to the interest of the tenant;

***premises*** includes —

(a) any part of premises; and

(b) land and appurtenances appurtenant to premises;

***rent*** means a payment under a residential tenancy agreement payable by the tenant in respect of a period of the tenancy;

***residential premises*** means premises that constitute or are intended to constitute a place of residence;

***residential tenancy agreement*** means any agreement, whether express or implied, under which any person for valuable consideration grants to any other person a right to occupy,


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whether exclusively or otherwise, any residential premises, or part of residential premises, for the purpose of residence;

***security bond*** means an amount payable by a tenant as security for the performance of his obligations under a residential tenancy agreement, including an amount referred to in section 29(1)(b)(ii);

***tenancy*** means the right of occupancy under a residential tenancy agreement;

***tenant*** means the grantee of a right of occupancy under a residential tenancy agreement or his legal representative, heir or assign.

*[Section 3 amended by No. 50 of 1988 s. 4; No. 57 of 1997 s. 39(10); No. 59 of 2004 s. 118; No. 28 of 2006 s. 133.]*

## 4. Position of Crown

Subject to sections 5(2)(f) and 6, this Act binds the Crown.

## 5. Application of Act

(1) Subject to this section and sections 6 and 7, this Act applies to any residential tenancy agreement entered into, renewed, extended, assigned or otherwise transferred after the commencement of this Act.

(2) This Act does not apply to any residential tenancy agreement —

(a) where the tenant is a party to an agreement for the sale and purchase of the premises;

(b) where the agreement arises under a mortgage in respect of the premises;

(c) where the agreement arises under a scheme under which —

(i) a group of adjacent premises is owned by a company; and


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(ii) the premises comprising the group are let by the company to persons who jointly have a controlling interest in the company;

(d) where the tenant is a boarder or lodger;

(e) where the agreement is *bona fide* entered into for the purpose of conferring on a person a right to occupy premises for a holiday;

(f) where the agreement is entered into as owner, whether generally or in prescribed circumstances, by any prescribed person or agency being a person or agency that is acting on behalf of the Crown; or

(g) where the agreement is a prescribed agreement, or is an agreement of a prescribed class.

(3) This Act does not apply to or in relation to —

(a) any part of a hotel or motel;

(b) any part of an educational institution, college, hospital or nursing home;

(c) any premises used for the purposes of a club;

(d) any premises used as a home for aged or disabled persons by an eligible organization within the meaning of the *Aged or Disabled Persons Homes Act 1954* of the Commonwealth Parliament;

(e) any prescribed premises or premises of a prescribed class.

(4) For the purposes of subsection (2)(e), an agreement conferring a right to occupy premises for a fixed term of 3 months or longer shall be deemed, in the absence of proof to the contrary, not to have been entered into *bona fide* for the purpose of conferring a right to occupy the premises for a holiday.

(5) Subject to subsection (6), this Act applies to a site at a caravan park, within the meaning of the *Caravan Parks and Camping Grounds Act 1995* (whether or not a caravan, within the


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meaning of that Act, is situated on that site) as if the site was residential premises for the purposes of this Act.

(6) This Act does not apply to a site at a residential park, within the meaning of the *Residential Parks (Long-stay Tenants) Act 2006*, other than in relation to a residential tenancy agreement —

(a) under which a person has a right to occupy such a site; and

(b) that is an existing fixed term long-stay agreement made in writing, to which the *Residential Parks (Long-stay Tenants) Act 2006* does not apply in accordance with section 6(4) of that Act.

(7) Subsection (6) has effect despite section 8(1) of the *Residential Parks (Long-stay Tenants) Act 2006*.

*[Section 5 amended by No. 34 of 1995 s. 33; No. 32 of 2006 s. 98.]*

## 6. Modification of application of Act by regulation

The Governor may by regulation provide that a provision of this Act shall not apply to or in relation to, or shall apply in a modified manner to, the following, or any combination of the following —

(a) any residential tenancy agreement or class of residential tenancy agreements;

(b) any premises or class of premises; or

(c) any prescribed person or agency being a person or agency that is acting on behalf of the Crown.

## 7. Transitional provisions

(1) Where —

(a) a residential tenancy agreement was entered into before the commencement of this Act and continues after such commencement; and

(b) the tenancy under the agreement is a periodic tenancy,


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this Act shall, subject to any other provision of this Act, apply to the agreement on and from the first day after such commencement on which rent is payable under the agreement.

(2) Where this Act applies to a residential tenancy agreement by virtue of subsection (1) —

(a) any proceedings commenced in relation to the agreement before that application may be continued and completed as if this Act had not come into operation;

(b) any notice to quit given in relation to the agreement before that application shall have effect and may be enforced as if this Act had not come into operation;

(c) any process commenced before that application, being a process whereby the rent may be increased under the agreement, may be continued and completed and shall have effect to increase the rent as if this Act had not come into operation, but subject to any order under section 32;

(d) proceedings may be brought subject to and in accordance with this Act in respect of any cause of action that arose before that application, not being a cause of action subject to proceedings at the time of that application; and

(e) no civil or criminal liability shall be incurred by virtue of that application in respect of any act or omission before that application.

(3) Where —

(a) this Act becomes applicable to a residential tenancy agreement by reason of a renewal, extension, assignment or transfer referred to in section 5(1); and


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(b) at the time of such application a security bond in respect of the agreement has been paid to the owner or a person acting on his behalf,

the following provisions apply, notwithstanding section 29(4) —

(c) the owner shall cause the person who is holding the security bond to pay the amount of the security bond allowed by section 29(1), or such lesser amount as is held, in accordance with either paragraph (a) or (b) of clause 2(1) of Schedule 1;

(d) each payment referred to in paragraph (c) shall be made not later than 21 days after this Act becomes applicable to the residential tenancy agreement; and

(e) any amount paid to the bond administrator under clause 2(1)(a) of Schedule 1 shall be credited to the Rental Accommodation Account established under clause 3 of that Schedule.

(4) Nothing in section 29(4) applies to a periodic tenancy to which this Act becomes applicable by virtue of subsection (1).

*[Section 7 amended by No. 59 of 1995 s. 56; No. 77 of 2006 s. 17.]*


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# Part II — Administration

## 7A. Commissioner

(1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.

(2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.

(3) In this section —

***executive officer*** has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

*[Section 7A inserted by No. 28 of 2006 s. 134.]*

## 8. Functions of the Commissioner

(1) The Commissioner has the following functions for the purposes of this Act —

(a) the investigation of and conduct of research into matters relating to the interests of parties to residential tenancy agreements generally or any particular party or parties;

(b) the publication of reports and the dissemination of information on matters relating to the interests of parties to residential tenancy agreements;

(c) the giving of advice to persons on the provisions of this Act or any other law relating to or affecting the interests of parties to residential tenancy agreements;

(d) the investigation, upon the complaint of a party to a residential tenancy agreement or otherwise, of an offence against this Act or of an infringement of a party's rights arising out of any residential tenancy agreement and the taking of action by negotiation, prosecution of such offence or otherwise;


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(e) the making of reports to the Minister on matters referred to the Commissioner by the Minister and matters of importance investigated by the Commissioner, whether referred to the Commissioner by the Minister or not.

*[(2) deleted]*

*[Section 8 amended by No. 28 of 2006 s. 135.]*

**9. Commissioner may institute or defend proceedings for party**

(1) The Commissioner may, upon being satisfied that there is a cause of action and that it is in the public interest, on behalf of any party to a residential tenancy agreement, institute legal proceedings against any other person or defend any proceedings brought against the party or assume the conduct of proceedings already commenced by or against the party, with a view to enforcing or protecting the rights of the party in relation to any infringement or suspected infringement by that other person of those rights or of any of the provisions of this Act or other law relating to the interests of such parties.

(2) The Commissioner may, if he considers it appropriate, on behalf of any tenant, institute proceedings under section 32 or assume the conduct of proceedings already commenced under that section by the tenant.

(3) The Commissioner shall not institute, defend or assume the conduct of, any proceedings under subsection (1) or (2) on behalf of a party —

(a) without first —

(i) obtaining the written consent of the party which once given shall be irrevocable except with the consent of the Commissioner; and

(ii) obtaining the written consent of the Minister which may be given subject to such conditions as the Minister thinks fit;

and


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(b) in relation to a residential tenancy agreement that has terminated unless a complaint is made to him by a person who was a party to that agreement within 3 months after termination of the residential tenancy agreement.

(4) In relation to any proceedings referred to in subsection (1) or (2) the following provisions shall apply —

(a) the Commissioner shall, on behalf of the party to the residential tenancy agreement, have in all respects the same rights in, and control over, the proceedings, including the right to settle any action or part of any action, as the party would have had in the conduct of those proceedings;

(b) the Commissioner may, without consulting or seeking the consent of the party, conduct the proceedings in such manner as the Commissioner thinks appropriate and proper;

(c) in the case of proceedings already commenced by or against the party, the court hearing the proceedings shall, on the application of the Commissioner, order that the Commissioner be substituted for the party as a party to the proceedings, and may make such other orders or give such other directions in that behalf as the court thinks fit;

(d) any moneys (excluding costs) recovered by the Commissioner shall belong and be paid to the party without deduction and any amount awarded against the party shall be paid by and recoverable from the party, but in all cases the costs of the proceedings shall be borne by or paid to and retained by the Commissioner as the case may require; and

(e) if any party to the proceedings alleges another cause of action, or if the party on whose behalf the proceedings are being defended has another cause of action, the court hearing the proceedings shall, on the application of the Commissioner, order that the proceedings for the other cause of action be heard separately and that the party be


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a party to those proceedings in his own right and may make such other orders or give such other directions in that behalf as the court thinks fit.

(5) In any proceedings referred to in subsection (1), a document purporting to be signed by the Commissioner stating in respect of the proceedings that he is satisfied that there is a cause of action and that it is in the public interest to institute, defend or assume the conduct of the proceedings, as the case may be, on behalf of the party to the residential tenancy agreement shall, in the absence of proof to the contrary, be accepted as proof that the Commissioner instituted, defended or assumed the conduct of the proceedings, as the case may be, in accordance with that subsection.

(6) In any proceedings referred to in subsection (2), a document purporting to be signed by the Commissioner stating in respect of the proceedings that he considers it appropriate to institute or assume the conduct of the proceedings, as the case may be, on behalf of the tenant shall, in the absence of proof to the contrary, be accepted as proof that the Commissioner instituted or assumed the conduct of the proceedings, as the case may be, in accordance with that subsection.

(7) In any proceedings referred to in subsection (1) or (2) —

(a) a document purporting to be the consent of the party to the residential tenancy agreement to the Commissioner instituting, defending or assuming the conduct of the proceedings, as the case may be; or

(b) a document purporting to be the Minister's consent to the Commissioner instituting, defending or assuming the conduct of the proceedings, as the case may be,

shall, in the absence of proof to the contrary, be accepted as proof of the matters referred to in the document.


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(8) Any money which the Commissioner becomes liable to pay by virtue of this section shall be charged to the Consolidated Account and this subsection, without any further appropriation, shall be sufficient authority for any such payment.

(9) Any costs received by the Commissioner under subsection (4)(d) shall be credited to the Consolidated Account.

(10) In this section ***tenant*** includes a prospective tenant or former tenant and ***party*** in relation to a residential tenancy agreement includes a person who is prospectively or was formerly a party to such agreement.

*[Section 9 amended by No. 50 of 1988 s. 18; No. 6 of 1993 s. 11; No. 59 of 1995 s. 56; No. 59 of 2004 s. 121; No. 77 of 2006 s. 4.]*

### 10. Delegation by Commissioner

The Commissioner may by notice published in the *Gazette* delegate any of his functions under this Act (other than this power of delegation) to the holder of any specified office in the public service of the State or to any specified officer of an agency or instrumentality of the Crown.

### 11. Protection of officers

No liability shall attach to the Commissioner or any delegate of the Commissioner, or any officer of the Department for any act or omission by the Commissioner, the delegate, or the officer in good faith and in the performance or purported performance of the functions of the Commissioner or the Department under this Act.

### 11A. Information officially obtained to be confidential

(1) A person who misuses information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.

Penalty: $20 000.


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(2) A person misuses information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —

(a) in the course of duty;

(b) under this Act;

(c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;

(d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or

(e) with the consent of the person to whom the information relates, or each of them if there is more than one.

(3) In this section —

***information*** means information concerning the affairs of a person.

*[Section 11A inserted by No. 28 of 2006 s. 136.]*

### 11B. Application of certain provisions of the *Consumer Affairs Act 1971*

Sections 19, 20, 21, 22 and 23A of the *Consumer Affairs Act 1971* apply, with such modifications as are necessary, to and in relation to the functions of the Commissioner and persons and matters affected by the exercise of those functions as if the sections were part of this Act.

*[Section 11B inserted by No. 28 of 2006 s. 136.]*


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# Part III — Determination of disputes

## 12. Terms used in this Part

In this Part —

***prescribed amount*** means $10 000 or such other amount as may be prescribed;

***prescribed dispute*** means any matter that may be the subject of an application under this Act, other than an application made under this Act that is, or involves, a claim for an amount over the prescribed amount, but includes an application made under clause 8 of Schedule 1, irrespective of the amount claimed.

*[Section 12 inserted by No. 59 of 2004 s. 119.]*

## 12A. Jurisdiction over prescribed disputes

(1) The Magistrates Court has exclusive jurisdiction to hear and determine a prescribed dispute and such disputes are not justiciable by any other court or tribunal.

(2) A prescribed dispute is a minor case for the purposes of Part 4 of the *Magistrates Court (Civil Proceedings) Act 2004* and the jurisdiction conferred by subsection (1) is to be exercised accordingly.

*[Section 12A inserted by No. 59 of 2004 s. 119.]*

## 13. Jurisdiction over other disputes

(1) If an application made under this Act is, or involves, a claim for an amount over the prescribed amount, any court that is competent to hear and determine a claim founded on contract for the amount of that claim has jurisdiction to hear and determine the application.

(2) To the extent that subsection (1) confers jurisdiction on the Magistrates Court, that jurisdiction is not to be exercised in accordance with Part 4 of the *Magistrates Court (Civil Proceedings) Act 2004*.


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(3) Despite subsection (2), the parties to an application referred to in subsection (1) in respect of which the Magistrates Court has jurisdiction may consent in writing (which consent is irrevocable) to the proceedings being heard and determined by the Magistrates Court in accordance with Part 4 of the *Magistrates Court (Civil Proceedings) Act 2004*.

(4) In respect of the hearing and determination of an application referred to in subsection (1) —

(a) the practice and procedure applicable in the court dealing with the application shall, subject to subsection (3), apply and this Part (other than this subsection) and regulations made for the purposes of this Part shall not apply; but

(b) subject to paragraph (a), this Act shall apply.

(5) If on an application referred to in subsection (1) the plaintiff recovers an amount that is not more than the prescribed amount, the plaintiff shall not be awarded any costs unless the court is satisfied that at the time of making the application there were reasonable grounds for the plaintiff to believe that he had a claim for an amount over the prescribed amount.

*[Section 13 inserted by No. 59 of 2004 s. 119.]*

### 13A. Magistrates Court's jurisdiction

(1) For the purpose of exercising the jurisdiction conferred by section 12A and 13, the Magistrates Court is to be constituted by a magistrate.

(2) Despite subsection (1), a registrar of the Magistrates Court may, subject to the directions of a magistrate, exercise the court's jurisdiction in respect of any application that is to be dealt with in accordance with Part 4 of the *Magistrates Court (Civil Proceedings) Act 2004* if —

(a) the application is within a prescribed class of applications; and


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(b) either —

(i) the application is not disputed; or

(ii) a party to the application does not appear.

(3) An application made under this Act to the Magistrates Court shall be made to the court at the place nearest to the place where the premises the subject of the proceedings are situated but, with the consent of the parties, may be made to the court at any other place.

*[Section 13A inserted by No. 59 of 2004 s. 119.]*

### 13B. Appeals from decisions of a registrar

A person dissatisfied with a decision of a registrar in respect of a matter on which a registrar has exercised jurisdiction under section 13A(2) may appeal to a magistrate under section 29 of the *Magistrates Court Act 2004*.

*[Section 13B inserted by No. 69 of 2006 s. 29.]*

### 14. Time for determination of proceedings

Proceedings under this Act shall be heard and determined wherever practicable within 14 days after they are instituted and, where that is not practicable, as expeditiously as possible.

### 15. Applications for relief and orders thereon

(1) Where an owner or tenant under a residential tenancy agreement or a party to an agreement for an option to enter into a residential tenancy agreement claims that a breach of the agreement has occurred or that a dispute has arisen under the agreement, he may apply for relief to a competent court.

(2) Upon such an application the court may —

(a) by such order as it considers appropriate in the circumstances —

(i) restrain any action in breach of the agreement; or


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(ii) require any action in performance of the agreement;

(b) order the payment of any amount payable under the agreement;

(c) order the payment of compensation for loss or injury, other than personal injury, caused by any breach of the agreement;

(d) authorise payment of the rent under the agreement into a local court until the agreement has been performed or any application for compensation has been determined, and order that such rent be paid out towards the cost of remedying the breach or towards the amount of any compensation or otherwise as it considers appropriate; and

(e) make such ancillary or incidental order as the court considers appropriate.

(3) The court may make an order under subsection (2)(a) notwithstanding that it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such remedy would not otherwise be available.

(4) Upon an application with respect to the breach of an agreement, the court shall take into account any previous breaches by the tenant of the agreement.

*[Section 15 amended by No. 50 of 1988 s. 8 and 18; No. 59 of 2004 s. 120 and 121.]*

## 16. Enforcement

(1) A person shall not, without reasonable excuse, fail to comply with an order under section 15(2) other than an order for payment of any amount.

Penalty: $2 000.


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(2) An order made under this Act by a competent court may be enforced as if it were a judgment of that court.

*[Section 16 amended by No. 50 of 1988 s. 9; No. 59 of 2004 s. 121.]*

### 17. Application to vary or set aside order

(1) A person who is or was a party to any proceedings on an application under this Act may apply to the court that heard and determined the proceedings for an order varying or setting aside an order made in those proceedings if the application was heard in his absence.

(2) An application to vary or set aside an order, other than an order under section 84, must be made within 14 days of the making of the order.

*[Section 17 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 121.]*

### 18. Form of applications and notice of hearing

(1) Any application under this Act shall —

(a) be made in writing in a form approved by the Minister; and

(b) be accompanied by the prescribed fee (if any).

(2) Before a competent court hears an application the court shall —

(a) give to the applicant notice in writing setting out the time and place of the hearing; and

(b) give to any other party —

(i) notice in writing setting out the time and place of the hearing; and

(ii) such notice of the nature of the application as is required by rules of court or directed by the court in a particular case.

*[Section 18 amended by No. 50 of 1988 s. 10; No. 59 of 2004 s. 121.]*


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## 19. Witnesses and inspection of documents

(1) For the purpose of any proceedings —

(a) a competent court may by summons —

(i) require the attendance of any person before the court;

(ii) require the production of any books, papers or documents; or

(iii) require both such attendance and production;

(b) a competent court may —

(i) inspect any books, papers or documents produced, retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;

(ii) require any person appearing before it to make an oath or affirmation that he will truly answer any relevant question put to him by the court or any person appearing before the court;

(iii) require any person appearing before it (whether he has been summoned to appear or not) to answer any relevant question put to him by the court or any person appearing before the court.

(2) A person shall not —

(a) without reasonable excuse fail to comply with the requirements of a summons served on him under subsection (1); or

(b) refuse or fail to comply with a requirement under subsection (1).

Penalty: $2 000.

*[Section 19 amended by No. 50 of 1988 s. 11 and 18; No. 59 of 2004 s. 120(2) and 121.]*


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## 20. General powers in proceedings

A competent court hearing any application may —

(a) hear the application in such manner as it considers best suited to the purposes of this Act;

(b) decline to entertain the application if it considers that the application is frivolous;

(c) proceed to hear and determine the application in the absence of any party thereto;

(d) where a person contravenes subsection (2) of section 19, issue a warrant to bring the person before a competent court for the purposes of subsection (1) of that section;

(e) order the refund to a person of a fee paid under section 18(1) by that person;

(f) extend or shorten any period prescribed by or under this Act within which any application or other step in respect of proceedings must be made or taken, such power to extend a period being exercisable notwithstanding that that period has expired;

(g) vary or set aside any order where it considers there are proper grounds for doing so;

(h) adjourn the hearing to any time or place or to a time and place to be fixed;

(i) allow the amendment of the application;

(j) hear the application jointly with any other application;

(k) receive in evidence any transcript of evidence in proceedings before the court or any other court and draw any conclusions of fact therefrom that it considers proper;

(l) adopt, as it considers proper, any findings, decision or judgment of the court or any other court that may be relevant to the proceedings; and


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(m) generally give all such directions and do all such things that it thinks necessary or expedient in the proceedings.

*[Section 20 amended by No. 50 of 1988 s. 12 and 18; No. 59 of 2004 s. 120(1) and (2) and 121.]*

## 21. Evidence

In any proceedings on an application under this Act, a competent court shall not be bound by the rules of evidence but may inform itself upon any matter relating to the proceedings in such manner as it thinks fit.

*[Section 21 inserted by No. 59 of 2004 s. 121.]*

## 22. Presentation of cases

(1) Except as provided in this section, a party to any proceedings shall present his own case and not be represented or assisted in the presentation of his case by another person.

(2) A party to any proceedings may be represented by an agent or assisted by an agent in the presentation of his case if the court hearing the proceedings is satisfied that —

(a) the party is unable to appear personally or conduct the proceedings properly himself; and

(b) no other party will be unfairly disadvantaged by the fact that the agent is allowed so to act.

(3) All or any of the parties to any proceedings may be represented by legal practitioners if —

(a) all the parties agree and the court hearing the proceedings is satisfied that any party who is not so represented will not be unfairly disadvantaged;

(b) one of the parties is a legally qualified person;

(c) one of the parties is a body corporate and any other party elects to be so represented;


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(d) the court is satisfied that one of the parties is unable to appear personally or conduct the proceedings properly himself; or

(e) the proceedings are instituted or defended, or the conduct thereof has been assumed, by the Commissioner.

(4) This section does not prevent —

(a) a body corporate from being represented by an officer or employee of the body corporate (not being a legally qualified person) authorised to conduct the proceedings on its behalf (whether or not he is remunerated by the body corporate for representing it in the proceedings); or

(b) a person from acting as an interpreter for a party, if his fee does not exceed an amount fixed by the court at the hearing.

(5) A person shall not demand or receive any fee or reward for representing or assisting a party to proceedings unless —

(a) he is a legal practitioner;

(b) where the party is a body corporate, he is an officer or employee of the body corporate representing it under subsection (4); or

(c) where the party is an owner, he is the agent of the owner appointed to manage the premises the subject of the proceedings on behalf of the owner.

Penalty: $1 000.

(6) In this section —

***agent*** means any person who is not a legally qualified person;

***legal practitioner*** means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

***legally qualified person*** means an Australian lawyer within the meaning of that term in the *Legal Profession Act 2008* section 3


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or a person who holds or has held legal qualifications under the laws of this State or any other place.

*[Section 22 amended by No. 50 of 1988 s. 18; No. 65 of 2003 s. 61; No. 59 of 2004 s. 120(3); No. 21 of 2008 s. 698.]*

### 23. Settlement by conciliation

(1) If before or during the hearing of any proceedings it appears to a competent court either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of matters in dispute between the parties being settled by conciliation, it may —

(a) interview the parties in private (either with or without any person who may be representing any of them or assisting any of them in the presentation of his case); and

(b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

(2) Nothing said or done in the course of any attempt to settle proceedings under this section shall subsequently be given in evidence in any proceedings nor shall the judicial officer who presided be thereby disqualified from hearing or continuing to hear the proceedings if he thinks fit to do so.

(3) Where proceedings are settled under this section, the court may embody the terms of the settlement in an order.

*[Section 23 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(2) and (3) and 121.]*

### 24. Costs

(1) A competent court hearing proceedings shall not award costs, unless —

(a) all parties to the proceedings were represented by legal practitioners, as defined in section 22(6); or

(b) it is of the opinion that there are special circumstances justifying the award of costs.


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(2) Where a party to the proceedings has paid a fee under section 18(1), nothing in subsection (1) is to be taken to prevent a court making an order which requires any other party to the proceedings to pay to the first-mentioned party the amount of that fee.

*[Section 24 amended by No. 50 of 1988 s. 18; No. 59 of 1995 s. 45; No. 59 of 2004 s. 120(2) and (3) and 121.]*

### 25. Reservation of question of law

(1) A competent court hearing proceedings may reserve any question of law for the decision of the Supreme Court.

(2) Any costs arising from the reservation of any question under this section, including any costs incurred by the parties to the proceedings, shall be charged to the Consolidated Account and this subsection, without any further appropriation, shall be sufficient authority for any such payment.

*[Section 25 amended by No. 50 of 1988 s. 18; No. 6 of 1993 s. 11; No. 59 of 1995 s. 56; No. 59 of 2004 s. 121; No. 77 of 2006 s. 4.]*

### 26. Finality of proceedings

(1) An order made by a court under this Act is final and binding on all parties to the proceedings in which the order is made and on all persons who under this Act could have become entitled to be joined as a party to the proceeding in which the order is made, and no appeal shall lie in respect thereof.

(2) No declaratory judgment shall be given and no order shall be made under section 36 of the *Magistrates Court Act 2004* in respect of proceedings taken or to be taken under this Act in the Magistrates Court or any order made in such proceedings by that court, unless the Supreme Court is satisfied that the Magistrates Court had or has no jurisdiction conferred by or under this Act in respect of the proceedings or that a party to the proceedings has been denied natural justice.


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(3) This section applies despite Part 7 of the *Magistrates Court (Civil Proceedings) Act 2004*.

*[Section 26 amended by No. 50 of 1988 s. 13; No. 59 of 2004 s. 120(3) and 121; No. 69 of 2006 s. 30.]*


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# Part IV — Rights and obligations of owner and tenant

## Division 1 — Rent and security bonds

### 27. Restriction on consideration for tenancy agreement

(1) Subject to subsection (2), a person shall not require or receive from a tenant or prospective tenant any monetary consideration for or in relation to entering into, renewing, extending or continuing a residential tenancy agreement other than rent and a security bond.

Penalty: $1 000.

(2) Subsection (1) does not apply to —

(a) any amount required or received as consideration for an option to enter into a residential tenancy agreement if, upon the option being exercised, the amount is refunded or applied towards the rent payable under the agreement;

(b) any amount that the owner is authorised by any other provision of this Act to require or receive; and

*[(c) deleted]*

(d) any other payment of a prescribed class.

*[Section 27 amended by No. 59 of 1995 s. 46 and 55.]*

### 28. Rent in advance

(1) A person shall not require before or during the first 2 weeks of the tenancy under a residential tenancy agreement as rent under the agreement an amount exceeding 2 weeks' rent.

Penalty: $1 000.

(2) A person shall not require any payment of rent (other than the first payment) under a residential tenancy agreement until the period of the tenancy in respect of which any previous payment has been made has elapsed.

Penalty: $1 000.

*[Section 28 amended by No. 59 of 1995 s. 55.]*


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## 29. Security bonds

(1) A person shall not —

(a) require the payment of, or receive, more than one security bond in relation to any residential tenancy agreement; or

(b) require the payment of, or receive, a security bond of an amount exceeding in the aggregate —

(i) 4 weeks' rent under the residential tenancy agreement in relation to which it is required or received; and

(ii) where the tenant is permitted to keep any cat or dog on the premises, the amount of $50, or such other amount as is prescribed, to meet the cost of any fumigation of the premises that may be required on the termination of the tenancy.

Penalty: $1 000.

(2) Subsection (1)(b) does not apply in relation to a residential tenancy agreement where —

(a) the weekly rate of rent payable under the agreement exceeds a prescribed amount; or

(b) the premises to which the agreement relates were during the whole of the 3 months immediately preceding the entering into of the agreement the principal private residence of the owner.

(3) Where, during the period of 6 months after the day on which the tenancy under a residential tenancy agreement commenced, the rent payable under the agreement decreases or is decreased, the amount paid in excess of the lower or, as the case may be, lowest rate of rent payable under the agreement during that period, together with the amount (if any) allowed by subsection (1)(b)(ii), shall be deemed to have been paid as a security bond.


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(4) A person who receives a security bond paid in relation to a residential tenancy agreement —

(a) shall forthwith give or cause to be given to the person paying the bond a receipt specifying the date on which the bond was received, the name of the person paying the bond, the amount paid and the premises in respect of which it is paid;

(b) shall pay the amount of the security bond in accordance with the provisions contained in Schedule 1;

(c) shall keep, or cause to be kept, in a form approved by the Minister a record of the payment referred to in paragraph (b) that includes the following details —

(i) the date on which the amount was paid;

(ii) the amount paid; and

(iii) if the payment was under clause 2(1)(b) of Schedule 1, the name of the financial institution to which the amount was paid and the name and number of the account into which the amount was paid;

and

(d) shall give or cause to be given to the person who paid the bond within such period as is prescribed a copy of the record referred to in paragraph (c).

Penalty: $4 000.

(5) A person shall not, without reasonable excuse, refuse or fail to produce a record referred to in subsection (4)(c) when required to do so by an officer of the Department.

Penalty: $1 000.


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(6) A person shall not make an entry in a record referred to in subsection (4)(c) that the person knows is false in a material particular.

Penalty: $1 000.

*[Section 29 amended by No. 59 of 1995 s. 47 and 55; No. 69 of 2006 s. 31.]*

### 29A. Power of Commissioner to obtain information relating to security bond accounts

(1) The Commissioner may require the manager or other officer for the time being in charge of an authorised financial institution as defined in Schedule 1 to give to the Commissioner such information as the Commissioner requires in relation to accounts referred to in clause 2(3)(a) and (b) of that Schedule, including information as to the balances of and amounts of interest paid on such accounts.

(2) A requirement under subsection (1) —

(a) shall be given by notice in writing to the manager or other officer required to give the information;

(b) shall specify the time at or within which the information is to be given;

(c) may, by its terms, require that the information be —

(i) given in writing;

(ii) certified as correct by a person who is registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001* of the Commonwealth and is specified in the requirement;

(iii) given at or sent or delivered to any place specified in the requirement;

(iv) sent or delivered by any means specified in the requirement; and


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(v) given on oath or affirmation or by statutory declaration;

and

(d) shall state that the manager or other officer is required under this Act to give the information.

(3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: $3 000.

(4) A person shall not give information in response to a requirement under subsection (1) that the person knows is false or misleading in a material particular.

Penalty: $3 000.

(5) It is a defence in proceedings for an offence against subsection (3) for the person to show that —

(a) the notice under subsection (2)(a) did not state that the person was required under this Act to give the information; or

(b) the time specified in the requirement did not give the person sufficient notice to enable compliance with the requirement.

(6) Where a person is required to give information under subsection (1), the person shall not refuse to comply with that requirement on the ground that the information may tend to incriminate the person or render the person liable to any penalty.

(7) Despite subsection (6), information given under this section is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against subsection (4).

*[Section 29A inserted by No. 59 of 1995 s. 48; amended by No. 10 of 2001 s. 220.]*


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### 30. Variation of rent

(1) Subject to this section, the rent payable under a residential tenancy agreement may be increased by the owner by notice in writing to the tenant specifying the amount of the increased rent and the day as from which the increased rent becomes payable, being a day —

(a) not less than 60 days after the day on which the notice is given; and

(b) not less than 6 months after the day on which the tenancy commenced, or, if the rent has been increased under this section, the day on which it was last so increased,

but otherwise the rent shall not increase or be increased.

(2) The right of the owner to increase rent in accordance with subsection (1) —

(a) is not exercisable in relation to an agreement that creates a tenancy for a fixed term during the currency of that term unless the agreement provides that the rent may increase or be increased; and

(b) in any case, may be excluded or limited by agreement between the owner and the tenant.

(3) A notice of increase of rent that has been given in accordance with this section and that has not been withdrawn by the owner varies the residential tenancy agreement to the effect that the increased rent specified in the notice is payable under the agreement as from the day specified in the notice.

### 31. Increase in security bond

(1) Where the amount of the rent payable under a residential tenancy agreement has been increased under section 30, the amount of the security bond payable under the agreement may be increased by the owner by notice in writing to the tenant


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specifying the amount of the increase and the day on which it is payable, being a day —

(a) not less than 60 days after the day on which the notice is given; and

(b) not less than 12 months after the day on which the tenancy commenced, or, if the amount of the security bond has been increased under this section, the day on which it was last so increased,

but otherwise the amount of the security bond shall not increase or be increased.

(2) The amount of a security bond may not be increased under this section to an amount that would exceed the aggregate of —

(a) 4 weeks' rent under the residential tenancy agreement at the time at which the amount of the increase would be payable; and

(b) any amount provided for by section 29(1)(b)(ii).

(3) A notice of increase of the amount of a security bond that has been given in accordance with this section and that has not been withdrawn by the owner varies the residential tenancy agreement to the effect that the amount of the increase specified in the notice is payable under the agreement on the day specified in the notice.

(4) Section 29(4) applies to an amount paid under this section.

## 32. Limitation of excessive rents in certain circumstances

(1) A tenant under a residential tenancy agreement may apply to a competent court for an order declaring that the rent payable in respect of the premises is excessive.

(2) An application under subsection (1) may only be made on one or more of the following grounds —

(a) that since the tenancy was entered into, renewed or extended there has been, without any default on the part


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of the tenant, a significant reduction in the chattels provided with the premises or in the facilities provided, or both;

(b) that the owner was wholly or partly motivated in his approach to the level of rent by a desire that the tenancy be terminated,

but may be so made notwithstanding that the tenant has agreed to the rent to which the application relates.

(3) The court shall, in determining whether or not the rent payable in respect of the premises is excessive, have regard to —

(a) the general level of rents for comparable premises in the locality or a similar locality;

(b) the estimated capital value of the premises at the date of the application;

(c) the amount of the outgoings in respect of the premises required to be borne by the owner under the agreement;

(d) the estimated cost of any services provided by the owner or tenant under the agreement;

(e) the value and nature of the chattels provided with the premises for use by the tenant;

(f) the accommodation and amenities provided in the premises and the state of repair and general condition thereof; and

(g) any other relevant matter.

(4) Where a court determines on an application under this section that the rent payable in respect of the premises is excessive, it may, having regard to the justice and merits of the case, order that from a specified day, not being earlier than the date of the application by the tenant, the rent payable in respect of the premises under the residential tenancy agreement shall not exceed a specified amount.


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(5) An order made by a court under subsection (4) has effect until the expiration of the tenancy of the person who applied for the order or of such period not exceeding 6 months as is fixed by the court commencing on the day on which the order is made, whichever is the earlier.

(6) A court may, upon application by the owner of any premises in respect of which an order under this section has been made, if satisfied having regard to the matters set out in subsection (3) that it is just to do so, vary or revoke the order.

(7) A person shall not demand or receive any rent in respect of premises of an amount that exceeds the amount fixed by an order under this section in respect of the premises.

Penalty: $1 000.

*[Section 32 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120 and 121.]*

### 33. Duty to give receipt for rent

(1) A person who receives any rent under a residential tenancy agreement shall, within 3 days of receiving the rent (not including an "excluded day" as defined in section 61(2) of the *Interpretation Act 1984*), prepare and give, or cause to be prepared and given, to the person paying the rent a receipt specifying the date on which the rent was received, the name of the person paying the rent, the amount paid, the period of the tenancy in respect of which it is paid, and the premises in respect of which it is paid.

Penalty: $1 000.

(2) Subsection (1) does not apply to rent paid under an agreement between the owner and tenant into an account at an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth nominated by the owner.


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(3) Nothing in subsection (1) shall be read as limiting section 69 of the *Real Estate and Business Agents Act 1978*.

*[Section 33 amended by No. 59 of 1995 s. 55; No. 26 of 1999 s. 100(2).]*

### 34. Proper records of rent to be kept

(1) An owner shall keep, or cause to be kept, a record showing the rent received in respect of the premises.

Penalty: $1 000.

(2) No person shall make in any record referred to in subsection (1) any entry that is to his knowledge false in a material particular.

Penalty: $1 000.

*[Section 34 amended by No. 59 of 1995 s. 55.]*

### 35. Payment of rent by post-dated cheques etc. prohibited

No person shall require a post-dated cheque or other negotiable instrument that is post-dated in payment of rent.

Penalty: $1 000.

*[Section 35 amended by No. 59 of 1995 s. 55.]*

### 36. Apportionment of rent

Rent payable shall accrue from day to day and upon termination be apportioned accordingly, and the appropriate amount shall be payable or recoverable forthwith.

## Division 2 — General

### 37. Term used in this Division

In this Division, unless the contrary intention appears, ***agreement*** means a residential tenancy agreement.


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### 38. Tenant's responsibility for cleanliness and damage

(1) It is a term of every agreement that the tenant —

(a) shall keep the premises in a reasonable state of cleanliness;

(b) shall notify the owner as soon as practicable but within 3 days of any damage to the premises; and

(c) shall not intentionally or negligently cause or permit damage to the premises.

(2) In this section ***premises*** includes chattels provided with the premises (whether under the agreement or not) for use by the tenant.

### 39. Tenant's conduct on premises

It is a term of every agreement that the tenant —

(a) shall not use the premises, or cause or permit the premises to be used, for any illegal purpose; and

(b) shall not cause or permit a nuisance.

### 40. Vacant possession

(1) It is a term of every agreement that the tenant shall have vacant possession of the premises on the day on which the tenant is entitled to enter into occupation of the premises under the agreement.

(2) In subsection (1) ***premises*** does not include any part of the premises in respect of which the tenant does not have a right of exclusive occupation.

### 41. Legal impediments to occupation as residence

It is a term of every agreement on the part of the owner that there is not any legal impediment of which, at the time of entering into the agreement, he had or ought reasonably to have


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had knowledge to occupation of the premises as a residence for the period of the tenancy.

### 42. Owner's responsibility for cleanliness and repairs

(1) It is a term of every agreement that the owner —

(a) shall provide the premises in a reasonable state of cleanliness;

(b) shall provide and maintain the premises in a reasonable state of repair having regard to their age, character and prospective life; and

(c) shall comply with all requirements in respect of buildings, health and safety under any other written law in so far as they apply to the premises.

(2) In this section ***premises*** includes chattels provided with the premises (whether under the agreement or not) for use by the tenant.

### 43. Compensation where tenant sees to repairs

(1) It is a term of every agreement that the owner shall compensate the tenant for any reasonable expense incurred by the tenant in making urgent repairs to premises where —

(a) the state of disrepair has arisen otherwise than as a result of a breach of the agreement by the tenant and is likely to cause injury to person or property or undue inconvenience to the tenant; and

(b) the tenant has made a reasonable attempt to give to the owner notice of the state of disrepair and of his intention to incur expense in repairing the premises.

(2) An owner is not obliged to compensate the tenant under the term prescribed by subsection (1) unless —

(a) the repairs are carried out by a person who holds a licence that he is required to hold under any written law to perform such work; and


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(b) the tenant has furnished to the owner a report prepared by that person as to the apparent cause of the state of disrepair.

(3) The term prescribed by subsection (1) applies notwithstanding that the tenant has notice of the state of the premises at the time when the agreement is entered into.

(4) In this section ***premises*** includes chattels provided with the premises (whether under the agreement or not) for use by the tenant.

### 44. Quiet enjoyment

(1) It is a term of every agreement —

(a) that the tenant shall have quiet enjoyment of the premises without interruption by the owner or any person claiming by, through or under the owner or having superior title to that of the owner;

(b) that the owner shall not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises; and

(c) that the owner shall take all reasonable steps to enforce the obligation of any other tenant of the owner in occupation of adjacent premises not to cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises.

(2) In this section ***premises*** includes chattels provided with the premises (whether under the agreement or not) for use by the tenant.

### 45. Locks

(1) It is a term of every agreement —

(a) that the owner shall provide and maintain such locks or other devices as are necessary to ensure that the premises are reasonably secure; and


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(b) that neither the owner nor the tenant shall alter, remove or add any lock or device without the consent of the other given at, or immediately before, the time that the alteration, removal or addition is carried out.

(2) An owner or tenant who, without reasonable excuse, breaches the term prescribed by subsection (1)(b) is, in addition to any civil liability that he might incur by so doing, guilty of an offence and liable to a penalty not exceeding $4 000.

(3) Where an agent of an owner, without reasonable excuse, alters, removes or adds a lock or device without the consent of the tenant given at, or immediately before, the time that the alteration, removal or addition is carried out, the agent is, in addition to any civil liability that he might incur by so doing, guilty of an offence and liable to a penalty not exceeding $4 000.

(4) The liability of an agent under subsection (3) is in addition to any liability of the owner in respect of the actions of the agent.

*[Section 45 amended by No. 59 of 1995 s. 55.]*

**46. Owner's right of entry**

(1) It is a term of every agreement that the owner may enter the premises in the following circumstances but not otherwise —

(a) in any case of emergency;

(b) for the purpose of inspecting the premises or any other purpose, on a day and at a reasonable hour, specified in a notice given to the tenant not less than 7 nor more than 14 days in advance;

(c) at any reasonable hour for the purpose of collecting the rent under the agreement, where it is payable not more frequently than once every week and it is agreed that the rent be collected at the premises;

(d) for the purposes of inspecting the premises, on the occasion of a rent collection referred to in paragraph (c), but not more frequently than once every 4 weeks;


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(e) for the purpose of carrying out or inspecting necessary repairs to or maintenance of the premises, at any reasonable hour, after giving the tenant not less than 72 hours notice;

(f) for the purpose of showing the premises to prospective tenants, at any reasonable hour and on a reasonable number of occasions during the period of 21 days preceding the termination of the agreement, after giving the tenant reasonable notice;

(g) for the purpose of showing the premises to prospective purchasers, at any reasonable hour and on a reasonable number of occasions, after giving the tenant reasonable notice; or

(h) with the consent of the tenant given at, or immediately before, the time of entry.

(2) In subsection (1) ***premises*** does not include any part of the premises used by the tenant in common with the owner or any other tenant of the owner.

### 47. Right of tenant to affix and remove fixtures etc.

(1) An agreement may provide that the tenant —

(a) shall not affix any fixture or make any renovation, alteration or addition to the premises; or

(b) may affix any fixture or make any renovation, alteration or addition to the premises, but only with the owner's consent.

(2) Where an agreement makes the provision described in subsection (1)(b) it is a term of the agreement that —

(a) the owner shall not unreasonably withhold such consent;

(b) the tenant may remove any fixture that he has affixed to the premises, with the owner's consent, during the period that he has continued in possession of the premises under


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the agreement, unless the removal of the fixture would cause irreparable damage to the premises; and

(c) where the tenant causes any damage to the premises by removing any fixture, he shall notify the owner and, at the option of the owner, repair the damage or compensate the owner for any reasonable expenses incurred by the owner in repairing the damage.

### 48. Owner to bear outgoings in respect of premises

It is a term of every agreement that the owner shall bear all rates, taxes or charges imposed in respect of the premises under any of the following written laws —

(a) the *Local Government Act 1995*;

(b) the *Land Tax Act 2002*;

(c) any written law under which a rate, tax or charge is imposed for "water services", as defined in the *Water Agencies (Powers) Act 1984*, other than a charge for water consumed.

*[Section 48 amended by No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 45 of 2002 s. 21.]*

### 49. Right of tenant to assign or sub-let

(1) An agreement may provide that the tenant —

(a) may assign his interest under the agreement or sub-let the premises;

(b) shall not assign his interest under the agreement or sub-let the premises; or

(c) may assign his interest under the agreement or sub-let the premises only with the written consent of the owner.

(2) Where an agreement makes or is deemed to make the provision described in subsection (1)(c), it is a term of the agreement —

(a) that the owner shall not unreasonably withhold such consent; and


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(b) that the owner shall not make any charge for giving such consent other than his reasonable expenses incidental thereto.

(3) Where an agreement does not make any of the provisions described in subsection (1), the agreement shall be deemed to contain the provision described in subsection (1)(c).

### 50. Vicarious responsibility of tenant for breach by other person lawfully on premises

(1) It is a term of every agreement that, where a person other than the tenant is lawfully on the premises, the tenant is vicariously responsible for any act or omission by that person that would, if it had been an act or omission by the tenant, have constituted a breach of the agreement.

(2) Subsection (1) does not extend to a person who is lawfully on the premises and whose authority to be on the premises does not derive from the permission, express or implied, of the tenant.

### 51. Tenant to be notified of owner's name and address

(1) An owner under an agreement shall, at the time of entering into the agreement, notify the tenant, or cause the tenant to be notified, in writing of —

(a) the full name and address of the owner and any person having superior title to that of the owner; and

(b) where the owner or such person is a body corporate, the full name and business address of the secretary of the body corporate.

Penalty: $1 000.

(2) Notwithstanding subsection (1)(a), so long as the premises are managed by a real estate agent who is licensed under the *Real Estate and Business Agents Act 1978*, it is sufficient for an owner instead of notifying the tenant, or causing him to be notified, of the address of the owner to notify him, or cause him to be notified, of the address of that agent.


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(3) Where a person succeeds another person as the owner under an agreement, the new owner shall within 14 days notify the tenant, or cause the tenant to be notified, in writing of —

(a) the full name and address of the new owner; and

(b) where the new owner is a body corporate, the full name and business address of the secretary of the body corporate.

Penalty: $1 000.

(4) Where any name or address of which the owner is required to notify the tenant under this section is changed, the owner shall within 14 days notify the tenant, or cause the tenant to be notified, in writing of the changed name or address.

Penalty: $1 000.

*[Section 51 amended by No. 59 of 1995 s. 55.]*

### 52. Failure to pay rent with intention it be recovered from security bond

A tenant shall not fail or refuse to pay any rent due under an agreement with the intention that the amount of such rent be recovered by the owner from the security bond paid by the tenant.

Penalty: $1 000.

*[Section 52 amended by No. 59 of 1995 s. 55.]*

### 53. Tenant's name, place of occupation and forwarding address

(1) A tenant under an agreement shall not falsely state to the owner his name or place of occupation.

Penalty: $1 000.

(2) Where a tenant has stated a place of occupation to the owner and that place is changed, the tenant shall, within 14 days of the change, notify the owner of the new place of occupation.

Penalty: $1 000.


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(3) A tenant under an agreement shall, at the time of delivering up possession of the premises to which the agreement relates, notify the owner, or cause the owner to be notified of —

(a) the address at which he intends to next reside; or

(b) his postal address.

Penalty: $1 000.

*[Section 53 amended by No. 59 of 1995 s. 55.]*

### 54. Owner to deliver copy of agreement to tenant

(1) An owner, or agent of an owner who has required or invited a tenant to sign a written agreement or memorandum thereof shall —

(a) provide the tenant with a copy of the document at the time at which it is signed by the tenant; and

(b) ensure that a fully executed copy of the document is delivered to the tenant within 21 days after it has been signed and delivered by the tenant, or, where that is not reasonably practicable in the circumstances, within such longer period as is so practicable.

Penalty: $1 000.

(2) If an owner, or agent of an owner, fails to execute and deliver a copy of the document in accordance with subsection (1)(b), acceptance of rent by the owner, or agent of the owner, without reservation shall give to the document the same effect as if it had been fully executed.

*[Section 54 amended by No. 59 of 1995 s. 55.]*

### 55. Cost of written agreement to be borne by owner

Where an owner requires the execution of a written agreement or memorandum of an agreement the cost of its preparation shall be borne by the owner.


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### 56. Discrimination against tenants with children

(1) A person shall not refuse, or cause any person to refuse, to grant a tenancy to any person on the ground that it is intended that a child should live in the premises.

Penalty: $1 000.

(2) A person shall not —

(a) instruct any person not to grant; or

(b) state his intention, whether by advertisement or otherwise, not to grant,

a tenancy to any person, if it is intended that a child should live in the premises.

Penalty: $1 000.

(3) This section does not apply where the premises the subject of the tenancy are the principal place of residence of the owner or where the owner or his agent appointed to manage the premises resides in premises adjoining the premises the subject of the tenancy.

*[Section 56 amended by No. 59 of 1995 s. 55.]*

### 57. Accelerated rent and liquidated damages prohibited

(1) Where an agreement provides that, upon breach by the tenant of the agreement to pay rent or any other term of the agreement or breach of this Act or any other written law, the tenant is liable to pay —

(a) all or any part of the rent remaining payable under the agreement;

(b) rent of an increased amount;

(c) any amount by way of a penalty; or

(d) any amount by way of liquidated damages,

the provision is to that extent void and of no effect.


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(2) Where an agreement provides that, if the tenant does not breach the agreement to pay rent or any other term of the agreement or any provision of this Act or any other written law, the rent shall or may be decreased or the tenant shall or may be granted or paid a rebate, refund or other benefit, the agreement shall be deemed to have been varied from the commencement of the tenancy so that the tenant is entitled to the reduction, rebate, refund or other benefit in any event.

### 58. Duty of mitigation

The rules under the law of contract relating to mitigation of loss or damage upon breach of a contract apply to and in relation to a breach of an agreement.


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# Part V — Termination of residential tenancy agreements

## 59. Term used in this Part

In this Part unless the contrary intention appears ***agreement*** means a residential tenancy agreement.

## 60. How residential tenancy agreements are terminated

(1) Notwithstanding any Act or law to the contrary, an agreement shall not terminate or be terminated except —

(a) where the owner or tenant gives notice of termination under this Act and —

(i) the tenant delivers up vacant possession of the premises on or after the expiration of the period of notice required under this Act; or

(ii) a competent court, upon application by the owner, terminates the agreement under section 71;

(b) in the case of a tenancy for a fixed term, where the term expires and —

(i) the tenant delivers up vacant possession of the premises on or after the expiration of the term; or

(ii) a competent court, upon application by the owner, terminates the agreement under section 72;

(c) where a competent court terminates the agreement under section 73, 74 or 75;

(d) where a person having superior title to that of the owner becomes entitled to possession of the premises;

(e) where a mortgagee in respect of the premises takes possession of the premises in pursuance of the mortgage;

(f) where the tenant abandons the premises;


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(g) where the tenant delivers up vacant possession of the premises pursuant to an agreement in writing between the owner and the tenant to terminate the residential tenancy agreement;

(h) by merger.

(2) Where an agreement continues beyond the day on which it would upon its terms have terminated by effluxion of time or the happening of an event, subject to subsection (3), the same terms as last applied before that day continue to apply.

(3) A competent court may, upon application by the owner or tenant, make such modification of the terms of an agreement referred to in subsection (2) as may be necessary for or appropriate to its continuance.

*[Section 60 amended by No. 50 of 1988 s. 18; No. 59 of 1995 s. 49; No. 59 of 2004 s. 120(1).]*

### 61. Form of notice of termination by owner

Notice of termination of an agreement by the owner shall —

(a) be in writing and in the prescribed form;

(b) be signed by the owner or his agent;

(c) identify the premises the subject of the agreement;

(d) specify the day on which possession of the premises is to be delivered up by the tenant; and

(e) specify and give particulars of the ground, if any, upon which the notice is given.

### 62. Notice of termination by owner upon ground of breach of term of agreement

(1) An owner may give notice of termination of an agreement to the tenant upon the ground that the tenant has breached a term of the agreement and the breach has not been remedied.


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(2) Where an owner gives notice of termination under this section, the period of notice shall be not less than 7 days.

(3) Where notice of termination is given under this section upon the ground of a breach of the agreement other than the agreement to pay rent, the notice is ineffectual unless a notice specifying the breach and requiring that it be remedied is given to the tenant not less than 14 days before the notice of termination is given.

(4) Where notice of termination is given under this section upon the ground of a breach of the agreement to pay rent —

(a) the notice is ineffectual unless a notice specifying the breach of the agreement and requiring payment of the rent is given to the tenant not less than 14 days before the notice of termination is given; and

(b) the notice is not rendered ineffectual by failure by the owner to make a prior formal demand for payment of the rent.

(5) Despite subsection (4)(a), notice of termination upon the ground of a breach of the agreement to pay rent may be given immediately the breach occurs but where notice is so given —

(a) the owner shall not make an application under section 71 if the rent due under the agreement is paid in full before the day specified in the notice as the day on which the tenant is to deliver up possession of the premises;

(b) the owner shall not continue proceedings in respect of an application under section 71 if —

(i) the rent due under the agreement; and

(ii) the amount of any fee paid by the owner under section 18(1),

are paid in full to the owner not less than one day before the hearing of application; and

(c) the hearing of an application under section 71 shall take place not less than 21 days after notice is given.


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(5a) Where an application is made, or proceedings in respect of an application are continued, in contravention of subsection (5), any order made under section 71(2) in respect of the application is of no effect.

(6) Where notice of termination is given under this section in respect of an agreement that creates a tenancy for a fixed term, the notice is not ineffectual by reason of the fact that the day specified as the day on which the tenant is to deliver up possession of the premises is earlier than the last day of that term.

(7) Failure by a tenant under an agreement that creates a tenancy for a fixed term to deliver up vacant possession of the premises at the expiration of the term does not constitute a breach of the agreement.

*[Section 62 amended by No. 59 of 1995 s. 50.]*

### 63. Notice of termination by owner who has entered into contract of sale

(1) An owner may give notice of termination of an agreement to the tenant on the ground that he has entered into a contract for sale of the premises to which the agreement relates and under that contract he is required to give vacant possession of the premises.

(2) Where an owner gives notice of termination under subsection (1) the period of notice shall be not less than 30 days.

(3) An owner or agent of an owner shall not give notice of termination under this section that falsely states the ground of the notice.

Penalty: $2 000.

(4) This section does not apply to an agreement that creates a tenancy for a fixed term during the currency of that term.

*[Section 63 amended by No. 59 of 1995 s. 55.]*


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### 64. Notice of termination by owner without any ground

(1) An owner may give notice of termination of an agreement to the tenant without specifying any ground for the notice.

(2) Where an owner gives notice of termination under this section, the period of notice must be not less than 60 days.

(3) This section does not apply in relation to an agreement that creates a tenancy for a fixed term during the currency of that term.

### 65. Termination by owner where section 32 invoked

(1) Where proceedings are pending for an order, or an order is in force, under section 32 fixing the maximum rent in respect of premises the subject of an agreement —

(a) any notice of termination of the agreement given by the owner under section 64 is ineffectual; and

(b) any other notice of termination of the agreement given by the owner is ineffectual unless first authorised by a competent court under subsection (2).

(2) A competent court may, upon application by an owner, authorise the owner to give notice of termination, if it is satisfied that neither the institution of the proceedings for the order nor the making of the order has wholly or partly motivated the owner to give notice of termination.

*[Section 65 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(1) and (2).]*

### 66. Notice by owner not waived by acceptance of rent

A demand for, any proceeding for the recovery of, or acceptance of, rent by an owner after he has notice of a breach of the agreement by the tenant or has given the tenant notice of termination under this Act does not operate as a waiver of that breach or that notice.


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### 67. Form of notice of termination by tenant

Notice of termination of an agreement by the tenant shall —

(a) be in writing;

(b) be signed by the tenant and identify the premises the subject of the agreement; and

(c) specify the day on which the tenant will deliver up possession of the premises.

### 68. Notice of termination by tenant

(1) A tenant may give notice of termination of an agreement to the owner without specifying any ground for the notice.

(2) Where a tenant gives notice of termination under this section, the period of notice must be not less than 21 days.

(3) This section does not apply in relation to an agreement that creates a tenancy for a fixed term during the currency of that term.

### 69. Notice of termination by owner or tenant where agreement frustrated

(1) Where, otherwise than as a result of a breach of an agreement, the premises, or a part of the premises, the subject of that agreement are destroyed or rendered uninhabitable or cease to be lawfully usable as a residence or are appropriated or acquired by any authority by compulsory process —

(a) the rent shall abate accordingly; and

(b) the owner or tenant may give notice of termination of the agreement to the other upon that ground.

(2) Where an owner gives notice of termination under this section, the period of notice shall be not less than 7 days.

(3) Where a tenant gives notice of termination under this section, the period of notice shall be not less than 2 days.


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(4) Where notice of termination is given under this section in respect of an agreement that creates a tenancy for a fixed term, the notice is not ineffectual by reason of the fact that the day specified as the day on which the tenant is to, or will, deliver up possession of the premises is earlier than the last day of that term.

### 70. Effect of notice of termination of periodic tenancy

Notice of termination of an agreement that creates a periodic tenancy is not ineffectual by reason of the fact —

(a) that the period of the notice, being not less than the period required under this Act, is less than that which would otherwise have been required at law; or

(b) that the day specified as the day on which the tenant is to, or will, deliver up possession of the premises is not the last day of a period of the tenancy.

### 71. Application by owner for termination and order for possession

(1) Where an owner or a tenant under an agreement gives notice of termination to the other under this Act and the tenant fails to deliver up possession of the premises on the day specified, the owner may, subject to section 62(5)(a), within 30 days after that day, apply to a competent court for an order terminating the agreement and an order for possession of the premises.

(2) Subject to this section, a competent court shall, upon application under this section, make an order terminating the agreement and an order for possession of the premises, if it is satisfied —

(a) that notice of termination was given by the owner or tenant to the other and that it complied with and was given in accordance with this Act; and

(b) where the notice was given by the owner upon a particular ground prescribed by this Act, that the owner has established that ground and, in the case of notice upon the ground of a breach by the tenant of a term of


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the agreement, that the breach is in all the circumstances such as to justify termination of the agreement.

(3) Notwithstanding subsection (2) the court may —

(a) except where the premises the subject of the agreement are the principal place of residence of the owner, suspend the operation of orders made under that subsection for a period not exceeding 30 days, if it is satisfied that it is desirable to do so having regard to the relative hardship that would be caused —

(i) to the owner by suspending the orders; or

(ii) to the tenant by not suspending the orders;

or

(b) refuse to make the orders under that subsection, if it is satisfied —

(i) that the owner was wholly or partly motivated to give the notice by the fact that the tenant had complained to a public authority or taken steps to secure or enforce his rights as a tenant;

(ii) in the case of notice given by the owner upon the ground of a breach by the tenant, that the tenant has remedied the breach, but in every case the court shall take into account any previous breaches of the agreement by the tenant; or

(iii) in the case of notice given by the owner upon the ground referred to in section 69, that the consequences of the owner continuing to be bound by the agreement would not be unduly burdensome to the owner.

(4) Where in any proceedings upon an application under this section the court is satisfied that the tenant had, within the period of 6 months before notice was given by the owner, complained to a public authority or taken steps to secure or enforce his rights as a tenant, the burden shall lie on the owner


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to prove that he was not wholly or partly motivated to give notice by that fact.

(5) Subject to subsection (3)(a), where the court terminates an agreement and makes an order for possession of the premises under this section, it shall specify the day as from which the orders shall operate, being not more than 7 days after the day on which the orders are made.

(6) The *Limitation Act 2005* does not apply to or in relation to an application under this section.

*[Section 71 amended by No. 50 of 1988 s. 18; No. 59 of 1995 s. 51; No. 59 of 2004 s. 120; No. 20 of 2005 s. 23.]*

### 72. Application for termination and order for possession in relation to fixed term agreements

(1) Where an agreement creates a tenancy for a fixed term and the tenant fails to deliver up possession of the premises on or after the expiration of the term, the owner may, within 30 days after the expiration of the term, apply to a competent court for an order terminating the agreement and an order for possession of the premises.

(2) Subject to this section, a competent court shall, upon application under this section, make an order terminating the agreement and an order for possession of the premises.

(3) Notwithstanding subsection (2), except where the premises the subject of the agreement are the principal place of residence of the owner, the court —

(a) may suspend the operation of orders under that subsection for a period not exceeding 30 days, if it is satisfied that it is desirable to do so having regard to the relative hardship that would be caused —

(i) to the owner by suspending the orders; or

(ii) to the tenant by not suspending the orders;


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and

(b) shall refuse to make the orders under that subsection where the term of the tenancy under the agreement is less than 90 days unless it is satisfied —

(i) that the owner genuinely proposed, at the time that he entered into the agreement, to use the premises after the expiration of the term for purposes inconsistent with the tenant continuing to occupy the premises; or

(ii) that the tenant of his own initiative sought a tenancy of a term of less than 90 days.

(4) Subject to subsection (3)(a), where the court terminates an agreement and makes an order for possession of the premises under this section, it shall specify the day as from which the orders shall operate, being not more than 7 days after the day on which the orders are made.

(5) The *Limitation Act 2005* does not apply to or in relation to an application under this section.

*[Section 72 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120 and 121; No. 20 of 2005 s. 23.]*

### 73. Termination of agreement where tenant causing serious damage or injury

(1) A competent court may, upon application by the owner under an agreement, terminate the agreement if it is satisfied that the tenant has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit, serious damage to the premises or injury to the owner or his agent or any person in occupation of or permitted on adjacent premises.

(2) Where a court terminates an agreement under this section, it shall also make an order for possession of the premises of immediate effect.


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*[Section 73 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120.]*

### 74. Termination of agreement where owner would otherwise suffer undue hardship

(1) A competent court may, upon application by the owner under an agreement, terminate the agreement, if it is satisfied that the owner would, in the circumstances of the case, suffer undue hardship if he were required to terminate the agreement under any other provision of this Act.

(2) Where a court terminates an agreement under this section, it —

(a) shall also make an order for possession of the premises and shall specify a day as from which the orders shall operate that it considers is, in the circumstances of the case, appropriate; and

(b) may make such other orders as to compensation of the tenant for any loss caused thereby or as to any other matter that it considers is, in the circumstances of the case, appropriate.

*[Section 74 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120 and 121.]*

### 75. Termination of agreement for breach by owner

(1) A competent court may, upon application by the tenant under an agreement, terminate the agreement, if it is satisfied that the owner has breached the agreement and the breach is in the circumstances of the case such as to justify termination of the agreement.

(2) Where a court terminates an agreement under this section, it shall also make an order for possession of the premises and shall specify a day as from which the orders shall operate.

*[Section 75 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120.]*


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### 76. Compensation to owner for holding over

(1) Where a tenant fails to comply with an order for possession made by a court under this Part, the owner shall be entitled to compensation for any loss caused by that failure.

(2) A competent court may, upon application by the owner, order the tenant to pay to the owner any compensation to which the owner is entitled under this section.

*[Section 76 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(1) and (3).]*

### 77. Order that premises are abandoned

(1) Where the owner under an agreement believes that the tenant has abandoned the premises, the owner may apply to a competent court for an order declaring that the tenant has abandoned the premises.

(2) A court may, upon application by an owner under this section, declare that the premises were abandoned by the tenant on a day specified by the court and the tenant shall be deemed to have abandoned the premises on that day.

*[Section 77 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(1) and (3).]*

### 78. Right of owner to compensation where tenant abandons premises

(1) Where a tenant under an agreement abandons the premises, the owner shall be entitled to compensation from the tenant for any loss (including loss of rent) caused thereby, but shall take all reasonable steps to mitigate such loss and shall not be entitled to compensation in respect of any loss that could have been avoided thereby.


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(2) A competent court may, upon application by the owner, order the tenant to pay to the owner any compensation to which the owner is entitled under this section.

*[Section 78 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(1).]*

### 79. Abandoned goods

(1) Where an agreement is terminated and goods are left on the premises that were subject to the agreement, the owner may, after the expiration of 2 days from the termination of the agreement, remove and destroy or dispose of the goods if —

(a) the goods are perishable foodstuffs; or

(b) the estimated value of the goods is less than the total estimated cost of the removal, storage and sale of the goods.

(2) Where an agreement is terminated and goods are left on the premises that were subject to the agreement and have not been removed for destruction or disposal under subsection (1), the owner shall store them in a safe place and manner for a period of not less than 60 days.

(3) An owner shall before the expiration of 7 days after he has stored goods under subsection (2) —

(a) where the former tenant has informed him of his forwarding address, send a notice to the tenant at that address in or to the effect of the form prescribed for the purpose of this paragraph; and

(b) cause a notice in or to the effect of the form prescribed for the purposes of this paragraph to be inserted in a newspaper circulating generally throughout the State.

(4) At the request of an owner, the Commissioner may state in writing whether or not in his opinion there are reasonable grounds for believing that subsection (1) applies in respect of particular goods.


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(5) Where an owner has been found liable to the owner of goods in respect of the removal, destruction or disposal of the goods, being goods that were left on premises that were subject to a former agreement, and it is proved that he removed and destroyed or disposed of the goods in reliance upon a statement of the Commissioner under subsection (4), the owner shall be entitled to be paid from moneys standing to the credit of the Rental Accommodation Account, in accordance with clause 3(3)(a) of Schedule 1, an amount equal to the amount in respect of which he has been found liable.

(6) Where —

(a) an agreement has been terminated;

(b) goods have been left on the premises that were subject to the agreement;

(c) at the request of the owner, the Commissioner has made a statement in writing that in his opinion there are reasonable grounds for believing that subsection (1) does not apply to the goods; and

(d) the total cost of removing, storing and selling the goods does in fact exceed the value of the goods,

a competent court may on application by the owner make an order for the payment to him out of moneys standing to the credit of the Rental Accommodation Account, in accordance with clause 3(3)(a) of Schedule 1, of an amount equal to the difference between the value of the goods and the reasonable cost of removal, storage and sale.

(7) A person who has a lawful right to goods removed and stored under subsection (2) may at any time before the goods are sold under subsection (8) reclaim the goods upon paying to the owner the reasonable costs of the removal and storage of the goods.

(8) Where goods are stored under subsection (2) and have not been reclaimed within 60 days after the day on which they were


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removed and stored, the owner shall as soon as practicable after the expiration of that period cause them to be sold by public auction.

(9) If goods are stored, removed and sold by public auction under this section, the owner is entitled to retain out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods.

(10) Where goods have been sold under this section by an owner, he may, upon application containing the prescribed information, pay into court an amount that a competent court is satisfied represents the balance of the proceeds of the sale after deduction of any amount to which the owner is entitled under subsection (9) and any amount that he is owed under the former agreement, and, where such payment is made, the receipt of the court for the moneys paid shall be sufficient discharge to the owner of his liability in respect of the moneys.

(11) Any moneys paid into court under subsection (10) shall be credited to the Rental Accommodation Account as provided by clause 3(2)(c) of Schedule 1.

(12) Where any application is made to a competent court by any person claiming any amount credited to the Rental Accommodation Account under this section, the court may, upon being satisfied that the person is entitled to the amount, order that the amount be paid to him.

(13) Where goods are sold by public auction under this section, the purchaser shall, unless he has actual notice of any interest in the goods of any person other than the former tenant, acquire a good title to the goods in defeasance of any such interest.

(14) An owner shall not incur any liability —

(a) in respect of the removal, destruction or disposal of goods under subsection (1); or

(b) in respect of the removal, storage or sale under this section of goods to which subsection (1) does not apply, except liability for intentional or negligent damage to the


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goods or where he has actual notice of any interest in the goods of any person other than the former tenant and fails to take all reasonable steps to notify that person of the whereabouts of the goods and afford that person a reasonable opportunity to reclaim the goods.

(15) Where a dispute arises between an owner and a former tenant in respect of goods to which this section applies, a competent court may, upon application by such person, order the payment of any amount or make such other order as it considers appropriate in the circumstances.

(16) In this section —

(a) ***owner*** means the former grantor of a right of occupancy under a residential tenancy agreement; and

(b) ***Rental Accommodation Account*** means the Rental Accommodation Account referred to in clause 3 of Schedule 1.

*[Section 79 amended by No. 50 of 1988 s. 14 and 18; No. 59 of 1995 s. 56; No. 59 of 2004 s. 120 and 121; No. 77 of 2006 s. 17.]*

### 80. Recovery of possession of premises prohibited except by court order

No person shall except under an order of a competent court enter premises or any part of premises of which a person has possession as a tenant under an agreement or a former tenant holding over after termination of an agreement for the purpose of recovering possession of the premises or part of the premises, whether entry is effected peaceably or otherwise.

Penalty: $4 000.

*[Section 80 amended by No. 50 of 1988 s. 18; No. 59 of 1995 s. 55; No. 59 of 2004 s. 120(1).]*


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### 81. Protection of tenants in relation to persons having superior title

(1) Where a person is proceeding before a court to recover possession of premises, the court shall not make the order sought by that person unless it is satisfied —

(a) as to whether or not any person has possession of the premises, or any part of the premises, as a tenant under a residential tenancy agreement or a former tenant holding over after termination of such an agreement, not being the immediate tenant or former tenant of that person; and

(b) that any such tenant or former tenant has had reasonable notice of the proceedings.

(2) Where a person, by application before a court, is proceeding for, or has recovered, possession of premises, and, at the time of the proceedings or recovery, a person has or had possession of the premises, or any part of the premises, as a tenant under an agreement or a former tenant holding over after termination of an agreement, not being the immediate tenant or former tenant of that person —

(a) the court before which any such proceedings are brought; or

(b) where such proceedings have been completed, or are not by way of application to a competent court, a competent court,

may, upon application by the tenant or former tenant, make an order vesting a tenancy in him to be held immediately of that person upon such terms and conditions as the court in the circumstances of the case thinks fit.

(3) An application by a tenant or former tenant under subsection (2) must be made within a reasonable time after the tenant or former tenant has notice of the proceedings for, or the recovery of, possession of the premises.

*[Section 81 amended by No. 50 of 1988 s. 15; No. 59 of 2004 s. 121.]*


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# Part VI — Miscellaneous

## 82. Contracting out

(1) Except as provided in subsection (3) or by or under any other provision of this Act —

(a) any agreement or arrangement that is inconsistent with a provision of this Act or purports to exclude, modify or restrict the operation of this Act is to that extent void and of no effect; and

(b) any purported waiver of a right conferred by or under this Act is void and of no effect.

(2) Except as permitted by subsection (3) or by or under any other provision of this Act, no person shall enter into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act.

Penalty: $2 000.

(3) A residential tenancy agreement may contain a provision by which section 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 55 or 56 is excluded, modified or restricted if the residential tenancy agreement is in writing and is signed by the owner and the tenant.

## 83. Recovery of amounts paid under mistake of law or fact

Where a party to a residential tenancy agreement pays any amount to the other party under a mistake of law or fact relating to the agreement, that party may —

(a) upon application to a competent court, recover that amount from the other party; or

(b) in the case of payment by the tenant, deduct the amount from rent payable under the agreement.

*[Section 83 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(1).]*


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### 84. Exemption of tenancy agreement or premises from provision of Act

A competent court may, upon application by any person, if the court considers it necessary or desirable in the circumstances, order that a provision of this Act shall not apply to or in relation to any residential tenancy agreement or proposed residential tenancy agreement or any premises or shall apply in a modified manner specified in the order and the order shall have effect accordingly.

*[Section 84 amended by No. 50 of 1988 s. 16; No. 59 of 2004 s. 120(1) and (3).]*

### 85. Service

(1) Any notice or document required or authorised to be given under this Act to any person may —

(a) be given to that person personally; or

(b) be sent by post addressed to that person at his last known place of residence, employment or business.

(2) If a letter is sent in accordance with subsection (1)(b) the giving of the notice or document so sent is deemed to be effected at the time when the letter would have been delivered in the ordinary course of post.

(3) Any notice or document required or authorised to be given under this Act to any person whose address is unknown shall be deemed to have been given to that person if a copy of it is published in a daily newspaper circulating throughout the State.

(4) Any notice or document required or authorised to be given under this Act to any tenant under a residential tenancy agreement shall be deemed to have been duly given to the tenant if it is given —

(a) to any person apparently over the age of 16 years apparently residing in the premises the subject of the agreement; or


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(b) to the person who ordinarily pays the rent under the agreement.

(5) A notice or document required or authorised to be given under this Act to an owner under a residential tenancy agreement shall be deemed to have been duly given to the owner if it has been given to the agent of the owner, to any person apparently over the age of 16 years apparently residing at the place of residence of the owner, or to the person who ordinarily receives the rent under the agreement.

(6) Where 2 or more persons are owners or tenants under a residential tenancy agreement it shall be sufficient compliance with a provision of this Act requiring or authorising that a notice or document be given to the owner or tenant under a residential tenancy agreement if the notice or document is given to any one of the owners or tenants, as the case may be.

*[**86.** Deleted by No. 59 of 1995 s. 52.]*

### 87. Time for bringing proceedings

Proceedings for an offence against this Act may be commenced at any time within 2 years of the day on which the offence is alleged to have been committed.

### 88. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

(2) Without limiting the generality of subsection (1), regulations made under that subsection may —

(a) provide for the practice and procedure to be followed, and the payment of fees, in relation to proceedings under this Act;


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(b) require the parties to a residential tenancy agreement to record on an inspection sheet, before the commencement, and after the termination, of the tenancy, their opinions of the state of the premises and prescribe the form of such inspection sheets and the manner in which the parties record their opinions;

(c) require the provision of information by the owner to the tenant at the time of entering into the residential tenancy agreement;

(d) prescribe the form of written residential tenancy agreements and authorise or require the use of such form; and

(e) prescribe penalties not exceeding $500, for breach of, or non-compliance with, any regulation.

*[**89.** Omitted under the Reprints Act 1984 s. 7(4)(e).]*

**90. Review of the Act**

(1) The Minister shall carry out, or cause to be carried out, a review of the operation of this Act as soon as practicable after the expiration of 5 years from the coming into operation of Part 3 of the *Real Estate Legislation Amendment Act 1995* [1].

(2) The Minister shall prepare a report based on his review of this Act and shall as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

*[Section 90 amended by No. 59 of 1995 s. 53.]*


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# Schedule 1

[section 29(4)]

## Provisions relating to holding and disposal of security bonds and the income therefrom

## Part A

### 1. Terms used in this Schedule

In this Schedule —

***authorised agent*** means a public officer appointed by the bond administrator to be his agent and included in a notice of such appointment published in the *Gazette*;

***authorised financial institution*** means —

(a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth;

(b) a bank constituted by a law of a State, a Territory or the Commonwealth; or

(c) any other body,

that is prescribed or that belongs to a class of bodies that is prescribed;

***bond administrator*** means the chief executive officer of the Department.

*[Clause 1 amended by No. 31 of 1993 s. 63(a); No. 59 of 1995 s. 54(1)(a); No. 26 of 1999 s. 100(3).]*

### 2. Where bond moneys to be paid

(1) A person who receives a security bond paid in relation to a residential tenancy agreement shall pay the amount of the bond —

(a) to the bond administrator either directly, including by electronic means, or by lodging the amount with an authorised agent of the bond administrator, in which case Parts B and D apply to that security bond; or

(b) to an authorised financial institution, in which case Parts C and D apply to that security bond.


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(2) A payment under subclause (1)(a) shall be paid within 14 days of the person's receipt of the bond or, in the case of a real estate agent under the *Real Estate and Business Agents Act 1978*, as soon as practicable after the agent's receipt of the bond.

(3) A payment under subclause (1)(b) shall —

(a) if paid by a real estate agent under the *Real Estate and Business Agents Act 1978*, be paid as soon as practicable after the agent's receipt of the bond into an account in the name of the agent entitled "tenancy bond trust account", and that account may only be used for the purpose of holding an amount or amounts paid under subclause (1)(b); and

(b) in any other case, be paid within 14 days of the receipt of the bond into a separate account in the names of the owner and the tenant entitled "tenancy bond account".

(4) To avoid doubt, an account referred to in subclause (3)(a) is a trust account for the purposes of Part VI of the *Real Estate and Business Agents Act 1978*.

*[Clause 2 amended by No. 59 of 1995 s. 54(1)(b) and (c); No. 69 of 2006 s. 32(1).]*

**3. Rental Accommodation Account**

(1) An agency special purpose account called the Rental Accommodation Account is established under section 16 of the *Financial Management Act 2006*, which is to be administered by the bond administrator.

(2) There shall be credited to the Rental Accommodation Account —

(a) all moneys received under clause 2(1)(a), 6(1)(c), and 7(3);

(aa) money payable to the fund under section 75(3), 92(b) or 94(a) of the *Residential Parks (Long-stay Tenants) Act 2006*;

(b) all income arising from the investment of that account, as determined by the Treasurer; and

(c) any moneys received under section 79(11),

and there shall be charged to that account all amounts required to be paid under clause 5(1).


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(3) The income referred to in subclause (2)(b) and the moneys referred to in subclause (2)(c) shall be applied —

(a) in payment of any amount required to be paid by or under section 79(5) or (6);

(aa) in payment of any amount required to be paid out of the fund under section 51 of the *Residential Parks (Long-stay Tenants) Act 2006* or under an order under section 76(3) or 77(2) of that Act;

(ab) in reimbursement of the costs and expenses incurred for the purposes of the *Residential Parks (Long-stay Tenants) Act 2006* by the bond administrator, bond agents and the Commissioner in carrying out their respective functions;

(b) in reimbursement of the costs and expenses incurred, so far as such income and moneys will allow —

(i) in the operation and administration of the Magistrates Court in connection with dealing with minor cases (within the meaning of the *Magistrates Court (Civil Proceedings) Act 2004*); and

(ii) in the performance by the bond administrator and his authorised agents, the Department and the Commissioner of their respective functions,

that are attributable to the carrying out of this Act or the *Residential Parks (Long-stay Tenants) Act 2006*; and

(c) in payment of any amount required to be paid under subclause (5).

(3a) The income referred to in subclause (2)(b) and the moneys referred to in subclause (2)(c) may, with the approval of the Minister, be applied in payment of grants to bodies, other than public sector bodies within the meaning of the *Public Sector Management Act 1994*, which provide educational or advisory services to tenants.

(4) The amount to be reimbursed under subclause (3)(b) —

(a) shall be determined by the Treasurer after consultation with the Ministers responsible for the administration of this Act and the Department respectively; and

(b) shall be credited to the Consolidated Account.


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(5) If in the opinion of the Treasurer there is at any time any surplus income available from the Rental Accommodation Account he may direct that all or part of that surplus income be expended for the purpose of public housing in such manner as he may specify.

*[Clause 3 amended by No. 50 of 1988 s. 17(a); No. 6 of 1993 s. 11; No. 31 of 1993 s. 63(b); No. 59 of 1995 s. 54(1)(d) and (e) and 56; No. 59 of 2004 s. 121; No. 28 of 2006 s. 137; No. 32 of 2006 s. 98; No. 77 of 2006 s. 4 and 17.]*

**4. Duties of bond administrator**

The bond administrator shall —

(a) cause to be kept proper accounts and records of transactions of the Rental Accommodation Account established under clause 3; and

(b) in relation to the amount of a security bond paid to him under clause 2(1)(a) —

(i) show in such records the name and address of the owner and the tenant under the residential tenancy agreement in respect of which the bond was paid; and

(ii) pay out the amount of the bond in accordance with clause 5.

*[Clause 4 amended by No. 77 of 2006 s. 17.]*

## Part B

**5. Disposal of security bond by bond administrator**

(1) The bond administrator shall on receipt of —

(a) an application in a form approved by the Minister —

(i) signed by both parties to the residential tenancy agreement to which the bond relates; and

(ii) lodged, including lodged by facsimile or electronic means, with the bond administrator or his authorised agent;

or

(b) a copy of an order under clause 8,


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pay the amount of the bond, or where subclause (2) applies part of that amount, in accordance with the application or the order.

(2) An application under subclause (1)(a) may relate to part of the amount of a security bond.

(3) If a party is deceased, the signature of his executor or administrator to an application is sufficient for the purposes of subclause (1)(a), and if a party is represented by a manager or administrator under any written law, the signature of the manager or administrator is sufficient for such purposes.

(4) If 6 months have elapsed since termination of a residential tenancy agreement and a bond has not been paid in accordance with an application under this clause or an application has not been made under clause 8, the bond shall be disposed of in such manner as is, and subject to compliance with such provisions as are, prescribed by regulations made under section 88.

(5) Regulations made under section 88 may provide for a scheme designed to establish whether any bond is one which should be dealt with under subclause (4).

*[Clause 5 amended by No. 69 of 2006 s. 32(2) and (3).]*

## Part C

### 6. Terms on which bond held by financial institution

(1) An authorised financial institution to which the amount of a security bond is paid under clause 2(1)(b) shall hold that amount on the following terms —

*[(a) deleted]*

(b) interest at a rate not less than the prescribed rate shall accrue on the amount for the period during which it is held;

(c) the amount of interest at the prescribed rate shall be paid, at such times as are prescribed, to the Rental Accommodation Account and if interest is paid at a rate exceeding the prescribed rate, the amount representing interest above the prescribed rate shall be paid, at such times as are prescribed, to the tenant;


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(d) the authorised financial institution may deduct from a payment to the credit of the Rental Accommodation Account or from a payment to a tenant under paragraph (c) an amount not exceeding such fee as is prescribed in respect of a payment of that kind;

(e) the amount of the bond shall be paid out in accordance with clause 7.

(2) In regulations made under section 88 the prescribed rate referred to in subclause (1)(b) and (c) may be prescribed by reference to a market rate indicator specified in the regulations.

*[Clause 6 amended by No. 59 of 1995 s. 54(1)(f); No. 77 of 2006 s. 17.]*

**7. Disposal of security bond**

(1) Where a security bond is held in an account referred to in clause 2(3)(a), the real estate agent in whose name the account is held shall on receipt of —

(a) an application in a form approved by the Minister signed by both parties to the residential tenancy agreement to which the bond relates; or

(b) a copy of an order under clause 8,

pay from the account the amount of the bond, or where subclause (4) applies part of that amount, in accordance with the application or the order.

(2) A real estate agent shall pay an amount under subclause (1) —

(a) within the period, if any, specified in the relevant application or order; or

(b) if no such period is specified, as soon as practicable but, in any case, not later than 7 days after receipt of the application or copy of the order.

Penalty: $1 000.

(3) Where a security bond is held in an account referred to in clause 2(3)(b), the authorised financial institution which holds the account shall on receipt of —


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(a) an application in a form approved by the Minister signed by both parties to the residential tenancy agreement to which the bond relates; or

(b) a copy of an order under clause 8,

pay the amount of the bond, or where subclause (4) applies part of that amount, in accordance with the application or the order.

(4) An application under subclause (1)(a) or (3)(a) may relate to part of the amount of a security bond.

(5) The provisions of clause 5(3), (4) and (5) apply for the purposes of this clause, and with the further provision that regulations made under section 88 may authorise the payment of an unclaimed bond to the credit of the Rental Accommodation Account referred to in clause 3.

*[Clause 7 inserted by No. 59 of 1995 s. 54(1)(g); amended by No. 77 of 2006 s. 17; No. 69 of 2006 s. 32(4) and (5).]*

## Part D

### 8. Referee may determine disposal of bond

(1) Subject to this clause, a competent court may, upon application by an owner or a tenant, order that the amount of any security bond be paid to the tenant in full, or, where the court is satisfied that the tenant is liable to pay an amount to the owner by reason of a breach of a term of a residential tenancy agreement or for fumigation of the premises as mentioned in section 29(1)(b)(ii), that the amount of the security bond be applied in payment of, or towards, that amount and the balance, if any, be paid to the tenant.

(2) Notwithstanding anything in this clause a court shall not order that any amount held under section 29(1)(b)(ii) be paid to the tenant until the expiry of the period of 14 days after the tenant has delivered up vacant possession of the premises.

(3) Where a person makes an application under subclause (1), section 18(2) shall not apply but the court shall give to the other party notice in writing of the application inviting him to indicate by notice in writing in the prescribed form, filed in the office in which the application was filed within 7 days after service of the court's notice, whether he intends to dispute the application.


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(4) Notwithstanding any other provision of this Act, where —

(a) a person makes an application under subclause (1) and notice has been given to the other party in accordance with subclause (3); and

(b) that other party does not within 7 days after service of that notice, file in the office in which the application was filed a notice in writing in the prescribed form indicating that he intends to dispute the application,

a competent court may, without conducting a formal hearing, order payment in accordance with the application.

(5) If the other party indicates in the manner referred to in subclause (4) that he intends to dispute the application, section 18(2) and the other provisions of this Act relating to proceedings shall thereupon apply in relation to the application.

(6) A tenant may not make an application under subclause (1) before the termination of the residential tenancy agreement.

(7) Where more than one person is the tenant under a residential tenancy agreement, an application may be made under subclause (1) by any one or more of the tenants, and the court may, subject to subclause (2) —

(a) if it is satisfied that it would be just to do so, order that the full amount of the bond be paid to the applicant or applicants; or

(b) order that a tenant be paid any share of the bond to which he is entitled,

in either case, less any deduction referred to in subclause (1).

(8) An application under this clause is a prescribed dispute within the meaning of section 12 irrespective of the amount claimed.

(9) In this clause a reference to the amount of a security bond includes, where clause 5(2) or 7(4) applies, a reference to the balance of a bond.

*[Clause 8 amended by No. 50 of 1988 s. 17(b) and (c) and 18; No. 59 of 1995 s. 54(1)(h); No. 59 of 2004 s. 120 and 121.]*

*[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(f).]*


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# Notes

[1] This is a compilation of the *Residential Tenancies Act 1987* and includes the amendments made by the other written laws referred to in the following table[1a]. The table also contains information about any reprint.

## Compilation table

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Residential Tenancies Act 1987* | 128 of 1987 | 21 Jan 1988 | s. 1 and 2: 21 Jan 1988; Act other than s. 1 and 2: 1 Oct 1989 (see s. 2 and *Gazette* 18 Aug 1989 p. 2748) |
| *Residential Tenancies Amendment Act 1988* | 50 of 1988 | 8 Dec 1988 | 8 Dec 1988 (see s. 2) |
| *Financial Administration Legislation Amendment Act 1993* s. 11 | 6 of 1993 | 27 Aug 1993 | 1 Jul 1993 (see s. 2(1)) |
| *Acts Amendment (Ministry of Justice) Act 1993* Pt. 17 [3] | 31 of 1993 | 15 Dec 1993 | 1 Jul 1993 (see s. 2) |
| *Caravan Parks and Camping Grounds Act 1995* s. 33 | 34 of 1995 | 29 Sep 1995 | 1 Jul 1997 (see s. 2 and *Gazette* 20 Jun 1997 p. 2805) |
| *Real Estate Legislation Amendment Act 1995* Pt. 3 [4, 5] | 59 of 1995 | 20 Dec 1995 | Pt. 3 other than s. 46 and 52: 1 Jul 1996 (see s. 2 and *Gazette* 25 Jun 1996 p. 2902); s. 46 and 52: 5 Apr 2007 (see s. 2 and *Gazette* 30 Mar 2007 p. 1451) |
| *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* s. 188 | 73 of 1995 | 27 Dec 1995 | 1 Jan 1996 (see s. 2(2) and *Gazette* 29 Dec 1995 p. 6291) |
| **Reprint of the *Residential Tenancies Act 1987* as at 15 Mar 1996** (includes amendments listed above except those in the *Real Estate Legislation Amendment Act 1995*) (correction in *Gazette* 6 Dec 1996 p. 6725) | | | |
| *Local Government (Consequential Amendments) Act 1996* s. 4 | 14 of 1996 | 28 Jun 1996 | 1 Jul 1996 (see s. 2) |
| *Statutes (Repeals and Minor Amendments) Act 1997* s. 39(10) | 57 of 1997 | 15 Dec 1997 | 15 Dec 1997 (see s. 2(1)) |


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| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| **Reprint of the *Residential Tenancies Act 1987* as at 22 Jan 1999** (includes amendments listed above except those in the *Real Estate Legislation Amendment Act 1995* s. 46 and 52) | | | |
| *Acts Amendment and Repeal (Financial Sector Reform) Act 1999* s. 100 | 26 of 1999 | 29 Jun 1999 | 1 Jul 1999 (see s. 2(1) and *Gazette* 30 Jun 1999 p. 2905) |
| *Corporations (Consequential Amendments) Act 2001* s. 220 | 10 of 2001 | 28 Jun 2001 | 15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285) |
| *Taxation Administration (Consequential Provisions) Act 2002* s. 21 [6] | 45 of 2002 | 20 Mar 2003 | 1 Jul 2003 (see s. 2 and *Gazette* 27 Jun 2003 p. 2383) |
| *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 61 | 65 of 2003 | 4 Dec 2003 | 1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722) |
| *Courts Legislation Amendment and Repeal Act 2004* Pt. 16 | 59 of 2004 | 23 Nov 2004 | 1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128) |
| **Reprint 3: The *Residential Tenancies Act 1987* as at 27 May 2005** (includes amendments listed above except those in the *Real Estate Legislation Amendment Act 1995* s. 46 and 52) | | | |
| *Limitation Legislation Amendment and Repeal Act 2005* Pt. 10 | 20 of 2005 | 15 Nov 2005 | 15 Nov 2005 (see s. 2) |
| *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 20 [7] | 28 of 2006 | 26 Jun 2006 | 1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347) |
| *Residential Parks (Long-stay Tenants) Act 2006* s. 98 | 32 of 2006 | 4 Jul 2006 | 3 Aug 2007 (see r. 2 and *Gazette* 1 Aug 2007 p. 3835) |
| *Consumer Protection Legislation Amendment and Repeal Act 2006* Pt. 9 | 69 of 2006 | 13 Dec 2006 | 14 Jul 2007 (see s. 2 and *Gazette* 13 Jul 2007 p. 3453) |
| *Financial Legislation Amendment and Repeal Act 2006* s. 4 and 17 | 77 of 2006 | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137) |
| **Reprint 4: The *Residential Tenancies Act 1987* as at 20 Jul 2007** (includes amendments listed above) | | | |
| *Legal Profession Act 2008* | 21 of 2008 | 27 May 2008 | 1 Mar 2009 (see s. 2(b) and |


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| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| s. 698 | | | *Gazette* 27 Feb 2009 p. 511) |

[1a] On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

## Provisions that have not come into operation

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Standardisation of Formatting Act 2010* s. 29 [8] | 19 of 2010 | 28 Jun 2010 | To be proclaimed (see s. 2(b)) |

[2] The provisions in this Act amending those Acts have been omitted under the *Reprints Act 1984* s. 7(4)(f).

[3] The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 is a savings and transitional provision that is of no further effect.

[4] The *Real Estate Legislation Amendment Act 1995* s. 54(2) and (3) read as follows:

"

(2) A financial institution which held a security bond under Schedule 1 to the principal Act immediately before the commencement of this section may continue to hold the bond after that commencement as if this section had not been enacted and for that purpose, subject to subsection (3), regulations in force under section 88 of the principal Act immediately before that commencement continue to apply.

(3) The interest payable by a financial institution after the commencement of this section on the amount of a security bond referred to in subsection (2) is interest at the prescribed rate in force from time to time under clause 6(1) of Schedule 1 to the principal Act as amended by this section.

".

[5] The *Real Estate Legislation Amendment Act 1995* s. 46 and 52 were purported to be proclaimed on 1 January 1997 in *Gazette* 25 June 1996 p. 2902, but the proclamation was revoked before it came into force — see *Gazette* 6 September 1996 p. 4405.


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[6] The *Taxation Administration (Consequential Provisions) Act 2002* s. 3 and 4 and Pt. 4 are transitional provisions that are of no further effect.

[7] The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

"

### Division 23 — Transitional provisions

**151. Commissioner for Fair Trading**

(1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —

(a) the *Associations Incorporation Act 1987*;
(b) the *Business Names Act 1962*;
(c) the *Chattel Securities Act 1987*;
(d) the *Companies (Co-operative) Act 1943*;
(e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
(f) the *Consumer Affairs Act 1971*;
(g) the *Co-operative and Provident Societies Act 1903*;
(h) the *Credit Act 1984*;
(i) the *Credit (Administration) Act 1984*;
(j) the *Employment Agents Act 1976*;
(k) the *Hire-Purchase Act 1959*;
(l) the *Limited Partnerships Act 1909*;
(m) the *Motor Vehicle Dealers Act 1973*;
(n) the *Petroleum Products Pricing Act 1983*;
(o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
(p) the *Residential Tenancies Act 1987*;
(q) the *Retirement Villages Act 1992*;
(r) the *Travel Agents Act 1985*.

(2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —


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(a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and

(b) where relevant, under the corresponding provision of that other enactment as in force after commencement.

(3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.

(4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

(5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —

(a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment — the Commissioner or Registrar (as the case requires) as defined in the enactment as in force after commencement; or

(b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

**152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions**

(1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.


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(2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

**153.** ***Consumer Affairs Act 1971***

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

**154.** ***Petroleum Products Pricing Act 1983***

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

**155.** **Interpretation**

In this Division —

***commencement*** means the time at which this Division comes into operation;

***Commissioner for Fair Trading*** means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

***Prices Commissioner*** means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

".

[8] On the date as at which this compilation was prepared, the *Standardisation of Formatting Act 2010* s. 29 had not come into operation. It reads as follows:

**29. *Residential Tenancies Act 1987* amended**

(1) This section amends the *Residential Tenancies Act 1987*.

(2) In Schedule 1:

(a) delete "**Schedule 1**";

(b) delete "[section 29(4)]";

(c) delete "**Provisions relating to holding and disposal of security bonds and the income therefrom**";

(d) delete "**Part A**",



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and insert:

## Schedule 1 — Provisions relating to holding and disposal of security bonds and the income therefrom

[s. 29(4)]

### Part A — Preliminary matters

(3) In Schedule 1 delete "**Part B**" and insert:

### Part B — Administrator

(4) In Schedule 1 delete "**Part C**" and insert:

### Part C — Financial institution

(5) In Schedule 1 delete "**Part D**" and insert:

### Part D — Referee


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