Western Australia

Residential Tenancies Act 1987

Compare between:

[01 Jul 2013, 04-k0-03] and [19 Jul 2013, 05-a0-00]

Western Australia

Reprinted under the *Reprints Act 1984* as at 19 July 2013

Residential Tenancies Act 1987

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

[Long title amended by No. 60 of 2011 s. 4.]

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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 —

bond means a security bond or a tenant compensation bond;

bond administrator means the Commissioner as defined in the *Fair Trading Act 2010* section 6;

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;

expiry day, in relation to a residential tenancy agreement that creates a tenancy for a fixed term, means the day on which the residential tenancy agreement would (but for the operation of this Act) upon its terms have terminated by effluxion of time or the happening of an event;

lessor —

(a) means a person who grants the right to occupy residential premises under a residential tenancy agreement; and

(b) includes —

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(i) a personal representative, successor or assignee of a lessor; and

(ii) where the context requires, a prospective, or former, lessor;

premises includes —

(a) any part of premises; and

(b) land and appurtenances appurtenant to premises;

property manager means a person who is —

(a) licensed under the *Real Estate and Business Agents Act 1978*; and

(b) in relation to a residential tenancy agreement, the agent of the lessor of the premises to which the agreement relates;

reasonable grounds, for suspecting that a tenant has abandoned residential premises, means that the tenant has failed to pay rent under the residential tenancy agreement and that at least one of the following has occurred —

(a) the presence at the premises of uncollected mail, newspapers or other material;

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

(c) the absence of household goods at the premises;

(d) the disconnection of services (including gas, electricity and telephone) to the premises;

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

Rental Accommodation Account means the Rental Accommodation Account established under Schedule 1 clause 3;

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

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residential tenancy agreement means any agreement, whether or not in writing and whether express or implied, under which any person for valuable consideration grants to any other person a right to occupy, 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 the tenant's obligations under a residential tenancy agreement, including an amount referred to in section 29(1)(b)(ii);

social housing premises has the meaning given in section 71A;

social housing provider has the meaning given in section 71A;

social housing tenancy agreement has the meaning given in section 71A;

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

tenant —

(a) means a person who is granted a right of occupancy of residential premises under a residential tenancy agreement; and

(b) includes, where the context requires, a prospective, or former, tenant;

tenant compensation bond means a bond referred to in section 59D(2).

[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; No. 60 of 2011 s. 5 and 90.]

4. Position of Crown

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

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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 in any of the following circumstances —

(a) where the tenant is a party to an agreement for the sale and purchase of the premises, unless the period of the tenancy is one month or longer;

(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

(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 lessor, 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;

(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 any of the following —

(a) any part of a hotel or motel;

(b) accommodation for students provided —

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(i) by an educational institution; or

(ii) by an entity, other than the educational institution, if the accommodation is provided other than for the purpose of making a profit,

unless the accommodation is prescribed, or is of a class prescribed, for the purposes of this paragraph;

(ca) any part of a hospital or nursing home;

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

(d) any premises used to provide residential care to approved care recipients by an approved provider as defined in the *Aged Care Act 1997* (Commonwealth);

(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 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.

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(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; No. 60 of 2011 s. 6.]

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; or

(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 relating to ~~the~~ commencement of this Act

(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,

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; and

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(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; and

(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; and

(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

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

the following provisions apply —

(c) the lessor 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, to the bond administrator;

(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;

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(e) any amount paid to the bond administrator must be credited to the Rental Accommodation Account and is to be taken, for the purposes of this Act, to have been paid under section 29(4)(b).

(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;~~Sch. 1 cl. 149(5); No. 60 of 2011 s. 7 and 89.]

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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

(1A) In this section —

party, in relation to a residential tenancy agreement, means a lessor or tenant under that agreement.

(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 the Commissioner 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

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

and

(b) in relation to a residential tenancy agreement that has terminated unless a complaint is made to the Commissioner 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; and

(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; and

(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; and

(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

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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 a party to those proceedings in the party's 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 the Commissioner 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 the Commissioner 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

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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.

(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) deleted]*~~

[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; No. 60 of 2011 s. 8.]

10. Delegation by Commissioner

The Commissioner may by notice published in the *Gazette* delegate any of the Commissioner's 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.

[Section 10 amended by No. 60 of 2011 s. 9.]

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

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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: a fine of $20 000.

(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; or

(b) under this Act; or

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

(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; amended by No. 60 of 2011 s. 10.]

11B. Powers of investigation

The *Fair Trading Act 2010* section 61 and Part 6 of that Act apply to this Act.

[Section 11B inserted by No. 58 of 2010 s. 189.]

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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 the plaintiff had a claim for an amount over the prescribed amount.

[Section 13 inserted by No. 59 of 2004 s. 119; amended by No. 60 of 2011 s. 11.]

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 —

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

(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.

(4) Subsection (3) does not prevent the Magistrates Court from making an order under the *Magistrates Court (Civil Proceedings) Act 2004* section 22 that proceedings under this Act are to be conducted at another place in the State.

[Section 13A inserted by No. 59 of 2004 s. 119; amended by No. 60 of 2011 s. 12.]

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~~ that may be made

(1) Where a lessor 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

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agreement, the lessor or tenant 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

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

and

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

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

(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 a residential tenancy agreement, the court shall take into account any previous breaches by the lessor or tenant of the agreement.

(5) The court may order that a person be joined as a party to the proceedings if the court considers that —

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(a) the person ought to be bound by, or have the benefit of, a decision of the court in the proceedings; or

(b) the person's interests are affected by the proceedings; or

(c) for any other reason it is desirable that the person be joined as a party.

(6) The court may make an order under subsection (5) on the application of any person or on its own initiative.

[Section 15 amended by No. 50 of 1988 s. 8 and 18; No. 59 of 2004 s. 120 and 121; No. 60 of 2011 s. 13 and 89.]

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: a fine of $10 000.

(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; No. 60 of 2011 s. 14.]

17A. Disputes between tenants

(1) Where 2 or more tenants under a residential tenancy agreement are jointly liable under the agreement to pay an amount to the lessor and one of the tenants (the ***first tenant***) pays another tenant's portion of that amount, the first tenant may apply to a competent court for an order that the other tenant pay to the first tenant the other tenant's portion.

(2) The court hearing the application may —

(a) make the order referred to in subsection (1); and

(b) order the payment of compensation to the first tenant by the other tenant for loss or injury, other than personal injury, caused by a failure by the other tenant to pay that

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tenant's portion of the amount referred to in subsection (1); and

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

[Section 17A inserted by No. 60 of 2011 s. 15.]

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 a competent court for an order varying or setting aside an order made in those proceedings if the application was heard in the person's absence.

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

[Section 17 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 121; No. 60 of 2011 s. 16.]

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.

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

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; or

(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 the person will truly answer any relevant question put to the person by the court or any person appearing before the court;

(iii) require any person appearing before it (whether the person has been summoned to appear or not) to answer any relevant question put to the person 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 the person under subsection (1); or

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

Penalty: a fine of $10 000.

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[Section 19 amended by No. 50 of 1988 s. 11 and 18; No. 59 of 2004 s. 120(2) and 121; No. 60 of 2011 s. 17.]

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; and

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

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

(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; and

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

(f) extend or shorten any period prescribed by or under this Act within which any action must be taken, such power to extend a period being exercisable notwithstanding that that period has expired; and

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

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

(i) allow the amendment of the application; and

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

(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; and

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(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

(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; No. 60 of 2011 s. 18.]

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

(1A) In this section —

proceedings means proceedings under this Act other than proceedings for an offence against this Act.

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

(2) A party to any proceedings may be represented or assisted by an agent in the presentation of the party's case if the agent is authorised by the party to do so and is —

(a) the property manager of the premises the subject of the proceedings; or

(b) employed or engaged by a non-profit association or similar body to act as an advocate for tenants or lessors in proceedings.

(3A) The authorisation must —

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

(b) be lodged with the court together with the application, or response to the application, to which the proceedings relate, as the case requires.

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

(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;

(d) the court is satisfied that one of the parties is unable to conduct the proceedings without representation by a legal practitioner;

(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 the officer or employee 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 the person's 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) the person is a legal practitioner; or

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

(c) where the party is a lessor, the person is a property manager of the premises the subject of the proceedings.

Penalty: a fine of $5 000.

(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 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; No. 60 of 2011 s. 19.]

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 the party's 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

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presided be thereby disqualified from hearing or continuing to hear the proceedings if the judicial officer 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.

(4) The order is valid despite any inconsistency with Part IV or V.

[Section 23 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(2) and (3) and 121; No. 60 of 2011 s. 20.]

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.

(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.

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[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.

(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 — Residential tenancy agreements

[Heading inserted by No. 60 of 2011 s. 21.]

Division 1A — Form of residential tenancy agreement and associated documents

[Heading inserted by No. 60 of 2011 s. 22.]

27A. Written residential tenancy agreement to be in prescribed form

A lessor must not enter into a written residential tenancy agreement except in the prescribed form.

Penalty: a fine of $5 000.

[Section 27A inserted by No. 60 of 2011 s. 22.]

27B. Information to be given to tenant by lessor

A lessor must give a copy of the information (if any) prescribed for the purposes of this section to each tenant —

(a) in the case of a written residential tenancy agreement, at the time of entering into the agreement; or

(b) in any other case, within 14 days after the tenant has taken possession of the residential premises.

Penalty: a fine of $5 000.

[Section 27B inserted by No. 60 of 2011 s. 22.]

27C. Property condition report at start and end of tenancy

(1) A lessor must, within 7 days after a tenant has entered into occupation of residential premises under a residential tenancy agreement —

(a) prepare a report describing the condition of the premises; and

(b) provide 2 copies of the report to the tenant.

Penalty: a fine of $5 000.

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(2) A tenant given copies of a report under subsection (1)(b) who disagrees with any information in the report must, within 7 days of receiving the copies —

(a) mark a copy in a manner that shows the information with which the tenant disagrees; and

(b) give the copy back to the lessor.

(3) If the tenant does not give a copy of the report back to the lessor under subsection (2), the tenant is to be taken to accept the report as a true and accurate description of the condition of the residential premises.

(4) A lessor must, as soon as practicable, and in any event within 14 days, after the termination of a tenancy —

(a) conduct an inspection of the residential premises; and

(b) prepare a final report describing the condition of the premises; and

(c) provide a copy of the report to the tenant.

Penalty: a fine of $5 000.

(5) The tenant is to be given a reasonable opportunity to be present at the inspection conducted under subsection (4)(a).

(6) The regulations may prescribe information that must be included in a property condition report.

[Section 27C inserted by No. 60 of 2011 s. 22.]

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 any monetary amount for or in relation to a residential tenancy agreement other than rent and a security bond.

Penalty: a fine of $5 000.

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

(a) any amount, not exceeding a prescribed amount, required or received as consideration for an option to enter into a residential tenancy agreement if —

(i) upon the option being exercised, the amount is refunded in cash or applied towards the rent payable under the agreement; or

(ii) upon the option being refused, and within 7 days of the decision to refuse the option, the amount is refunded in cash, by electronic means or in any other prescribed way;

and

(b) any amount that the lessor 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; No. 60 of 2011 s. 23 and 89.]

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: a fine of $5 000.

(2) A person must not require any payment of rent (other than the first payment) under a residential tenancy agreement —

(a) until the period of the tenancy in respect of which any previous payment has been made has elapsed; and

(b) unless the amount does not exceed 2 weeks' rent.

Penalty: a fine of $5 000.

[Section 28 amended by No. 59 of 1995 s. 55; No. 60 of 2011 s. 24.]

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29. Security bonds

(1A) In this section, unless the contrary intention appears —

pet does not include a guide dog as defined in the *Dog Act 1976* section 3(1);

security bond includes an instalment of a security bond.

(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) if the tenant is permitted to keep on the premises any pet capable of carrying parasites that can affect humans — a prescribed amount to meet the cost of any fumigation of the premises that may be required on the termination of the tenancy.

Penalty: a fine of $5 000.

(2A) Subsection (1)(a) does not prevent a person from receiving a security bond in instalments.

(2) Subsection (1)(b) does not apply in relation to a residential tenancy agreement where the weekly rate of rent payable under the agreement exceeds a prescribed amount.

(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

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subsection (1)(b)(ii), shall be deemed to have been paid as a security bond.

(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; and

(b) shall pay the amount of the bond to the bond administrator in accordance with Schedule 1 clause 5A; and

(c) shall, at the time of making the payment referred to in paragraph (b), lodge with the bond administrator a record in a form approved by the Minister relating to the payment.

[(d) deleted]

Penalty: a fine of $20 000.

[(5) deleted]

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

Penalty: a fine of $5 000.

(7) The bond administrator must pay the amount of the security bond in accordance with Schedule 1 clause 5.

(8) A lessor and property manager must ensure that an application form referred to in Schedule 1 clause 5(1)(a) is not signed by a tenant unless —

(a) the residential tenancy agreement to which the security bond relates has terminated; and

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(b) any amount of the security bond to be paid to the lessor or tenant is stipulated on the form.

Penalty: a fine of $5 000.

[Section 29 amended by No. 59 of 1995 s. 47 and 55; No. 69 of 2006 s. 31; No. 60 of 2011 s. 25.]

*[**29A.** Deleted by No. 60 of 2011 s. 26.]*

30. Variation of rent (except where calculated by reference to tenant's income)

(1) Subject to this section and except where rent payable under a residential tenancy agreement is calculated by reference to the tenant's income, the rent payable under a residential tenancy agreement may be increased by the lessor by written notice to the tenant, in a form approved by the Minister, 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 lessor to increase rent in accordance with subsection (1) —

(a) is not exercisable in relation to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of that term unless the amount of the increase, or the method of calculating the amount of the increase, is set out in the agreement; and

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

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(3) A notice of increase of rent that has been given in accordance with this section and that has not been withdrawn by the lessor 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.

[Section 30 amended by No. 60 of 2011 s. 27, 88 and 89.]

31A. Variation of rent where calculated by reference to tenant's income

(1) Where rent payable under a residential tenancy agreement is calculated by reference to the tenant's income, the method by which the rent is calculated by reference to that income may be changed by the lessor in accordance with this section but otherwise the rent must not increase or be increased.

(2) The method may be changed by notice in writing to the tenant, in a form approved by the Minister, specifying —

(a) the change to the method; and

(b) the day as from which the change will take effect, being a day —

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

(ii) not less than 6 months after the day on which the tenancy commenced, or, if the means of calculating rent has been changed under this section, the day on which it was last so changed.

[Section 31A inserted by No. 60 of 2011 s. 28.]

31B. Increase in rent after renegotiating lease

If —

(a) a residential tenancy agreement creates a tenancy for a fixed term (the ***former agreement***); and

(b) the parties enter into a new residential tenancy agreement in relation to the same premises (the ***new***

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agreement) that is to commence immediately after the end of the term of the former agreement, whether under the terms of the agreement or under section 76C,

then, during the first 30 days after the new agreement was entered into, the tenant cannot be required under the new agreement to pay an amount of rent more than the amount payable under the former agreement.

[Section 31B inserted by No. 60 of 2011 s. 28.]

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 lessor by notice in writing to the tenant 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 6 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 lessor varies the residential tenancy agreement

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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.

[Section 31 amended by No. 60 of 2011 s. 29 and 89.]

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) must be made not more than 30 days, or any greater period as the court thinks fit having regard to the justice and merits of the case, after —

(a) the tenant has received notice of —

(i) an increase in the rent payable; or

(ii) a change in the method of calculating rent that results in an increase in the rent payable;

or

(b) there has been, without any default on the part of the tenant, a significant reduction in the chattels or facilities provided with the premises.

(3A) An application under subsection (1) may be made despite the fact that the tenant has paid, or agreed to pay, 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; and

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

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

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

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

(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, which may be a day 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.

(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 lessor 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: a fine of $5 000.

[Section 32 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120 and 121; No. 60 of 2011 s. 30 and 89.]

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33. Duty to give receipt for rent

(1) A person who receives any rent under a residential tenancy agreement shall, within 3 days after receiving the rent (not including an "***excluded day***" as defined in section 61(2) of the *Interpretation Act 1984*), prepare and give 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: a fine of $5 000.

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

(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); No. 60 of 2011 s. 31, 88 and 89.]

34A. Manner of payment of rent

Except as otherwise provided in a residential tenancy agreement, a tenant under the agreement may pay rent in the form of cash or a cheque, or in the manner referred to in section 33(2).

[Section 34A inserted by No. 60 of 2011 s. 32.]

34. Proper records of rent to be kept

(1) A lessor shall keep, or cause to be kept, a record in accordance with subsection (2A) showing the rent received in respect of the premises.

Penalty: a fine of $5 000.

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(2A) The record should specify all of the following —

(a) the fact that the payment is for rent;

(b) the date the rent is received;

(c) the name of the person paying the rent;

(d) the amount paid;

(e) the period in respect of which it is paid;

(f) the premises in respect of which it is paid.

(2) No person shall make in any record referred to in subsection (1) any entry that the person knows is false or misleading in a material particular.

Penalty: a fine of $5 000.

[Section 34 amended by No. 59 of 1995 s. 55; No. 60 of 2011 s. 33 and 89.]

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: a fine of $5 000.

[Section 35 amended by No. 59 of 1995 s. 55; No. 60 of 2011 s. 34.]

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 — Standard terms

[Heading amended by No. 60 of 2011 s. 35.]

*[**37.** Deleted by No. 60 of 2011 s. 36.]*

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38. Tenant's responsibility for cleanliness and damage

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

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

(b) shall notify the lessor as soon as practicable after 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.

[Section 38 amended by No. 60 of 2011 s. 37 and 89.]

39. Tenant's conduct on premises

It is a term of every residential tenancy 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.

[Section 39 amended by No. 60 of 2011 s. 38.]

40. Vacant possession

(1) In this section —

premises does not include —

(a) any part of the premises in respect of which the tenant does not have a right of exclusive occupation; or

(b) any part of the premises to which the parties to the residential tenancy agreement have agreed the tenant will not have access.

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(2) It is a term of every residential tenancy agreement that the tenant must 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.

[Section 40 inserted by No. 60 of 2011 s. 39.]

41. Legal impediments to occupation as residence

It is a term of every residential tenancy agreement on the part of the lessor that there is not any legal impediment of which, at the time of entering into the agreement, the lessor had or ought reasonably to have had knowledge to occupation of the premises as a residence for the period of the tenancy.

[Section 41 amended by No. 60 of 2011 s. 40 and 89.]

42. Lessor's responsibility for cleanliness and repairs

(1) In this section —

premises includes fixtures and chattels provided with the premises, but does not include —

(a) any fixture or chattel disclosed by the lessor as not functioning before the agreement was entered into; or

(b) any other fixture or chattel that the tenant could not reasonably have expected to be functioning at the time the agreement was entered into.

(2) It is a term of every residential tenancy agreement that the lessor —

(a) must deliver up to the tenant vacant possession of the premises in a reasonable state of cleanliness and a reasonable state of repair having regard to its age and character; and

(b) must maintain the premises in a reasonable state of repair having regard to its age and character and must conduct any repairs within a reasonable period after the need for the repair arises; and

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

[Section 42 inserted by No. 60 of 2011 s. 41.]

43. Urgent repairs

(1) In this section —

prescribed period, in relation to the carrying out of urgent repairs, means —

(a) in relation to repairs necessary for the supply or restoration of a service prescribed in the regulations as an essential service — 24 hours; or

(b) in relation to any other urgent repairs — 48 hours or any longer period prescribed in the regulations;

suitable repairer, in relation to urgent repairs, means a person who is suitably qualified, trained or, if necessary under any written law, licensed or otherwise authorised, to undertake the work necessary to carry out the repairs;

urgent repairs, in relation to residential premises, means repairs to the premises that are necessary —

(a) for the supply or restoration of a service prescribed in the regulations as an essential service; or

(b) to avoid —

(i) exposing a person to the risk of injury; or

(ii) exposing property to damage; or

(iii) causing the tenant undue hardship or inconvenience.

(2) It is a term of every residential tenancy agreement that if a need for urgent repairs arises otherwise than as a result of a breach of the agreement by the tenant —

(a) the tenant is to notify the lessor of the need for those repairs as soon as practicable after the need arises; and

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(b) the lessor is to ensure that the repairs are carried out by a suitable repairer as soon as practicable after that notification.

(3) It is a term of every residential tenancy agreement that if, within the prescribed period after the need for the urgent repairs arises, the tenant is unable to contact the lessor or, having notified the lessor of the need for the repair, the lessor fails to ensure that the repairs are carried out by a suitable repairer as soon as practicable after that notification —

(a) the tenant may arrange for the repairs to be carried out by a suitable repairer to the minimum extent necessary to effect those repairs; and

(b) the lessor must, as soon as practicable after the repairs are carried out, reimburse the tenant for any reasonable expense incurred by the tenant in arranging for those repairs to be carried out and paying for those repairs.

[Section 43 inserted by No. 60 of 2011 s. 41.]

44. Quiet enjoyment

(1) In this section —

premises includes fixtures and chattels provided with the premises, but does not include —

(a) any fixture or chattel disclosed by the lessor as not functioning before the agreement was entered into; or

(b) any other fixture or chattel that the tenant could not reasonably have expected to be functioning at the time the agreement was entered into.

(2) It is a term of every residential tenancy agreement —

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

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(b) that the lessor must 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 lessor must take all reasonable steps to enforce the obligation of any other tenant of the lessor 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.

[Section 44 inserted by No. 60 of 2011 s. 41.]

45. Securing premises

It is a term of every residential tenancy agreement —

(a) that the lessor must provide and maintain such means to ensure that the residential premises are reasonably secure as are prescribed in the regulations; and

(b) that any lock or other means of securing the residential premises must not be altered, removed or added by a lessor or tenant without the consent of the other given at, or immediately before, the time that the alteration, removal or addition is carried out; and

(c) that the lessor or the tenant must not unreasonably withhold the consent referred to in paragraph (b).

[Section 45 inserted by No. 60 of 2011 s. 41.]

46. Lessor's right of entry

(1) In this section —

lessor, in relation to premises, includes the property manager of the premises acting on behalf of the lessor;

premises means any part of the premises in respect of which the tenant has a right of exclusive occupation;

reasonable time means —

(a) between 8.00 a.m. and 6.00 p.m. on a weekday; or

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(b) between 9.00 a.m. and 5.00 p.m. on a Saturday; or

(c) at any other time agreed between the lessor and each tenant.

(2) It is a term of every residential tenancy agreement that the lessor may enter the premises in all or any of the following circumstances but not otherwise —

(a) in any case of emergency;

(b) for conducting routine inspections of the premises or any other purpose, on a day and at a reasonable time, specified by notice in writing given to the tenant —

(i) not less than 7 days before the proposed entry; and

(ii) within 14 days before the proposed entry;

(c) at any reasonable time 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) under section 77(4);

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

(f) for the purpose of showing the premises to prospective tenants, at any reasonable time 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 in writing;

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

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

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(3) It is a term of every residential tenancy agreement that the lessor may enter the premises under subsection (2)(b) for the purpose of inspecting the premises not more than 4 times in any 12 month period.

(4) It is a term of every residential tenancy agreement that before the lessor gives notice under subsection (2) of a proposed entry to the premises, the lessor must make a reasonable attempt to negotiate a day and time for that entry that does not unduly inconvenience the tenant.

(5) It is a term of every residential tenancy agreement that where a lessor gives a tenant notice of an intention to enter premises on a particular day under subsection (2), the notice must specify —

(a) the day of the entry; and

(b) whether the entry will be before or after 12.00 p.m. on that day.

(6) It is a term of every residential tenancy agreement that if the lessor exercises a right of entry under subsection (2)(f) or (g) the tenant is entitled to be on the premises during the entry.

(7) It is a term of every residential tenancy agreement that the lessor exercising a right of entry under this section —

(a) must do so in a reasonable manner; and

(b) must not, without the tenant's consent, stay or permit others to stay on the premises longer than is necessary to achieve the purpose of the entry.

(8) It is a term of every residential tenancy agreement that the lessor is to compensate the tenant if the lessor or any person accompanying the lessor causes damage to the tenant's goods on the premises when exercising a right of entry under subsection (2).

[Section 46 inserted by No. 60 of 2011 s. 41.]

Extract from www.slp.wa.gov.au, see that website for further information

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

(1) A residential tenancy 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 lessor's consent.

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

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

(b) the tenant may remove any fixture that the tenant has affixed to the premises, with the lessor's consent, during the period that the tenant has continued in possession of the premises under 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, the tenant shall notify the lessor and, at the option of the lessor, repair the damage or compensate the lessor for any reasonable expenses incurred by the lessor in repairing the damage.

(3) It is a term of every residential tenancy agreement that —

(a) the lessor may affix any fixture or make any renovation, alteration or addition to the premises, but only with the tenant's consent; and

(b) the tenant must not unreasonably withhold such consent.

[Section 47 amended by No. 60 of 2011 s. 42, 88 and 89.]

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48. Lessor to bear outgoings in respect of premises

(1) It is a term of every residential tenancy agreement that the lessor 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 supply or sewerage services under the *Water Agencies (Powers) Act 1984*, other than a charge for water consumed.

(2) It is a term of every residential tenancy agreement that a contribution levied on a proprietor under the *Strata Titles Act 1985* section 36 cannot be passed on to a tenant.

[Section 48 amended by No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 45 of 2002 s. 21; No. 60 of 2011 s. 43 and 89.]

49A. Lessor's and tenant's responsibilities in respect of public utility services

(1) In this section —

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth);

public utility services has the meaning given in the *Land Administration Act 1997* section 3(1).

(2) It is a term of every residential tenancy agreement that the tenant must pay a charge in relation to a public utility service provided to the premises only if —

(a) the charge is calculated by reference to consumption at the residential premises by the tenant; and

(b) the tenant is given notice in writing of the charge in relation to the public utility service, specifying —

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(i) if consumption at the premises is metered — the relevant meter reading, or readings, and the charge per metered unit; or

(ii) if consumption at the premises is not metered and the lessor and tenant have agreed in writing to an alternative method of calculating the charge to be paid by the tenant — the charge calculated in accordance with the agreed method;

and

(c) the tenant is provided with full details of the account for the charge including —

(i) any meter readings and the charge per metered unit; or

(ii) the agreed method of calculating referred to in paragraph (b)(ii),

and the amount of GST payable in respect of the provision of the public utility service to the residential premises.

[Section 49A inserted by No. 60 of 2011 s. 44.]

49. Right of tenant to assign or sub-let

(1) A residential tenancy agreement may provide that the tenant —

(a) may assign the tenant's interest under the agreement or sub-let the premises; or

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

(c) may assign the tenant's interest under the agreement or sub-let the premises only with the written consent of the lessor.

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

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

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

(3) Where a residential tenancy 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).

[Section 49 amended by No. 60 of 2011 s. 45, 88 and 89.]

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

(1) It is a term of every residential tenancy 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.

[Section 50 amended by No. 60 of 2011 s. 46.]

Division 3 — General

[Heading inserted by No. 60 of 2011 s. 47.]

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

(1) Unless subsection (2) applies, at the time of entering into a residential tenancy agreement the lessor must notify the tenant, or cause the tenant to be notified, in writing of —

(a) if the lessor is an individual — the full name and address of —

(i) the lessor; and

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(ii) any person having superior title to that of the lessor;

or

(b) if the lessor is a body corporate — the full name and business address of the secretary of the body corporate.

Penalty: a fine of $5 000.

(2) If residential premises that are the subject of a residential tenancy agreement are managed by a property manager, the lessor and the property manager must, 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 of the lessor; and

(b) the full name and address of the property manager.

Penalty: a fine of $5 000.

(3) Where a person succeeds another person as the lessor under a residential tenancy agreement, the new lessor must, within 14 days after the succession, notify the tenant, or cause the tenant to be notified, in writing of —

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

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

Penalty: a fine of $5 000.

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

Penalty: a fine of $5 000.

[Section 51 inserted by No. 60 of 2011 s. 48.]

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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 a residential tenancy agreement with the intention that the amount of such rent be recovered by the lessor from the security bond paid by the tenant.

Penalty: a fine of $5 000.

[Section 52 amended by No. 59 of 1995 s. 55; No. 60 of 2011 s. 49, 88 and 89.]

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

(1) A tenant under a residential tenancy agreement must not falsely state to the lessor the tenant's name or place of employment.

Penalty: a fine of $5 000.

(2) Where a tenant has stated a place of employment to the lessor and that place is changed, the tenant must, within 14 days after the change, notify the lessor, or cause the lessor to be notified, in writing of the new place of employment.

Penalty: a fine of $5 000.

(3) A tenant under a residential tenancy agreement must, at the time of delivering up possession of the premises to which the agreement relates, notify the lessor, or cause the lessor to be notified, in writing of —

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

(b) the tenant's postal address.

Penalty: a fine of $5 000.

[Section 53 inserted by No. 60 of 2011 s. 50.]

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54. Lessor to deliver copy of agreement to tenant

(1) A lessor or a property manager of residential premises who has required or invited a tenant to sign a written residential tenancy 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 14 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: a fine of $5 000.

(2) If a lessor or a property manager of residential premises fails to execute and deliver a copy of the document in accordance with subsection (1)(b), acceptance of rent by the lessor or property manager 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; No. 60 of 2011 s. 51.]

55. Cost of written agreement to be borne by lessor

Where a lessor requires the execution of a written residential tenancy agreement or a memorandum of a residential tenancy agreement, the cost of its preparation must be borne by the lessor.

[Section 55 inserted by No. 60 of 2011 s. 52.]

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: a fine of $5 000.

(2) A person shall not —

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(a) instruct any person not to grant; or

(b) state the person's intention, whether by advertisement or otherwise, not to grant,

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

Penalty: a fine of $5 000.

~~*[(3) deleted]*~~

[Section 56 amended by No. 59 of 1995 s. 55; No. 60 of 2011 s. 53.]

57. Accelerated rent and liquidated damages prohibited

(1) Where a residential tenancy 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; or

(b) rent of an increased amount; or

(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.

(2A) A lessor or property manager who executes a residential tenancy agreement with a provision of the kind referred to in subsection (1) commits an offence.

Penalty: a fine of $5 000.

(2) Where a residential tenancy 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

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commencement of the tenancy so that the tenant is entitled to the reduction, rebate, refund or other benefit in any event.

[Section 57 amended by No. 60 of 2011 s. 54 and 88.]

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 a residential tenancy agreement.

[Section 58 amended by No. 60 of 2011 s. 55.]

59A. Minors

(1) In this section —

minor means a person who has reached 16 years of age but who has not reached 18 years of age.

(2) Despite any other law in force in this State —

(a) a minor has the capacity to enter into a residential tenancy agreement as a tenant; and

(b) a residential tenancy agreement may be enforced in accordance with this Act against a minor who is a tenant.

[Section 59A inserted by No. 60 of 2011 s. 56.]

59B. Death of one of 2 or more tenants

(1) This section applies if —

(a) 2 or more tenants are parties to a residential tenancy agreement; and

(b) the tenants are not joint tenants under the agreement; and

(c) one of the tenants dies.

(2) On the death of the tenant —

(a) the deceased tenant's interest in the tenancy ends; and

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(b) the agreement continues in force with the parties to the agreement being the lessor and the surviving tenant or tenants.

(3) Subsection (2) does not affect, as between the deceased tenant and the surviving tenant or tenants, any right (including, in particular, a right relating to a security bond) or liability of the deceased tenant existing immediately before the deceased tenant's death.

[Section 59B inserted by No. 60 of 2011 s. 56.]

59C. Recognition of certain persons as tenants

(1) A person who is not a tenant but who is occupying residential premises to which a residential tenancy agreement applies may apply to a competent court to be recognised as a tenant under the agreement or to be joined as a party to any proceedings before the court relating to the premises, or both.

(2) An application by a person to be recognised as a tenant may be made at the same time as any other application or during proceedings before the court or independently of any such other application or proceedings.

(3) On application by a person under this section the court may make either or both of the following orders —

(a) an order recognising the person as a tenant under a residential tenancy agreement and in that case the person is to be taken, for the purposes of this or any other Act and of the agreement, to be a tenant under the agreement;

(b) an order joining the person as a party to proceedings.

(4) In making an order referred to in subsection (3)(a) the court may order that the tenancy be continued on such of the terms and conditions of the residential tenancy agreement as it thinks are appropriate having regard to the circumstances of the case.

[Section 59C inserted by No. 60 of 2011 s. 56.]

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59D. Tenant compensation bonds

(1) In this section —

tenant compensation order means an order under section 15(2)(b) in relation to a failure by a lessor to reimburse a tenant for reasonable expenses incurred by the tenant in arranging for urgent repairs to be carried out, and paying for those repairs, in accordance with section 43.

(2) A court that makes a tenant compensation order against a lessor may make a further order requiring the lessor to pay to the bond administrator a tenant compensation bond to cover any future tenant compensation orders that might be made against the lessor in respect of —

(a) a particular tenant or particular residential premises of the lessor; or

(b) any tenant or residential premises of the lessor.

(3) The tenant compensation bond is to be an amount determined by the court.

(4) The lessor may apply to the court for an order that the whole or part of a tenant compensation bond is to be paid back to the lessor.

(5) The court may make the order referred to in subsection (4) if it is satisfied that it is appropriate in the circumstances to do so.

(6) The bond administrator must pay the amount of the tenant compensation bond in accordance with —

(a) Schedule 1 clause 10; or

(b) an order under subsection (5) and Schedule 1 clause 11.

[Section 59D inserted by No. 60 of 2011 s. 56.]

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59E. Interference with quiet enjoyment

(1) A lessor who causes or permits interference with the reasonable peace, comfort or privacy of the tenant in the tenant's use of the premises commits an offence.

Penalty: a fine of $10 000.

(2) The liability of a person in civil proceedings is not affected by the commencement of proceedings against the person for an offence under subsection (1) or the conviction of the person in proceedings for the offence.

[Section 59E inserted by No. 60 of 2011 s. 56.]

59F. Offences relating to security of residential premises

(1) A lessor or tenant who breaches the term referred to in section 45(b) without reasonable excuse commits an offence.

Penalty: a fine of $20 000.

(2) A property manager of residential premises who, without reasonable excuse alters, removes or adds a lock or other means of securing the residential premises without the consent of the tenant given at, or immediately before, the time that the alteration, removal or addition is carried out, in addition to any civil liability that the property manager might incur, commits an offence.

Penalty: a fine of $20 000.

(3) The liability of a person in civil proceedings is not affected by the commencement of proceedings against the person for an offence under this section or the conviction of the person in proceedings for the offence.

[Section 59F inserted by No. 60 of 2011 s. 56.]

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Part V — Termination of residential tenancy agreements

Division 1 — How residential tenancy agreements are terminated

[Heading inserted by No. 60 of 2011 s. 57.]

*[**59.** Deleted by No. 60 of 2011 s. 58.]*

60. How residential tenancy agreements are terminated

Despite any Act or law to the contrary, a residential tenancy agreement shall not terminate or be terminated except in one of the following circumstances —

(a) where the lessor 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 lessor, terminates the agreement under section 71;

(b) in the case of a tenancy for a fixed term, where the lessor or tenant gives a notice of termination under section 70A and —

(i) the tenant delivers up possession of the premises on or after the day on which the term of the agreement expires in accordance with that section; or

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

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

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(d) where a person having superior title to that of the lessor 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;

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

(h) where the agreement terminates by merger;

(i) where every tenant dies.

~~*[(2), (3) deleted]*~~

[Section 60 amended by No. 50 of 1988 s. 18; No. 59 of 1995 s. 49; No. 59 of 2004 s. 120(1); No. 60 of 2011 s. 59, 88, 89 and ~~-~~ 91.]

Division 2 — Notices of termination

[Heading inserted by No. 60 of 2011 s. 60.]

61. Form of notice of termination by lessor

Notice of termination of a residential tenancy agreement by the lessor must —

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

(b) be signed by the lessor or a property manager of the residential premises; and

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

(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.

[Section 61 inserted by No. 60 of 2011 s. 61.]

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62. Notice of termination by lessor upon ground of breach of term of agreement

(1) A lessor may give notice of termination of a residential tenancy agreement to the tenant upon the ground that the tenant has breached a term of the agreement and the breach has not been remedied.

(2) Where a lessor gives notice of termination under this section, the period of notice shall be not less than 7 days before the day on which the tenant is required under the notice to give the lessor possession of the premises.

(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 lessor 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 lessor 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; and

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

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(i) the rent due under the agreement; and

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

are paid in full to the lessor 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.

(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 a residential tenancy 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 a residential tenancy 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; No. 60 of 2011 s. 62, 88 and 89.]

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

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

(2) Where a lessor gives notice of termination under subsection (1) the period of notice must be not less than 30 days before the day

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on which the tenant is required under the notice to give to the lessor possession of the premises.

(3) A lessor, or a property manager acting on behalf of the lessor, must not give notice of termination under this section that the person knows is false or misleading in a material particular.

Penalty: a fine of $10 000.

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

[Section 63 inserted by No. 60 of 2011 s. 63.]

64. Notice of termination by lessor without any ground

(1) A lessor may give notice of termination of a residential tenancy agreement to the tenant without specifying any ground for the notice.

(2) Where a lessor gives notice of termination under this section, the period of notice must be not less than 60 days before the day on which the tenant is required under the notice to give to the lessor possession of the premises.

(3) A tenant may, within 7 days after receiving a notice of termination under this section, apply to a competent court for an order —

(a) that the period of notice be extended by a further period of up to 60 days; or

(b) if the tenant is of the opinion that the grounds set out in section 71(3)(b)(i) apply — that the residential tenancy agreement is not terminated as a consequence of the notice.

(4) On an application under subsection (3) the court may, as it thinks fit having regard to the justice and merits of the case —

(a) extend the period of notice for a further period of up to 60 days and make such other orders as to compensation

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of the lessor for any loss caused by the extension or as to any other matter that it considers is, in the circumstances of the case, appropriate; or

(b) make an order that the residential tenancy agreement is not terminated as a consequence of the notice; or

(c) make an order referred to in section 71(2) and in that case the court must specify the day as from which the order for possession operates, being a day that is the later of —

(i) a day not less than 60 days after the day on which the notice of termination was received; or

(ii) a day within 7 days after the day on which the order was made.

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

[Section 64 inserted by No. 60 of 2011 s. 63.]

65. Termination by lessor where ~~section~~s. 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 a residential tenancy agreement —

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

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

(2) A competent court may, upon application by a lessor, authorise the lessor 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 lessor to give notice of termination.

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[Section 65 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(1) and (2); No. 60 of 2011 s. 64 and 89.]

66. Notice by lessor not waived by acceptance of rent

A demand for, any proceeding for the recovery of, or acceptance of, rent by a lessor after the lessor 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.

[Section 66 amended by No. 60 of 2011 s. 65 and 89.]

67. Form of notice of termination by tenant

Notice of termination of a residential tenancy agreement by the tenant shall —

(a) be in writing; and

(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.

[Section 67 amended by No. 60 of 2011 s. 88.]

68. Notice of termination by tenant

(1) A tenant may give notice of termination of a residential tenancy agreement to the lessor 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 before the termination day.

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

[Section 68 amended by No. 60 of 2011 s. 66, 88 and 89.]

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69. Notice of termination by lessor or tenant where agreement frustrated

(1) Where, otherwise than as a result of a breach of a residential tenancy 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 lessor or tenant may give notice of termination of the agreement to the other upon that ground.

(2) Where a lessor gives notice of termination under this section, the period of notice shall be not less than 7 days before the termination day.

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

(4) Where notice of termination is given under this section in respect of a residential tenancy 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.

[Section 69 amended by No. 60 of 2011 s. 67, 88 and 89.]

70A. Notice of termination by lessor or tenant at end of fixed term tenancy

(1) In this section —

agreement means a residential tenancy agreement that creates a tenancy for a fixed term;

notice means a notice of termination referred to in subsection (2);

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possession day means the day specified in a notice as the day on which possession of the premises is to be delivered up by the tenant and has the meaning affected by subsection (6).

(2) Despite any other written law or a requirement under a contract, the term of a residential tenancy agreement does not end on the expiry day unless the lessor or tenant has given a notice of termination of the agreement to the other party specifying a day on which possession of the residential premises is to be delivered up by the tenant.

(3) The notice must be given not later than 30 days before the possession day.

(4) The possession day must not be a day earlier than the expiry day.

(5) If the possession day is later than the expiry day, then —

(a) the term of the agreement expires on the possession day, and not on the expiry day; and

(b) the terms of the agreement are to be taken, for all purposes, to be varied to that extent.

(6) If both the lessor and tenant give a notice to each other and the notices specify different possession days, then the day that is the earlier of the 2 days is to be taken to be the possession day.

(7) If —

(a) the day on which the term of the agreement is to expire under subsection (5)(a) is the possession day under a notice given by the lessor; and

(b) the tenant delivers up possession of the premises after the expiry day but before the possession day,

then the day on which the tenant delivers up possession of the premises is to be taken to be the possession day for the purposes of subsection (5).

[Section 70A inserted by No. 60 of 2011 s. 68.]

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70. Effect of notice of termination of periodic tenancy

Notice of termination of a residential tenancy 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.

[Section 70 amended by No. 60 of 2011 s. 88.]

Division 3 — Special provisions about terminating social housing tenancy agreements

[Heading inserted by No. 60 of 2011 s. 92.]

Subdivision 1 — Preliminary

[Heading inserted by No. 60 of 2011 s. 92.]

71A. Terms used

In this Division —

criteria means the criteria approved under section 71E;

Housing Authority means the Housing Authority referred to in the *Housing Act 1980* section 6(4);

Minister for Housing means the Minister to whom the administration of the *Housing Act 1980* is committed;

social housing premises means residential premises let by a social housing provider under a social housing tenancy agreement, but does not include any premises that are excluded by regulation from the ambit of this definition;

social housing provider means any of the following —

(a) the Housing Authority;

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(b) a body or person prescribed, or of a class prescribed, for the purposes of this definition;

social housing tenancy agreement means a residential tenancy agreement in respect of social housing premises, but does not include any agreement that is excluded by regulation from the ambit of this definition.

[Section 71A inserted by No. 60 of 2011 s. 92.]

71B. Application of Division

This Division does not limit the operation of the other provisions of this Part in relation to residential tenancy agreements that are social housing tenancy agreements.

[Section 71B inserted by No. 60 of 2011 s. 92.]

Subdivision 2 — Notice of termination where tenant not eligible for social housing premises

[Heading inserted by No. 60 of 2011 s. 92.]

71C. Notice of termination by lessor on ground that tenant not eligible for social housing premises

A lessor under a social housing tenancy agreement may give notice of termination of the agreement to the tenant on the ground that the lessor has determined, as the result of an assessment carried out under section 71D, that the tenant is not eligible to reside in social housing premises, or to reside in the class of social housing premises to which the agreement relates.

[Section 71C inserted by No. 60 of 2011 s. 92.]

71D. Assessment of tenants eligibility for social housing premises

(1) In carrying out an assessment of the eligibility of a tenant under a social housing tenancy agreement (the ***agreement***) to reside in social housing premises, or to reside in the class of social housing premises to which the agreement relates, the lessor is to

apply the criteria approved under section 71E for the purposes of this Subdivision.

(2) The lessor may request the tenant to provide any information that is reasonably required to enable the lessor to determine whether the tenant meets the criteria for the purposes of an assessment under this section.

(3) If the tenant refuses to provide any such information to the lessor, the lessor may determine, without further inquiry, that the tenant is not eligible to reside in social housing premises, or to reside in the class of social housing premises to which the agreement relates.

(4) In the case of a social housing tenancy agreement that creates a tenancy for a fixed term, an assessment under this section may not be carried out prior to 6 months before the end of the term.

[Section 71D inserted by No. 60 of 2011 s. 92.]

71E. Criteria for assessing eligibility of tenants for social housing premises under ~~section~~s. 71D

(1) The Minister for Housing is to approve criteria for the purposes of this Subdivision.

(2) The criteria may differ from the criteria used to assess a person's eligibility to commence residing in social housing premises, or in a particular class of social housing premises.

(3) The criteria must not relate to whether or not a tenant has complied with any term of a residential tenancy agreement.

(4) The criteria must be made publicly available.

(5) A copy of the criteria must be provided, on request, to any tenant under a social housing tenancy agreement free of charge and to other persons either free of charge or on payment of the reasonable cost incurred in copying the criteria.

[Section 71E inserted by No. 60 of 2011 s. 92.]

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71F. Review of decision to give notice on ground that tenant not eligible for social housing premises

(1) Before giving notice of termination of a social housing tenancy agreement to a tenant on the ground referred to in section 71C, the lessor must advise the tenant of the decision to do so by notice in writing.

(2) A notice given under this section must —

(a) contain particulars of the reasons why the tenant is no longer considered eligible to reside in the premises; and

(b) state that the tenant may apply to the lessor for a review of the decision within 30 days after the notice is given and give particulars of how such an application may be made; and

(c) state that the tenant is entitled to make representations to the lessor in writing, or (if the tenant wishes) orally, as to why the agreement should not be terminated.

(3) The tenant may, in accordance with the notice —

(a) apply to the lessor for a review of the decision; and

(b) make representations in writing, or (if the tenant wishes) orally, to the lessor as to why the agreement should not be terminated.

(4) If the tenant applies to the lessor for a review under this section, the lessor must review the decision, in accordance with any procedures approved by the Minister for Housing for the purposes of this section, and consider any representations made by the tenant.

(5) After the review is carried out, the lessor may —

(a) give notice of termination of the agreement on the ground referred to in section 71C; or

(b) advise the tenant, by notice in writing, that the lessor has decided not to give notice of termination of the agreement.

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[Section 71F inserted by No. 60 of 2011 s. 92.]

71G. Time periods to be observed where notice of termination given under this Subdivision

(1) A notice of termination of a social housing tenancy agreement cannot be given to a tenant on the ground referred to in section 71C before the later of the following —

(a) the end of the 30 day period within which the tenant may apply for a review under section 71F of the decision to give notice of termination;

(b) the end of any such review carried out in respect of that decision.

(2) The notice of termination cannot specify as the day on which vacant possession of the premises is to be delivered up to the lessor a day that is earlier than —

(a) in the case of a social housing tenancy agreement that creates a tenancy for a fixed term, 60 days after the day on which the notice is given or the day the term of the agreement ends, whichever is the later; or

(b) in any other case, 60 days after the day on which the notice of termination is given.

[Section 71G inserted by No. 60 of 2011 s. 92.]

Subdivision 3 — Notice of termination where tenant offered alternative social housing premises

[Heading inserted by No. 60 of 2011 s. 92.]

71H. Notice of termination by lessor where tenant offered alternative social housing premises

A lessor under a social housing tenancy agreement may give notice of termination of the agreement (the ***existing agreement***) to the tenant on the ground that the lessor has offered to enter into a new social housing tenancy agreement with the tenant in

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respect of alternative premises to the premises the subject of the existing agreement.

[Section 71H inserted by No. 60 of 2011 s. 92.]

71I. Review of decision to give notice on ground that tenant offered alternative social housing premises

(1) Before giving notice of termination of a social housing tenancy agreement to a tenant on the ground referred to in section 71H, the lessor must advise the tenant of the decision to do so by notice in writing.

(2) The lessor may make the offer to enter into a new social housing tenancy agreement and give notice of the decision at the same time.

(3) A notice given under this section must —

(a) contain particulars of the reasons why the lessor wishes the tenant to move to alternative premises; and

(b) state that the tenant may apply to the lessor for a review of the decision within 30 days after the notice is given and give particulars of how such an application may be made; and

(c) state that the tenant is entitled to make representations to the lessor in writing, or (if the tenant wishes) orally, as to why the existing agreement should not be terminated.

(4) The tenant may, in accordance with the notice —

(a) apply to the lessor for a review of the decision; and

(b) make representations in writing, or (if the tenant wishes) orally, to the lessor as to why the existing agreement should not be terminated.

(5) If the tenant applies to the lessor for a review under this section, the lessor must review the decision, in accordance with any procedures approved by the Minister for Housing for the

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purposes of this section, and consider any representations made by the tenant.

(6) After the review is carried out, the lessor may —

(a) give notice of termination of the existing agreement on the ground referred to in section 71H; or

(b) advise the tenant, by notice in writing, that the lessor has decided not to give notice of termination of the existing agreement; or

(c) make a new offer to the tenant to enter into a new social housing tenancy agreement in respect of alternative premises that differ from those the subject of the offer in respect of which the review was carried out.

(7) If a new offer is made under subsection (6)(c), subsections (1) to (6) apply in relation to giving notice of termination in connection with the new offer.

(8) If the situation referred to in subsection (7) applies, the lessor is required to give a second notice, and the tenant is entitled to a second review, under this section, however, the lessor is not required to give any further notice, and the tenant is not entitled to any further review, under this section in relation to giving notice of termination following a second review.

[Section 71I inserted by No. 60 of 2011 s. 92.]

71J. Time periods to be observed where notice of termination given under this Subdivision

(1) A notice of termination of a social housing tenancy agreement cannot be given to a tenant on the ground referred to in section 71H before the later of the following —

(a) the end of the 30 day period within which the tenant may apply for any review under section 71I of the decision to give the notice of termination;

(b) the end of any such review carried out in respect of that decision.

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(2) Despite subsection (1), if the lessor and tenant enter into a new social housing tenancy agreement before the end of that 30 day period or any such review, the notice of termination may be given on or after the day on which they enter into the new agreement.

(3) The notice of termination cannot specify a day earlier than 60 days after the day on which the notice is given as the day on which vacant possession of the premises the subject of the existing agreement is to be delivered up to the lessor, unless it specifies an earlier day to which the tenant has consented.

(4) The notice of termination is ineffective unless the alternative premises in connection with which the notice of termination is given are available for occupation no later than 7 days before the date specified in the notice as the day on which vacant possession is to be delivered up to the lessor.

(5) In the case of a social housing tenancy agreement that creates a tenancy for a fixed term, the notice of termination is not ineffective merely because a day earlier than the day on which the term ends is specified as the day on which vacant possession is to be delivered up to the lessor.

[Section 71J inserted by No. 60 of 2011 s. 92.]

Division 4 — Orders for termination of residential tenancy agreement

[Heading inserted by No. 60 of 2011 s. 69.]

71. Application by lessor for termination and order for possession

(1) Where a lessor or a tenant under a residential tenancy agreement gives notice of termination to the other under this Act except under section 70A and the tenant fails to deliver up possession of the premises on the day specified, the lessor 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 lessor 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 lessor upon a particular ground prescribed by this Act, other than a notice given by a lessor on a ground referred to in section 71C or 71H, that the lessor has established that ground and, in the case of notice upon the ground of a breach by the tenant of a term of the agreement, that the breach is in all the circumstances such as to justify termination of the agreement; and

(c) where the notice was given by a lessor upon a ground referred to in section 71C or 71H, in respect of the relevant matters referred to in subsection (3A).

(3A) The matters in respect of which the court is to be satisfied for the purposes of subsection (2)(c) in respect of a social housing tenancy agreement are —

(a) where the notice was given by the lessor upon a ground referred to in section 71C, that the tenant is not eligible to reside in social housing premises, or to reside in the class of social housing premises to which the agreement relates under the criteria approved under section 71E for the purposes of Division 3 Subdivision 2; or

(b) where the notice was given by the lessor upon a ground referred to in section 71H, that the lessor has offered to enter into a new social housing tenancy agreement with the tenant in respect of alternative premises to the premises the subject of the existing agreement and those alternative premises (which might or might not be the

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same as the premises in connection which the notice was given) are available for occupation by the tenant.

(3B) The court is not to make an order terminating a social housing tenancy agreement on a ground referred to in section 71C or 71H unless it is satisfied that —

(a) any notice required to be given under section 71F or 71I before giving notice of termination was given and that it was given in accordance with that section; and

(b) any review required to be carried out under section 71F or 71I was carried out and that it was carried out in accordance with that section.

(3C) Without limiting the obligations of the court under subsection (2), in considering the circumstances of a case concerning social housing premises under that provision, the court, in addition to having regard to the circumstances of the tenant and other circumstances of the case, is to have regard to such of the following matters as may be relevant —

(a) any serious adverse effects the tenancy has had on neighbouring residents or other persons;

(b) whether any breach of the residential tenancy agreement was a serious one, and whether, given the behaviour or likely behaviour of the tenant, a failure to terminate the agreement would subject, or continue to subject, neighbouring residents or any persons or property to unreasonable risk;

(c) the lessor's responsibility to its other tenants;

(d) whether the tenant, wilfully or otherwise, is or has been in breach of an order of the court;

(e) the history of the tenancy concerned, including, if the tenant is a tenant under a social housing tenancy agreement, any prior tenancy of the tenant arising under any such agreement.

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

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

(i) to the lessor 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 lessor 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; or

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

(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 lessor, complained to a public authority or taken steps to secure or enforce the tenant's rights as a tenant, the burden shall lie on the lessor to prove that the lessor was not wholly or partly motivated to give notice by that fact.

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(5) Subject to subsection (3)(a), where the court terminates a residential tenancy 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 within 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; No. 60 of 2011 s. 70, 88, 89 and 93.]

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

(1A) In this section —

agreement has the meaning given in section 70A(1);

possession day has the meaning given in section 70A(1).

(1) Where a lessor or a tenant under an agreement gives notice of termination under section 70A and the tenant fails to deliver up possession of the premises on the possession day, the lessor may, within 30 days after the possession 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.

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

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

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

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 lessor genuinely proposed, at the time that the lessor 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 the tenant's own initiative sought a tenancy of a term of less than 90 days.

(4) Subject to subsection (3)(a), where the court terminates a residential tenancy 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 within 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; No. 60 of 2011 s. 71, 88 and 89.]

73A. Notice of termination not required in certain cases

An application under section 73, 74, 75A or 75 may be made whether or not notice of termination has been given.

[Section 73A inserted by No. 60 of 2011 s. 94.]

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

(1) A competent court may, upon application by the lessor under a residential tenancy agreement, terminate the agreement if it is

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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 lessor or the property manager of the premises or any person in occupation of or permitted on adjacent premises.

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

[Section 73 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120; No. 60 of 2011 s. 72, 88 and 89.]

74. Termination of agreement where lessor or tenant would otherwise suffer undue hardship

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

(2) Where a court terminates a residential tenancy 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 or lessor 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; No. 60 of 2011 s. 73 and 88.]

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75A. Termination of social housing tenancy agreement due to objectionable behaviour

(1) A competent court may, upon application by the lessor under a social housing tenancy agreement, terminate the agreement if it is satisfied that the tenant has —

(a) used the social housing premises, or caused or permitted the social housing premises to be used, for an illegal purpose; or

(b) caused or permitted a nuisance by the use of the social housing premises; or

(c) interfered, or caused or permitted any interference, with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises,

and that the behaviour justifies terminating the agreement.

(2) The court may, on an application made under this section, make such other orders or give such other directions as the court in the circumstances of the case thinks fit, including, if there has been a breach of the agreement, making any order that the court may make under section 15.

(3) In deciding if the behaviour justifies terminating the agreement, or making any order or giving any direction referred to in subsection (2), the court may have regard to whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences.

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

(5) Where a court terminates a social housing tenancy agreement under this section, it must also make an order for possession of the social housing premises and must specify a day as from which the orders are to operate that it considers, in the circumstances of the case, appropriate.

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(6) For the purposes of section 16(1), an order made by the court under subsection (2) is to be taken to have been made under section 15(2).

[Section 75A inserted by No. 60 of 2011 s. 95.]

75. Termination of agreement for breach by lessor

(1) A competent court may, upon application by the tenant under a residential tenancy agreement, terminate the agreement, if it is satisfied that the lessor 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 a residential tenancy 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; No. 60 of 2011 s. 88 and 89.]

76A. Termination of agreement by lessor if premises abandoned

(1) If a lessor suspects on reasonable grounds that a tenant has abandoned the residential premises, the lessor may give a written notice to the tenant terminating the agreement.

(2) The notice must be in a form approved by the Minister and must —

(a) be signed by or for the lessor or property manager; and

(b) identify the residential premises; and

(c) state the lessor is terminating the agreement because the tenant has abandoned the premises.

(3) If the tenant does not take action under section 76B to dispute the notice within 7 days after being given the notice, the tenant is to be taken to have abandoned the premises.

[Section 76A inserted by No. 60 of 2011 s. 74.]

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76B. Dispute about s. 76A notice

(1) If the tenant wishes to dispute a notice given under section 76A, the tenant may apply to a competent court for an order —

(a) setting aside the notice; or

(b) for compensation.

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

(3) On an application under this section, the court may —

(a) if the application was made within 7 days after the notice was given — make an order setting aside the notice; or

(b) if paragraph (a) does not apply — make any of the following orders —

(i) an order terminating the agreement;

(ii) an order requiring the lessor to pay to the tenant the amount stated by the court as compensation for loss or expense incurred by the tenant because of the termination of the agreement;

(iii) any other order it considers appropriate.

[Section 76B inserted by No. 60 of 2011 s. 74.]

Division 5 — General

[Heading inserted by No. 60 of 2011 s. 74.]

76C. Fixed term tenancies continued as periodic tenancies

(1) This section applies to a residential tenancy agreement that creates a tenancy for a fixed term unless the agreement is terminated before the expiry day.

(2) Subject to subsection (3), a residential tenancy agreement continues as a periodic tenancy after the expiry day on the same terms that applied immediately before the expiry day.

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(3) A competent court may, upon application by the lessor or tenant, make such modification to the terms of the residential tenancy agreement as may be necessary for, or appropriate to, its continuance.

[Section 76C inserted by No. 60 of 2011 s. 74.]

76. Compensation to lessor for holding over

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

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

[Section 76 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(1) and (3); No. 60 of 2011 s. 89.]

77. Abandonment of premises

(1) If the lessor suspects on reasonable grounds that the tenant has abandoned the residential premises, the lessor may give to the tenant a written notice stating that —

(a) the lessor suspects that the tenant has abandoned the premises; and

(b) unless the tenant informs the lessor within 24 hours after the giving of the notice that the tenant has not abandoned the premises, the lessor —

(i) will enter the premises for the purpose of inspecting and securing them; and

(ii) may give to the tenant a notice under section 76A or apply to a competent court for an order under section 78A.

(2) The notice under subsection (1) must be in a form approved by the Minister.

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(3) The lessor must give the notice to the tenant by —

(a) leaving a copy at the premises; and

(b) leaving a copy at the tenant's last known place of employment.

(4) If the tenant fails to notify the lessor within 24 hours after notice has been given under subsection (3) that the premises have not been abandoned, the lessor may enter the premises for the purposes of inspecting and securing them.

[Section 77 inserted by No. 60 of 2011 s. 75.]

78A. Order about abandonment

(1) If a lessor suspects on reasonable grounds that the tenant has abandoned the residential premises, the lessor may apply to a competent court for an order under this section.

(2) The lessor may make the application instead of giving a notice under section 76A to the tenant.

(3) If an application is made, the court may make an order declaring that the premises were abandoned by the tenant on the day stated in the order.

(4) If the court makes an order under subsection (3), the tenant is taken to have abandoned the premises on the day stated in the order.

[Section 78A inserted by No. 60 of 2011 s. 75.]

78B. Review of abandonment order

(1) The tenant under a residential tenancy agreement who is dissatisfied with a decision of a court under section 78A(3) declaring that the tenant abandoned the premises on a stated day may apply to the court for a review of the decision.

(2) The application must be made within 28 days after the decision is made.

(3) The review is to be by way of a rehearing.

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(4) The court —

(a) must exercise its original jurisdiction for the review; and

(b) may make an order under this section if it is satisfied the applicant did not abandon the premises or only abandoned the premises on a day after the day stated.

(5) The order the court may make is an order requiring the lessor under the agreement to pay to the tenant an amount the court considers appropriate as compensation for any loss or expense incurred by the tenant by the termination of the agreement.

[Section 78B inserted by No. 60 of 2011 s. 75.]

78. Right of lessor to compensation where tenant abandons premises

(1) Where a tenant under a residential tenancy agreement abandons the premises, the lessor 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.

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

[Section 78 amended by No. 50 of 1988 s. 18; No. 59 of 2004 s. 120(1); No. 60 of 2011 s. 88 and 89.]

79. Abandoned goods

(1A) In this section —

goods does not include a tenant's document as defined in section 80A.

(1) Where a residential tenancy agreement is terminated and goods are left on the premises that were subject to the agreement, the lessor 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 a residential tenancy 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 lessor shall store them in a safe place and manner for a period of not less than 60 days after the day on which the agreement is terminated.

Penalty: a fine of $5 000.

(3) A lessor shall before the expiration of 7 days after the lessor has stored goods under subsection (2) —

(a) where the tenant has informed the lessor of the tenant's 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.

Penalty: a fine of $5 000.

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

(5) Where a lessor 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 the lessor removed and destroyed or disposed of the goods in reliance upon a statement of the Commissioner under subsection (4), the

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lessor 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 the lessor has been found liable.

(6) Where —

(a) a residential tenancy agreement has been terminated; and

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

(c) at the request of the lessor, the Commissioner has made a statement in writing that in the Commissioner's 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 lessor make an order for the payment to the lessor 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 lessor 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 removed and stored, the lessor 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 lessor is entitled to retain out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods.

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(10) Where goods have been sold under this section by a lessor, the lessor 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 lessor is entitled under subsection (9) and any amount that the lessor 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 lessor of the lessor's 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 the person.

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

(14) A lessor 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 goods or where the lessor has actual notice of any interest in the goods of any person other than the 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.

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(15) Where a dispute arises between a lessor and a 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) deleted]*~~

[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;~~Sch. 1 cl. 149(1) and (5); No. 60 of 2011 s. 76, 88 and 89.]

80A. Abandoned documents

(1) In this section —

tenant's document means —

(a) an official document; or

(b) a photograph; or

(c) correspondence; or

(d) any other document which it would be reasonable to expect that a person would want to keep.

(2) This section applies if —

(a) a residential tenancy agreement is terminated; and

(b) a tenant's document is left on premises the subject of the agreement.

(3) The lessor must take reasonable care of the tenant's document for a period of 60 days after the termination of the agreement.

Penalty: a fine of $5 000.

(4) The lessor must, during the period of 60 days after the termination of the agreement, take reasonable steps to notify the tenant —

(a) that the document was left at the premises; and

(b) as to when and from where the document may be collected.

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Penalty: a fine of $5 000.

(5) A person who has a lawful right to the document may reclaim it at any time before it is disposed of in accordance with subsection (7) if the person pays the lessor the reasonable costs, if any, incurred by the lessor in discharging the duties imposed on the lessor under this section in relation to that document.

(6) If a person who has a lawful right to a document reclaims the document and pays an amount equal to the reasonable costs incurred by the lessor in discharging the duties imposed on the lessor under this section, the lessor must give the document to that person.

Penalty: a fine of $5 000.

(7) If the document has not been claimed under subsection (5) within 60 days after the day on which the agreement was terminated, the lessor may destroy or otherwise dispose of the document.

(8) If a lessor destroys or otherwise disposes of a document under subsection (7), a competent court may, on an application by the lessor, make an order for the payment to the lessor out of moneys standing to the credit of the Rental Accommodation Account, in accordance with Schedule 1 clause 3(3)(a), of an amount equal to the reasonable costs incurred by the lessor in discharging the duties imposed on the lessor under this section.

(9) Nothing in this section affects the operation of any other Act or law affecting the destruction or disposal of a document.

[Section 80A inserted by No. 60 of 2011 s. 77.]

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 a residential tenancy agreement or a former tenant holding over after termination of a residential

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tenancy agreement for the purpose of recovering possession of the premises or part of the premises, whether entry is effected peaceably or otherwise.

Penalty: a fine of $20 000.

[Section 80 amended by No. 50 of 1988 s. 18; No. 59 of 1995 s. 55; No. 59 of 2004 s. 120(1); No. 60 of 2011 s. 78 and 88.]

81A. Mortgagee repossessions of rented properties

(1) In this section —

notice to vacate, in relation to residential premises, means a written notice to vacate the premises;

specified date means a date, specified in a notice to vacate, by which the tenant is to vacate the residential premises.

(2) If a residential tenancy agreement is terminated under section 60(e), the mortgagee is not to take possession of the residential premises from a tenant who is holding over after termination of the agreement unless the mortgagee, after becoming entitled to take possession, gives the tenant a notice to vacate the premises.

(3) The notice to vacate must be in a form approved by the Minister and must include a specified date that is not less than 30 days after the date on which the notice is given to the tenant.

(4) The tenant who is holding over after termination of the residential tenancy agreement —

(a) is not, during the period of 30 days following the date on which the tenant is given the notice to vacate, required to pay any rent, fee or other charge to occupy the residential premises; and

(b) is, if the tenant has paid any rent in advance for any part of that period, entitled to be repaid the amount of that rent.

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(5) A competent court may, on application by the tenant, order the repayment to the tenant of any such amount referred to in subsection (4)(a) or (b).

(6) The mortgagee (or any person acting on behalf of the mortgagee) is, during the period in which the tenant is holding over after termination of the residential tenancy agreement, entitled to enter the residential premises to show the premises to prospective purchasers on a reasonable number of occasions, but only if the tenant —

(a) is given reasonable notice of each such occasion; and

(b) agrees to the date and time of the inspection.

(7) This section does not prevent the mortgagee from —

(a) taking possession of the residential premises before the specified date if the tenant voluntarily vacates the premises before that date; or

(b) changing the specified date to a later date by further notice in writing given to the tenant; or

(c) entering into a new residential tenancy agreement with the tenant in respect of the residential premises.

(8) This section extends to a tenant who is, immediately before the commencement of this section, holding over after termination of the residential tenancy agreement.

(9) This section has effect despite the terms of any court order made before the commencement of this section or any contract or other agreement.

[Section 81A inserted by No. 60 of 2011 s. 79.]

81B. Notice of proposed recovery of premises by person with superior title

(1) This section applies where a person (the ***plaintiff***) brings proceedings in a competent court for the recovery of possession of residential premises.

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(2) The court must not make an order for possession unless it is satisfied —

(a) that a person is not in possession of the residential premises as —

(i) a tenant under a residential tenancy agreement; or

(ii) a tenant holding over after termination of a residential tenancy agreement;

or

(b) if there is such a person in possession of the residential premises and the plaintiff is not the lessor under the residential tenancy agreement — that the person has been given written notice, in a form approved by the Minister, of the proceedings not less than 30 days before the commencement of the proceedings.

(3) Failure to comply with this section does not invalidate or otherwise affect the judgment or order.

[Section 81B inserted by No. 60 of 2011 s. 79.]

81. Order for tenancy against person with superior title

(1) This section applies to a person who is or was in possession of residential premises as —

(a) a tenant under a residential tenancy agreement; or

(b) a tenant holding over after termination of a residential tenancy agreement,

at a time when proceedings for the recovery of possession of the premises had been commenced before a court by a person (the ***plaintiff***) who is not the lessor under the agreement.

(2) A person to whom this section applies may apply for an order under this section and such an application may be made to —

(a) the court before which the proceedings are pending; or

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(b) if the proceedings have been completed or possession has been recovered — a competent court,

within a reasonable time after the applicant was given notice of the proceedings or, if no notice was given, within a reasonable time after the recovery of possession of the residential premises.

(3) The court may, on such an application, and if it thinks it appropriate to do so in the special circumstances of the case, make an order vesting a tenancy over the residential premises in the applicant.

(4) The tenancy is to be held of the plaintiff, and on such terms and conditions as the court thinks fit, having regard to the circumstances of the case.

(5) Such an application or order may be made, even though —

(a) notice was not given to the applicant of the proceedings brought by the plaintiff; or

(b) the proceedings brought by the plaintiff have been completed or possession of the residential premises has been recovered by the plaintiff.

[Section 81 inserted by No. 60 of 2011 s. 79.]

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Part VIA — Residential tenancy databases

[Heading inserted by No. 60 of 2011 s. 96.]

Division 1 — Preliminary

[Heading inserted by No. 60 of 2011 s. 96.]

82A. Terms used

In this Part —

agent, of a lessor, means a person employed, or otherwise authorised, by the lessor to act as the lessor's agent;

database means a system, device or other thing used for storing information, whether electronically or in some other form;

database operator means an entity that operates a residential tenancy database;

inaccurate, in relation to personal information in a residential tenancy database, includes information that is inaccurate because —

(a) the information indicates that the person owes a lessor an amount that is more than the security bond for a residential tenancy agreement; and

(b) the amount owed was paid to the lessor more than 3 months after the amount became due;

list, personal information about a person in a residential tenancy database —

(a) means —

(i) to enter the personal information into the database; or

(ii) to give the personal information to a database operator or someone else for entry into the database;

and

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(b) includes to amend personal information about a person in the database to include additional personal information about the person;

out-of-date, in relation to personal information in a residential tenancy database, means the information is no longer accurate because —

(a) for a listing made on the basis the person owes a lessor an amount that is more than the security bond for a residential tenancy agreement — the amount owed was paid to the lessor within 3 months after the amount became due; or

(b) for a listing made on the basis a court has made an order terminating the residential tenancy agreement — the order has been set aside on appeal;

personal information means information (including an individual's name) or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

residential premises includes a long-stay site in a residential park as those terms are defined in the *Residential Parks (Long-stay Tenants) Act 2006*;

residential tenancy agreement includes a long-stay agreement as defined in the *Residential Parks (Long-stay Tenants) Act 2006*;

residential tenancy database means a database —

(a) containing personal information —

(i) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or

(ii) entered into the database for reasons relating to, or arising from, the occupation of residential premises under a residential tenancy agreement;

and

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(b) the purpose of which is for use by lessors or agents of lessors for checking a person's tenancy history to decide whether a residential tenancy agreement should be entered into with the person;

tenant includes a long-stay tenant as defined in the *Residential Parks (Long-stay Tenants) Act 2006*.

[Section 82A inserted by No. 60 of 2011 s. 96.]

82B. Application of Part

This Part does not apply to a residential tenancy database kept by an entity (including a government department of this State, another State or a Territory) for use only by that entity or its officers, employees or agents.

[Section 82B inserted by No. 60 of 2011 s. 96.]

Division 2 — Tenancy database information

[Heading inserted by No. 60 of 2011 s. 96.]

82C. Notice of usual use of database

(1) This section applies if —

(a) a person (the ***applicant***) applies to a lessor, whether or not through the lessor's agent, to enter into a residential tenancy agreement; and

(b) the lessor or, if the application is made through the lessor's agent, the lessor or agent usually uses one or more residential tenancy databases for deciding whether a residential tenancy agreement should be entered into with a person.

(2) The lessor or agent must, when the application is made, give the applicant written notice stating the following —

(a) the name of each residential tenancy database the lessor or agent usually uses, or may use, for deciding whether a

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residential tenancy agreement should be entered into with a person;

(b) that the reason the lessor or agent uses a residential tenancy database mentioned in paragraph (a) is for checking an applicant's tenancy history;

(c) for each residential tenancy database mentioned in paragraph (a), how persons may contact the database operator who operates the database and obtain information from the operator.

Penalty: a fine of $5 000.

(3) Subsection (2) applies in relation to a residential tenancy database whether or not the lessor or agent intends to use the database for deciding whether a residential tenancy agreement should be entered into with the applicant.

(4) However, the lessor or agent is not required to give the written notice mentioned in subsection (2) if a written notice stating the matters mentioned in the subsection was given to the applicant not more than 7 days before the application was made.

[Section 82C inserted by No. 60 of 2011 s. 96.]

82D. Notice of listing if database used

(1) This section applies if —

(a) a person (the ***applicant***) applies to a lessor, whether or not through the lessor's agent, to enter into a residential tenancy agreement; and

(b) the lessor or, if the application is made through the lessor's agent, the lessor or agent uses a residential tenancy database for checking whether personal information about the applicant is in the database; and

(c) personal information about the applicant is in the database.

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(2) The lessor or agent must, as soon as possible but within 7 days after using the database, give the applicant a written notice stating —

(a) the name of the database; and

(b) that personal information about the applicant is in the database; and

(c) the name of each person who listed the personal information in the database; and

(d) how and in what circumstances the applicant can have the personal information removed or amended under this Part.

Penalty: a fine of $5 000.

(3) However, subsection (2)(c) requires the written notice to state the name of a person only if the person is identified in the residential tenancy database as the person who listed the personal information in the database.

[Section 82D inserted by No. 60 of 2011 s. 96.]

82E. Listing can be made only for particular breaches by particular persons

(1) A lessor, lessor's agent or database operator must not list personal information about a person in a residential tenancy database unless —

(a) the person was named as a tenant in a residential tenancy agreement that has ended; and

(b) the person has breached the agreement; and

(c) because of the breach, either —

(i) the person owes the lessor an amount that is more than the security bond for the agreement; or

(ii) a court has made an order terminating the residential tenancy agreement;

and

(d) the personal information —

(i) relates only to the breach; and

(ii) is accurate, complete and unambiguous.

Penalty: a fine of $5 000.

(2) Without limiting subsection (1)(d)(ii), the personal information must indicate the nature of the breach.

[Section 82E inserted by No. 60 of 2011 s. 96.]

82F. Further restriction on listing

(1) A lessor, lessor's agent or database operator must not list personal information about a person in a residential tenancy database unless the lessor, agent or operator —

(a) has, without charging a fee —

(i) given the person a copy of the personal information; or

(ii) taken other reasonable steps to disclose the personal information to the person;

and

(b) has given the person at least 14 days to review the personal information and make submissions —

(i) objecting to its entry into the database; or

(ii) about its accuracy, completeness and clarity;

and

(c) has considered any submissions made.

Penalty: a fine of $5 000.

(2) Subsection (1) does not apply if the lessor, lessor's agent or database operator cannot locate the person after making reasonable enquiries.

(3) Subsection (1)(b) and (c) do not apply —

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(a) to information that, at the time of the listing, is contained in publicly available court or tribunal records; or

(b) to a listing involving only an amendment of personal information about a person under section 82G.

[Section 82F inserted by No. 60 of 2011 s. 96.]

82G. Ensuring quality of listing — lessor's or agent's obligation

(1) This section applies if a lessor or lessor's agent who lists personal information in a residential tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out-of-date.

(2) The lessor or agent must, within 7 days, give written notice of the following to the database operator who operates the database —

(a) if the information is inaccurate, incomplete or ambiguous —

(i) that the information is inaccurate, incomplete or ambiguous; and

(ii) how the information must be amended so that it is no longer inaccurate, incomplete or ambiguous;

(b) if the information is out-of-date — that the information is out-of-date and must be removed.

Penalty: a fine of $5 000.

(3) The lessor or agent must keep a copy of the written notice for one year after it was given under subsection (2).

Penalty: a fine of $5 000.

[Section 82G inserted by No. 60 of 2011 s. 96.]

82H. Ensuring quality of listing — database operator's obligation

(1) This section applies if a lessor or agent of a lessor who has listed personal information about a person in a residential

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tenancy database gives the database operator that operates the database written notice that the personal information must be —

(a) amended in a stated way to make it accurate, complete and unambiguous; or

(b) removed.

(2) The database operator must amend the personal information in the stated way, or remove the personal information, within 14 days of the notice being given.

Penalty: a fine of $5 000.

[Section 82H inserted by No. 60 of 2011 s. 96.]

82I. Providing copy of personal information listed

(1) A lessor or lessor's agent who lists personal information about a person in a residential tenancy database must, if asked in writing by the person, give the person a copy of the information within 14 days after the request is made.

Penalty: a fine of $5 000.

(2) A database operator must, if asked in writing by a person whose personal information is in the residential tenancy database kept by the operator, give the person a copy of the information within 14 days after the request is made.

Penalty: a fine of $5 000.

(3) If a lessor or lessor's agent charges a fee for giving personal information under subsection (1), or a database operator charges a fee for giving personal information under subsection (2), the subsection applies only if the fee has been paid.

(4) A fee charged by a lessor or lessor's agent for giving personal information under subsection (1) or by a database operator for giving personal information under subsection (2) —

(a) must not be excessive; and

(b) must not apply to lodging a request for the information.

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[Section 82I inserted by No. 60 of 2011 s. 96.]

82J. Disputes about listings

(1) A person may apply to a competent court for an order under this section if personal information about the person has been listed in a residential tenancy database.

(2) The court may make an order under this section if it is satisfied that —

(a) the residential tenancy database includes personal information about the applicant that is inaccurate, incomplete, ambiguous or out-of-date; or

(b) the inclusion of the applicant's name or other personal information about the applicant is unjust in the circumstances, having regard to all of the following —

(i) the reason for the listing;

(ii) the tenant's involvement in any acts or omissions giving rise to the listing;

(iii) any adverse consequences suffered, or likely to be suffered, by the tenant because of the listing;

(iv) any other relevant matter.

(2) The court may order personal information about a person in a residential tenancy database to be wholly or partly removed, amended in a stated way or not listed in a residential tenancy database.

(3) The court must give a copy of the order to the lessor, tenant and database operator.

(4) If the court makes an order directing a person other than a lessor or agent to remove, amend or not list information in a residential tenancy database, the court must give a copy of the order to the person.

[Section 82J inserted by No. 60 of 2011 s. 96.]

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82K. Keeping personal information listed

(1) In this section —

national privacy principles means the principles stated in the *Privacy Act 1988* (Commonwealth).

(2) A database operator must not keep personal information about a particular person in the operator's residential tenancy database for longer than —

(a) 3 years; or

(b) if, under the national privacy principles, the operator of the database is required to remove the personal information before the end of the 3 year period mentioned in paragraph (a) — the period ending when the information must be removed under the national privacy principles; or

(c) if the person —

(i) was a minor as defined in section 59A(1) when the information was listed in the database; and

(ii) reaches 18 years of age before the end of the 3 year period mentioned in paragraph (a),

the period ending when the person reaches 18 years of age.

Penalty: a fine of $5 000.

(3) However, a database operator may keep the person's name in the operator's residential tenancy database for longer than the period stated in subsection (2)(a) or (b) if —

(a) other personal information about the person in the database is attached to the name; and

(b) the other personal information is not required to be removed under subsection (2) or another law.

(4) This section does not limit the operation of another provision of this Part or of another law that requires the removal of the personal information.

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[Section 82K inserted by No. 60 of 2011 s. 96.]

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Part VI — Miscellaneous

82. Contracting out

(1) Except as provided under 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) A person must not enter into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act.

Penalty: a fine of $10 000.

[(3) deleted]

[Section 82 amended by No. 60 of 2011 s. 80.]

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).]

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

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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 any place specified by the person as a place where the person's mail may be directed or, if the person has not so specified, at the person's 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) a copy of it is published in a daily newspaper circulating throughout the State; or

(b) a court hearing proceedings under this Act orders an alternative means of giving the notice or document, and that means of giving the notice or document is effected.

(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 —

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

(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 a lessor under a residential tenancy agreement shall be deemed to have been duly given to the lessor if it has been given to the property manager of the residential premises, to any person apparently over the age of 16 years apparently residing at the place of residence of the lessor, or to the person who ordinarily receives the rent under the agreement.

(6) Where 2 or more persons are lessors 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 lessor or tenant under a residential tenancy agreement if the notice or document is given to any one of the lessors or tenants, as the case may be.

[Section 85 amended by No. 60 of 2011 s. 81 and 89.]

86. Court may refer matter to Commissioner for investigation

(1) If, while hearing proceedings under this Act, a court forms a suspicion that a person has committed an offence against this Act (other than an offence to which the proceedings relate), the court may refer the matter to the Commissioner for investigation.

(2) A court referring a matter to the Commissioner under subsection (1) is to give to the Commissioner any relevant documents or other records in the court's possession.

[Section 86 inserted by No. 60 of 2011 s. 82.]

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87A. Defence where lessor and property manager are both charged with the same offence

If a lessor under a residential tenancy agreement and a property manager of the residential premises under that agreement are both charged with the same offence under this Act, it is a defence to the charge for one of them to prove that he or she —

(a) did not aid, abet, counsel or procure the act or omission of the other giving rise to the offence; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by the other.

[Section 87A inserted by No. 60 of 2011 s. 82.]

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.

88A. Infringement notices

(1) In subsection (2), (3), (6) or (7) —

authorised person means a person appointed under subsection (13) by the Commissioner to be an authorised person for the purposes of the subsection in which the term is used.

(2) An authorised person who has reason to believe that a person has committed a prescribed offence under this Act may give an infringement notice to the alleged offender within —

(a) 21 days after forming the opinion that there is sufficient evidence to support the allegation of the offence; and

(b) 6 months after the alleged offence is believed to have been committed.

(3) An infringement notice is to be in the prescribed form and is to —

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(a) contain a description of the alleged offence; and

(b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the giving of the notice; and

(c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.

(4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

(5) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

(6) An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

(7) An authorised person may, within 60 days after an infringement notice has been given and whether or not the modified penalty has been paid, withdraw the infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(8) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

(9) Subsection (10) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

(10) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they

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would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(11) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

(12) Unless subsection (8) requires it to be refunded, an amount paid as a modified penalty is to be dealt with as if it were a penalty imposed by a court as a penalty for an offence.

(13) The Commissioner may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of subsection (2), (3), (6) or (7) or for the purposes of 2 or more of those subsections, but a person who is authorised to give infringement notices under subsection (2) is not eligible to be an authorised person for the purposes of any of the other subsections.

(14) The Commissioner is to issue to each person who is authorised to give infringement notices under this section a certificate of that person's authorisation, and the authorised person is to produce the certificate whenever required to do so by a person to whom an infringement notice has been or is about to be given.

[Section 88A inserted by No. 60 of 2011 s. 83.]

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; and

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[(b)-(d) deleted]

(e) prescribe penalties not exceeding $5 000 for breach of, or non-compliance with, any regulation.

[Section 88 amended by No. 60 of 2011 s. 84.]

*[**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 the Minister's 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; No. 60 of 2011 s. 85.]

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Part VII — Savings and transitional provisions relating to the *Residential Tenancies Amendment Act 2011*

[Heading inserted by No. 60 of 2011 s. 86.]

Division 1 — Contracting out

[Heading inserted by No. 60 of 2011 s. 86.]

91. Savings in relation to contracting out of standard terms

(1) In this section —

commencement day means the day on which the *Residential Tenancies Amendment Act 2011* section 80(3) comes into operation[1].

(2) If a residential tenancy agreement subsisting immediately before the commencement day contains a provision referred to in section 82(3), as in force immediately before that day, then that provision of the agreement continues to have effect after the commencement day despite the deletion of section 82(3) by section 80(3) of the *Residential Tenancies Amendment Act 2011*.

[Section 91 inserted by No. 60 of 2011 s. 86.]

Division 2 — Security bonds held in AFI

[Heading inserted by No. 60 of 2011 s. 86.]

92. Terms used

In this Part —

authorised financial institution or ***AFI*** means —

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

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

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(c) any other body,

that was prescribed, or that belongs to a class of bodies that was prescribed, for the purposes of the definition of that term under Schedule 1 clause 1 as in force immediately before the commencement day;

commencement day means the day on which the *Residential Tenancies Amendment Act 2011* section 87 comes into operation [1];

security bond held in an AFI means an amount of a security bond held in an AFI and that was so held immediately before the commencement day.

[Section 92 inserted by No. 60 of 2011 s. 86.]

93. All security bonds to be transferred to the bond administrator after renewal of agreement or within 18 months

(1) A lessor under a residential tenancy agreement must take all reasonable steps to ensure that a security bond held in an AFI that was paid in relation to the agreement is paid from the account in accordance with subsection (2) —

(a) if the agreement is renewed — as soon as practicable after the renewal; or

(b) in any other case — not later than 18 months after the commencement day.

Penalty: a fine of $5 000.

(2) The security bond is to be paid either —

(a) to the tenant; or

(b) to the bond administrator, in which case section 29(4)(b), (c) and (d) apply, with all necessary changes, to the payment.

[Section 93 inserted by No. 60 of 2011 s. 86.]

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94. Requirements for AFI holding security bonds

(1) An AFI must ensure that the following records are kept, in a form approved by the Minister, in relation to each security bond held in the AFI —

(a) the name and number of the account in which the security bond is held in the AFI;

(b) the amount of the security bond;

(c) the date the security bond was paid into the account.

(2) The AFI must hold a security bond on the following terms —

(a) interest at a rate not less than the prescribed rate must accrue on the amount of the bond for the period during which it is held by the AFI;

(b) the amount of interest accrued at the prescribed rate must 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 of interest accrued above the prescribed rate must be paid, at such times as are prescribed, to the person who paid the bond;

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

(d) the amount of the security bond must be paid out in accordance with section 96.

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

[Section 94 inserted by No. 60 of 2011 s. 86.]

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95. Power of Commissioner to obtain information relating to AFI security bond accounts

(1) Where a security bond is held in an AFI, the Commissioner may require the AFI to give to the Commissioner such information as the Commissioner requires in relation to an account in which the security bond is held, including information as to the balances of and amounts of interest paid on that account.

(2) A requirement under subsection (1) —

(a) must be given by notice in writing to the AFI; and

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

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

(i) given in writing; and

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

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

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

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

and

(d) must state that the AFI is required under this Act to give the information.

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

Penalty: a fine of $3 000.

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

Penalty: a fine of $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 cannot 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 95 inserted by No. 60 of 2011 s. 86.]

96. Disposal of security bond held in AFIs

(1) Where a security bond is held in an AFI in the name of a real estate agent under the *Real Estate and Business Agents Act 1978*, the real estate agent must on receipt of —

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

(b) a copy of an order under Schedule 1 clause 8,

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

(2) A real estate agent must pay an amount under subsection (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: a fine of $5 000.

(3) Where a security bond is held in an AFI in an account in the names of the lessor and the tenant entitled "tenancy bond account", the AFI that holds the account must on receipt of —

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

(b) a copy of an order under Schedule 1 clause 8,

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

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

(5) Schedule 1 clause 5(3) applies in respect of an application referred to in subsection (1) or (3) as if it were an application referred to in clause 5(1) of that Schedule.

(6) Schedule 1 clause 5(4) applies, with all necessary changes, in respect of a security bond held in an AFI.

(7) Regulations made under section 88 may authorise the payment of an unclaimed bond to the credit of the Rental Accommodation Account.

[Section 96 inserted by No. 60 of 2011 s. 86.]

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Division 3 — Residential tenancy databases

[Heading inserted by No. 60 of 2011 s. 86.]

97. Application of Part VIA to listings existing before commencement day

(1) In this section —

commencement day means the day on which the *Residential Tenancies Amendment Act 2011* section 96 comes into operation[1].

(2) For the period of 3 months from the commencement day, Part VIA applies only in respect of personal information that is listed after that day.

(3) A term used in subsection (2) that is used in Part VIA has the same meaning in that subsection as it has in that Part.

[Section 97 inserted by No. 60 of 2011 s. 86.]

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Schedule 1 — Provisions relating to holding and disposal of bonds and income from bonds

[s. 3, 7(3), 12, 29(4), (7), (8), 59D(6), 79(5), (6), (11) and 80A(8)]

[Heading inserted by No. 60 of 2011 s. 87(1).]

Division 1 — General

[Heading inserted by No. 60 of 2011 s. 87(2).]

1. ~~Terms~~Term used ~~in this Schedule~~: authorised agent

In this Schedule —

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

[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); No. 60 of 2011 s. 87(3)-(4).]

*[**2.** Deleted by No. 60 of 2011 s. 87(5).]*

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 all of the following —

(a) all moneys received under section 29(4)(b);

(ba) all moneys received pursuant to a court order under section 59D(2);

(bb) interest payable to the fund under section 94(2)(b);

(bc) amounts payable to the fund under the *Residential Parks (Long-stay Tenants) Act 2006* sections 75(3) and 92(b);

(bd) amounts payable to the fund under the *Residential Parks (Long-stay Tenants) Act 2006* section 94(a);

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

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(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).

(3) The interest referred to in subclause (2)(bb), the amounts referred to subclause (2)(bc), 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) or 80A(8); and

(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; and

(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, authorised agents and the Commissioner in carrying out their respective functions; and

(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 the bond administrator's 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); and

(d) in funding any not-for-profit body, one of the main functions of which is the delivery of free or substantially subsidised legal services to tenants and that is approved by the Minister for the purposes of this paragraph.

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(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 *Magistrates Court (Civil Proceedings) Act 2004* respectively; and

(b) shall be credited to an operating account of the Department and the department principally assisting in the administration of the *Magistrates Court (Civil Proceedings) Act 2004* respectively.

(5) If in the opinion of the Treasurer there is at any time any surplus income available from the Rental Accommodation Account the Treasurer may, after consulting the Minister, direct that all or part of that surplus income be expended by the Housing Authority as defined in section 71A for the purpose of social housing premises in such manner as the Treasurer might 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;~~Sch. 1 cl. 149(2)-(5); No. 60 of 2011 s. 87(6)-(9).]

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; and

(b) in relation to the amount of a security bond paid to the bond administrator under section 29(4)(b) —

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

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

and

(c) in relation to the amount of a tenant compensation bond paid to the bond administrator under section 59D(2) —

(i) show in such records the name and address of the lessor and the tenant in respect of whom, and any residential premises in respect of which, the bond was paid; and

(ii) pay out the amount of the bond in accordance with Division 3.

[Clause 4 amended by No. 77 of 2006 ~~s. 17;~~ Sch. 1 cl. 149(5); No. 60 of 2011 s. 87(10) and 89.]

Division 2 — Security bonds

[Heading inserted by No. 60 of 2011 s. 87(11).]

5A. Security bond moneys to be paid to bond administrator

(1) The payment of an amount under section 29(4)(b) must be made as soon as practicable, and in any event within 14 days, after the person's receipt of the bond.

(2) The payment may be made either directly, including by electronic means, or by lodging the amount with an authorised agent of the bond administrator.

[Clause 5A inserted by No. 60 of 2011 s. 87(12).]

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 security bond relates; and

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

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or

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

pay the amount of the security 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 tenant is deceased, the signature of the tenant's executor or administrator to an application is sufficient for the purposes of subclause (1)(a), and if a tenant 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 the bond administrator is satisfied that 6 months have elapsed since termination of a residential tenancy agreement and a security bond has not been paid in accordance with an application under this clause or an application has not been made under clause 8, the amount of the bond or any remaining portion of that amount must 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); No. 60 of 2011 s. 87(13)-(15).]

[Part C (cl. 6-7) deleted by No. 60 of 2011 s. 87(16).]

[Heading deleted by No. 60 of 2011 s. 87(17).]

8. Court may determine disposal of security bond

(1) Subject to this clause, a competent court may, upon application by a lessor 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 lessor 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

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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 the party 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 the party intends to dispute the application.

(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, or such longer period as the court hearing the application thinks fit, file in the office in which the application was filed a notice in writing in the prescribed form indicating that the party intends to dispute the application,

the 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 the party 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) —

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(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 the tenant 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) 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; No. 60 of 2011 s. 87(18)-(22) and 89.]

Division 3 — Tenant compensation bonds

[Heading inserted by No. 60 of 2011 s. 87(23).]

9. Application of Division

This Division applies where the bond administrator has been paid a tenant compensation bond in accordance with an order under section 59D(2).

[Clause 9 inserted by No. 60 of 2011 s. 87(23).]

10. Disposal of tenant compensation bond to tenant by bond administrator

(1) The bond administrator must on receipt of —

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

(i) signed by a tenant to a residential tenancy agreement to which the tenant compensation bond relates; and

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

and

(b) a copy of an order —

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(i) made under section 15(2)(b) in relation to a failure by a lessor to compensate a tenant for reasonable expenses incurred by the tenant in arranging for urgent repairs to be carried out in accordance with section 43; and

(ii) subsequent to the order under section 59D(2),

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

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

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

(4) A payment under subclause (1) is to be taken to be a payment by the lessor in satisfaction, or part satisfaction as the case may be, of the order referred to in subclause (1)(b).

[Clause 10 inserted by No. 60 of 2011 s. 87(23).]

11. Disposal of tenant compensation bond to lessor by bond administrator

The bond administrator must on receipt of —

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

(i) signed by the lessor to whom the tenant compensation bond relates; and

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

and

(b) a copy of an order made under section 59D(5),

pay the amount of the tenant compensation bond, or part of that amount, ordered by the court in accordance with the application.

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[Clause 11 inserted by No. 60 of 2011 s. 87(23).]

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

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Notes

[1] This reprint is a compilation as at 19 July 2013 of the *Residential Tenancies Act 1987* and includes the amendments made by the other written laws referred to in the following table. 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~~s. 23	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~~s. 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~~Sch. 1 cl. 149	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 except those in the *Residential Parks (Long-stay Tenants) Act 2006*)			

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Short title	Number and year	Assent	Commencement
Legal Profession Act 2008 s. 698	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Standardisation of Formatting Act 2010 s. 29	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Acts Amendment (Fair Trading) Act 2010 s. 189	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and *Gazette* 24 Dec 2010 p. 6805)
Residential Tenancies Amendment Act 2011	60 of 2011	14 Dec 2011	~~s.~~s. 1 and 2: 14 Dec 2011 (see s. 2(a)); s. 5(2) (to the extent that it inserts the definition of ***lessor***), 42(1) and (2), 45(1), 57, 58, 60, 69, 88, 89 (to the extent that it amends s. 71) and 90-95: 30 Jul 2012 (see s. 2(b) and *Gazette* 27 Jul 2012 p. 3663); s. 3-5 (except to the extent that it inserts the definition of ***lessor***), 6-41, 42(3), 43-44, 45(2), 46-56, 59, 61-68, 70-87, 89 (except to the extent that it amends s. 71) and Pt. 4 (s. 96): 1 Jul 2013 (see s. 2(b) and *Gazette* 3 May 2013 p. 1735)

Reprint 5: The *Residential Tenancies Act 1987* as at 19 Jul 2013 (includes amendments listed above)

[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

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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.

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 (other than s. 151) (as amended by *Acts Amendment (Fair Trading) Act 2010* s. 184) reads as follows:~~23 is a transitional provision that is of no further effect.

~~**Division 23 Transitional provisions**~~

~~*[151. Deleted by No. 58 of 2010 s. 184.]*~~

~~**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.~~

~~(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*~~

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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.

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