

Western Australia

Residential Tenancies Act 1987

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Residential Tenancies Act 1987

CONTENTS

Part I — Preliminary		
1.	Short title	2
2.	Commencement	2
3.	Terms used in this Act	2
4.	Position of Crown	3
5.	Application of Act	3
6.	Modification of application of Act by regulation	5
7.	Transitional provisions	5
Part II — Administration		
7A.	Commissioner	8
8.	Functions of the Commissioner	8
9.	Commissioner may institute or defend proceedings for party	9
10.	Delegation by Commissioner	12
11.	Protection of officers	12
11A.	Information officially obtained to be confidential	12
11B.	Powers of investigation	13
Part III — Determination of disputes		
12.	Terms used in this Part	14
12A.	Jurisdiction over prescribed disputes	14
13.	Jurisdiction over other disputes	14
13A.	Magistrates Court's jurisdiction	15
13B.	Appeals from decisions of a registrar	16
14.	Time for determination of proceedings	16
15.	Applications for relief and orders thereon	16

Contents

16.	Enforcement	17
17.	Application to vary or set aside order	18
18.	Form of applications and notice of hearing	18
19.	Witnesses and inspection of documents	19
20.	General powers in proceedings	20
21.	Evidence	21
22.	Presentation of cases	21
23.	Settlement by conciliation	23
24.	Costs	23
25.	Reservation of question of law	24
26.	Finality of proceedings	24

**Part IV — Rights and obligations of
owner and tenant**

Division 1 — Rent and security bonds

27.	Restriction on consideration for tenancy agreement	26
28.	Rent in advance	26
29.	Security bonds	27
29A.	Power of Commissioner to obtain information relating to security bond accounts	29
30.	Variation of rent	31
31.	Increase in security bond	31
32.	Limitation of excessive rents in certain circumstances	32
33.	Duty to give receipt for rent	34
34.	Proper records of rent to be kept	35
35.	Payment of rent by post-dated cheques etc. prohibited	35
36.	Apportionment of rent	35

Division 2 — General

37.	Term used in this Division	35
38.	Tenant's responsibility for cleanliness and damage	35
39.	Tenant's conduct on premises	36
40.	Vacant possession	36
41.	Legal impediments to occupation as residence	36
42.	Owner's responsibility for cleanliness and repairs	36
43.	Compensation where tenant sees to repairs	37
44.	Quiet enjoyment	38
45.	Locks	38
46.	Owner's right of entry	39

47.	Right of tenant to affix and remove fixtures etc.	40
48.	Owner to bear outgoings in respect of premises	41
49.	Right of tenant to assign or sub-let	41
50.	Vicarious responsibility of tenant for breach by other person lawfully on premises	42
51.	Tenant to be notified of owner's name and address	42
52.	Failure to pay rent with intention it be recovered from security bond	43
53.	Tenant's name, place of occupation and forwarding address	43
54.	Owner to deliver copy of agreement to tenant	44
55.	Cost of written agreement to be borne by owner	44
56.	Discrimination against tenants with children	44
57.	Accelerated rent and liquidated damages prohibited	45
58.	Duty of mitigation	46

Part V — Termination of residential tenancy agreements

59.	Term used in this Part	47
60.	How residential tenancy agreements are terminated	47
61.	Form of notice of termination by owner	48
62.	Notice of termination by owner upon ground of breach of term of agreement	48
63.	Notice of termination by owner who has entered into contract of sale	50
64.	Notice of termination by owner without any ground	51
65.	Termination by owner where section 32 invoked	51
66.	Notice by owner not waived by acceptance of rent	51
67.	Form of notice of termination by tenant	52
68.	Notice of termination by tenant	52
69.	Notice of termination by owner or tenant where agreement frustrated	52
70.	Effect of notice of termination of periodic tenancy	53
71.	Application by owner for termination and order for possession	53
72.	Application for termination and order for possession in relation to fixed term agreements	55
73.	Termination of agreement where tenant causing serious damage or injury	56

Contents

74.	Termination of agreement where owner would otherwise suffer undue hardship	57
75.	Termination of agreement for breach by owner	57
76.	Compensation to owner for holding over	58
77.	Order that premises are abandoned	58
78.	Right of owner to compensation where tenant abandons premises	58
79.	Abandoned goods	59
80.	Recovery of possession of premises prohibited except by court order	62
81.	Protection of tenants in relation to persons having superior title	63

Part VI — Miscellaneous

82.	Contracting out	64
83.	Recovery of amounts paid under mistake of law or fact	64
84.	Exemption of tenancy agreement or premises from provision of Act	65
85.	Service	65
87.	Time for bringing proceedings	66
88.	Regulations	66
90.	Review of the Act	67

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

Part A — Preliminary matters

1.	Terms used in this Schedule	68
2.	Where bond moneys to be paid	68
3.	Rental Accommodation Account	69
4.	Duties of bond administrator	71

Part B — Administrator

5.	Disposal of security bond by bond administrator	71
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Part C — Financial institution

6.	Terms on which bond held by financial institution	72
7.	Disposal of security bond	73

Part D — Referee

8.	Referee may determine disposal of bond	74
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Notes

Compilation table	77
Provisions that have not come into operation	79

Western Australia

Residential Tenancies Act 1987

An Act to regulate the relationship of owners and tenants under residential tenancy agreements, to consequentially amend certain Acts², and for connected purposes.

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 proclamation¹.

3. Terms used in this Act

In this Act, unless the contrary intention appears —

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

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

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

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

premises includes —

- (a) any part of premises; and
- (b) land and appurtenances appurtenant to premises;

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

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

residential tenancy agreement means any agreement, whether express or implied, under which any person for valuable consideration grants to any other person a right to occupy, whether exclusively or otherwise, any residential premises, or part of residential premises, for the purpose of residence;

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

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

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

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

4. Position of Crown

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

5. Application of Act

- (1) Subject to this section and sections 6 and 7, this Act applies to any residential tenancy agreement entered into, renewed, extended, assigned or otherwise transferred after the commencement of this Act.
- (2) This Act does not apply to any residential tenancy agreement —
 - (a) where the tenant is a party to an agreement for the sale and purchase of the premises;
 - (b) where the agreement arises under a mortgage in respect of the premises;
 - (c) where the agreement arises under a scheme under which —
 - (i) a group of adjacent premises is owned by a company; and
 - (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;

s. 5

- (e) where the agreement is *bona fide* entered into for the purpose of conferring on a person a right to occupy premises for a holiday;
 - (f) where the agreement is entered into as owner, whether generally or in prescribed circumstances, by any prescribed person or agency being a person or agency that is acting on behalf of the Crown; or
 - (g) where the agreement is a prescribed agreement, or is an agreement of a prescribed class.
- (3) This Act does not apply to or in relation to —
- (a) any part of a hotel or motel;
 - (b) any part of an educational institution, college, hospital or nursing home;
 - (c) any premises used for the purposes of a club;
 - (d) any premises used as a home for aged or disabled persons by an eligible organization within the meaning of the *Aged or Disabled Persons Homes Act 1954* of the Commonwealth Parliament;
 - (e) any prescribed premises or premises of a prescribed class.
- (4) For the purposes of subsection (2)(e), an agreement conferring a right to occupy premises for a fixed term of 3 months or longer shall be deemed, in the absence of proof to the contrary, not to have been entered into *bona fide* for the purpose of conferring a right to occupy the premises for a holiday.
- (5) Subject to subsection (6), this Act applies to a site at a caravan park, within the meaning of the *Caravan Parks and Camping Grounds Act 1995* (whether or not a caravan, within the meaning of that Act, is situated on that site) as if the site was residential premises for the purposes of this Act.
- (6) This Act does not apply to a site at a residential park, within the meaning of the *Residential Parks (Long-stay Tenants) Act 2006*, other than in relation to a residential tenancy agreement —
- (a) under which a person has a right to occupy such a site; and

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

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

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

6. Modification of application of Act by regulation

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

- (a) any residential tenancy agreement or class of residential tenancy agreements;
- (b) any premises or class of premises; or
- (c) any prescribed person or agency being a person or agency that is acting on behalf of the Crown.

7. Transitional provisions

(1) Where —

- (a) a residential tenancy agreement was entered into before the commencement of this Act and continues after such commencement; and
- (b) the tenancy under the agreement is a periodic tenancy,

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.

s. 7

- (2) Where this Act applies to a residential tenancy agreement by virtue of subsection (1) —
- (a) any proceedings commenced in relation to the agreement before that application may be continued and completed as if this Act had not come into operation;
 - (b) any notice to quit given in relation to the agreement before that application shall have effect and may be enforced as if this Act had not come into operation;
 - (c) any process commenced before that application, being a process whereby the rent may be increased under the agreement, may be continued and completed and shall have effect to increase the rent as if this Act had not come into operation, but subject to any order under section 32;
 - (d) proceedings may be brought subject to and in accordance with this Act in respect of any cause of action that arose before that application, not being a cause of action subject to proceedings at the time of that application; and
 - (e) no civil or criminal liability shall be incurred by virtue of that application in respect of any act or omission before that application.
- (3) Where —
- (a) this Act becomes applicable to a residential tenancy agreement by reason of a renewal, extension, assignment or transfer referred to in section 5(1); and
 - (b) at the time of such application a security bond in respect of the agreement has been paid to the owner or a person acting on his behalf,

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

- (c) the owner shall cause the person who is holding the security bond to pay the amount of the security bond allowed by section 29(1), or such lesser amount as is

- held, in accordance with either paragraph (a) or (b) of clause 2(1) of Schedule 1;
- (d) each payment referred to in paragraph (c) shall be made not later than 21 days after this Act becomes applicable to the residential tenancy agreement; and
 - (e) any amount paid to the bond administrator under clause 2(1)(a) of Schedule 1 shall be credited to the Rental Accommodation Account established under clause 3 of that Schedule.
- (4) Nothing in section 29(4) applies to a periodic tenancy to which this Act becomes applicable by virtue of subsection (1).

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

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;

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

[(2) deleted]

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

9. Commissioner may institute or defend proceedings for party

- (1) The Commissioner may, upon being satisfied that there is a cause of action and that it is in the public interest, on behalf of any party to a residential tenancy agreement, institute legal proceedings against any other person or defend any proceedings brought against the party or assume the conduct of proceedings already commenced by or against the party, with a view to enforcing or protecting the rights of the party in relation to any infringement or suspected infringement by that other person of those rights or of any of the provisions of this Act or other law relating to the interests of such parties.
- (2) The Commissioner may, if he considers it appropriate, on behalf of any tenant, institute proceedings under section 32 or assume the conduct of proceedings already commenced under that section by the tenant.
- (3) The Commissioner shall not institute, defend or assume the conduct of, any proceedings under subsection (1) or (2) on behalf of a party —
 - (a) without first —
 - (i) obtaining the written consent of the party which once given shall be irrevocable except with the consent of the Commissioner; and
 - (ii) obtaining the written consent of the Minister which may be given subject to such conditions as the Minister thinks fit;and

- (b) in relation to a residential tenancy agreement that has terminated unless a complaint is made to him by a person who was a party to that agreement within 3 months after termination of the residential tenancy agreement.
- (4) In relation to any proceedings referred to in subsection (1) or (2) the following provisions shall apply —
 - (a) the Commissioner shall, on behalf of the party to the residential tenancy agreement, have in all respects the same rights in, and control over, the proceedings, including the right to settle any action or part of any action, as the party would have had in the conduct of those proceedings;
 - (b) the Commissioner may, without consulting or seeking the consent of the party, conduct the proceedings in such manner as the Commissioner thinks appropriate and proper;
 - (c) in the case of proceedings already commenced by or against the party, the court hearing the proceedings shall, on the application of the Commissioner, order that the Commissioner be substituted for the party as a party to the proceedings, and may make such other orders or give such other directions in that behalf as the court thinks fit;
 - (d) any moneys (excluding costs) recovered by the Commissioner shall belong and be paid to the party without deduction and any amount awarded against the party shall be paid by and recoverable from the party, but in all cases the costs of the proceedings shall be borne by or paid to and retained by the Commissioner as the case may require; and
 - (e) if any party to the proceedings alleges another cause of action, or if the party on whose behalf the proceedings are being defended has another cause of action, the court hearing the proceedings shall, on the application of the Commissioner, order that the proceedings for the other cause of action be heard separately and that the party be

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

- (5) In any proceedings referred to in subsection (1), a document purporting to be signed by the Commissioner stating in respect of the proceedings that he is satisfied that there is a cause of action and that it is in the public interest to institute, defend or assume the conduct of the proceedings, as the case may be, on behalf of the party to the residential tenancy agreement shall, in the absence of proof to the contrary, be accepted as proof that the Commissioner instituted, defended or assumed the conduct of the proceedings, as the case may be, in accordance with that subsection.
- (6) In any proceedings referred to in subsection (2), a document purporting to be signed by the Commissioner stating in respect of the proceedings that he considers it appropriate to institute or assume the conduct of the proceedings, as the case may be, on behalf of the tenant shall, in the absence of proof to the contrary, be accepted as proof that the Commissioner instituted or assumed the conduct of the proceedings, as the case may be, in accordance with that subsection.
- (7) In any proceedings referred to in subsection (1) or (2) —
- (a) a document purporting to be the consent of the party to the residential tenancy agreement to the Commissioner instituting, defending or assuming the conduct of the proceedings, as the case may be; or
 - (b) a document purporting to be the Minister's consent to the Commissioner instituting, defending or assuming the conduct of the proceedings, as the case may be,

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

s. 10

- (8) Any money which the Commissioner becomes liable to pay by virtue of this section shall be charged to the Consolidated Account and this subsection, without any further appropriation, shall be sufficient authority for any such payment.
- (9) Any costs received by the Commissioner under subsection (4)(d) shall be credited to the Consolidated Account.
- (10) In this section *tenant* includes a prospective tenant or former tenant and *party* in relation to a residential tenancy agreement includes a person who is prospectively or was formerly a party to such agreement.

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

10. Delegation by Commissioner

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

11. Protection of officers

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

11A. Information officially obtained to be confidential

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

Penalty: \$20 000.

- (2) A person misuses information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —
- (a) in the course of duty;
 - (b) under this Act;
 - (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
 - (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
 - (e) with the consent of the person to whom the information relates, or each of them if there is more than one.
- (3) In this section —
- information** means information concerning the affairs of a person.

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

11B. 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.]

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*.

- (3) Despite subsection (2), the parties to an application referred to in subsection (1) in respect of which the Magistrates Court has jurisdiction may consent in writing (which consent is irrevocable) to the proceedings being heard and determined by the Magistrates Court in accordance with Part 4 of the *Magistrates Court (Civil Proceedings) Act 2004*.
- (4) In respect of the hearing and determination of an application referred to in subsection (1) —
 - (a) the practice and procedure applicable in the court dealing with the application shall, subject to subsection (3), apply and this Part (other than this subsection) and regulations made for the purposes of this Part shall not apply; but
 - (b) subject to paragraph (a), this Act shall apply.
- (5) If on an application referred to in subsection (1) the plaintiff recovers an amount that is not more than the prescribed amount, the plaintiff shall not be awarded any costs unless the court is satisfied that at the time of making the application there were reasonable grounds for the plaintiff to believe that he had a claim for an amount over the prescribed amount.

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

13A. Magistrates Court's jurisdiction

- (1) For the purpose of exercising the jurisdiction conferred by section 12A and 13, the Magistrates Court is to be constituted by a magistrate.
- (2) Despite subsection (1), a registrar of the Magistrates Court may, subject to the directions of a magistrate, exercise the court's jurisdiction in respect of any application that is to be dealt with in accordance with Part 4 of the *Magistrates Court (Civil Proceedings) Act 2004* if —
 - (a) the application is within a prescribed class of applications; and

s. 13B

- (b) either —
 - (i) the application is not disputed; or
 - (ii) a party to the application does not appear.
- (3) An application made under this Act to the Magistrates Court shall be made to the court at the place nearest to the place where the premises the subject of the proceedings are situated but, with the consent of the parties, may be made to the court at any other place.

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

13B. Appeals from decisions of a registrar

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

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

14. Time for determination of proceedings

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

15. Applications for relief and orders thereon

- (1) Where an owner or tenant under a residential tenancy agreement or a party to an agreement for an option to enter into a residential tenancy agreement claims that a breach of the agreement has occurred or that a dispute has arisen under the agreement, he may apply for relief to a competent court.
- (2) Upon such an application the court may —
 - (a) by such order as it considers appropriate in the circumstances —
 - (i) restrain any action in breach of the agreement; or

- (ii) require any action in performance of the agreement;
 - (b) order the payment of any amount payable under the agreement;
 - (c) order the payment of compensation for loss or injury, other than personal injury, caused by any breach of the agreement;
 - (d) authorise payment of the rent under the agreement into a local court until the agreement has been performed or any application for compensation has been determined, and order that such rent be paid out towards the cost of remedying the breach or towards the amount of any compensation or otherwise as it considers appropriate; and
 - (e) make such ancillary or incidental order as the court considers appropriate.
- (3) The court may make an order under subsection (2)(a) notwithstanding that it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such remedy would not otherwise be available.
- (4) Upon an application with respect to the breach of an agreement, the court shall take into account any previous breaches by the tenant of the agreement.

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

16. Enforcement

- (1) A person shall not, without reasonable excuse, fail to comply with an order under section 15(2) other than an order for payment of any amount.
Penalty: \$2 000.

s. 17

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

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

17. Application to vary or set aside order

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

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

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

18. Form of applications and notice of hearing

- (1) Any application under this Act shall —
- (a) be made in writing in a form approved by the Minister; and
 - (b) be accompanied by the prescribed fee (if any).
- (2) Before a competent court hears an application the court shall —
- (a) give to the applicant notice in writing setting out the time and place of the hearing; and
 - (b) give to any other party —
 - (i) notice in writing setting out the time and place of the hearing; and
 - (ii) such notice of the nature of the application as is required by rules of court or directed by the court in a particular case.

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

19. Witnesses and inspection of documents

- (1) For the purpose of any proceedings —
- (a) a competent court may by summons —
 - (i) require the attendance of any person before the court;
 - (ii) require the production of any books, papers or documents; or
 - (iii) require both such attendance and production;
 - (b) a competent court may —
 - (i) inspect any books, papers or documents produced, retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
 - (ii) require any person appearing before it to make an oath or affirmation that he will truly answer any relevant question put to him by the court or any person appearing before the court;
 - (iii) require any person appearing before it (whether he has been summoned to appear or not) to answer any relevant question put to him by the court or any person appearing before the court.
- (2) A person shall not —
- (a) without reasonable excuse fail to comply with the requirements of a summons served on him under subsection (1); or
 - (b) refuse or fail to comply with a requirement under subsection (1).

Penalty: \$2 000.

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

20. General powers in proceedings

A competent court hearing any application may —

- (a) hear the application in such manner as it considers best suited to the purposes of this Act;
- (b) decline to entertain the application if it considers that the application is frivolous;
- (c) proceed to hear and determine the application in the absence of any party thereto;
- (d) where a person contravenes subsection (2) of section 19, issue a warrant to bring the person before a competent court for the purposes of subsection (1) of that section;
- (e) order the refund to a person of a fee paid under section 18(1) by that person;
- (f) extend or shorten any period prescribed by or under this Act within which any application or other step in respect of proceedings must be made or taken, such power to extend a period being exercisable notwithstanding that that period has expired;
- (g) vary or set aside any order where it considers there are proper grounds for doing so;
- (h) adjourn the hearing to any time or place or to a time and place to be fixed;
- (i) allow the amendment of the application;
- (j) hear the application jointly with any other application;
- (k) receive in evidence any transcript of evidence in proceedings before the court or any other court and draw any conclusions of fact therefrom that it considers proper;
- (l) adopt, as it considers proper, any findings, decision or judgment of the court or any other court that may be relevant to the proceedings; and

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

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

21. Evidence

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

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

22. Presentation of cases

- (1) Except as provided in this section, a party to any proceedings shall present his own case and not be represented or assisted in the presentation of his case by another person.
- (2) A party to any proceedings may be represented by an agent or assisted by an agent in the presentation of his case if the court hearing the proceedings is satisfied that —
 - (a) the party is unable to appear personally or conduct the proceedings properly himself; and
 - (b) no other party will be unfairly disadvantaged by the fact that the agent is allowed so to act.
- (3) All or any of the parties to any proceedings may be represented by legal practitioners if —
 - (a) all the parties agree and the court hearing the proceedings is satisfied that any party who is not so represented will not be unfairly disadvantaged;
 - (b) one of the parties is a legally qualified person;
 - (c) one of the parties is a body corporate and any other party elects to be so represented;

s. 22

- (d) the court is satisfied that one of the parties is unable to appear personally or conduct the proceedings properly himself; or
 - (e) the proceedings are instituted or defended, or the conduct thereof has been assumed, by the Commissioner.
- (4) This section does not prevent —
- (a) a body corporate from being represented by an officer or employee of the body corporate (not being a legally qualified person) authorised to conduct the proceedings on its behalf (whether or not he is remunerated by the body corporate for representing it in the proceedings); or
 - (b) a person from acting as an interpreter for a party, if his fee does not exceed an amount fixed by the court at the hearing.
- (5) A person shall not demand or receive any fee or reward for representing or assisting a party to proceedings unless —
- (a) he is a legal practitioner;
 - (b) where the party is a body corporate, he is an officer or employee of the body corporate representing it under subsection (4); or
 - (c) where the party is an owner, he is the agent of the owner appointed to manage the premises the subject of the proceedings on behalf of the owner.

Penalty: \$1 000.

- (6) In this section —

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

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

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

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

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

23. Settlement by conciliation

- (1) If before or during the hearing of any proceedings it appears to a competent court either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of matters in dispute between the parties being settled by conciliation, it may —
 - (a) interview the parties in private (either with or without any person who may be representing any of them or assisting any of them in the presentation of his case); and
 - (b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.
- (2) Nothing said or done in the course of any attempt to settle proceedings under this section shall subsequently be given in evidence in any proceedings nor shall the judicial officer who presided be thereby disqualified from hearing or continuing to hear the proceedings if he thinks fit to do so.
- (3) Where proceedings are settled under this section, the court may embody the terms of the settlement in an order.

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

24. Costs

- (1) A competent court hearing proceedings shall not award costs, unless —
 - (a) all parties to the proceedings were represented by legal practitioners, as defined in section 22(6); or
 - (b) it is of the opinion that there are special circumstances justifying the award of costs.

s. 25

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

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

25. Reservation of question of law

- (1) A competent court hearing proceedings may reserve any question of law for the decision of the Supreme Court.
- (2) Any costs arising from the reservation of any question under this section, including any costs incurred by the parties to the proceedings, shall be charged to the Consolidated Account and this subsection, without any further appropriation, shall be sufficient authority for any such payment.

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

26. Finality of proceedings

- (1) An order made by a court under this Act is final and binding on all parties to the proceedings in which the order is made and on all persons who under this Act could have become entitled to be joined as a party to the proceeding in which the order is made, and no appeal shall lie in respect thereof.
- (2) No declaratory judgment shall be given and no order shall be made under section 36 of the *Magistrates Court Act 2004* in respect of proceedings taken or to be taken under this Act in the Magistrates Court or any order made in such proceedings by that court, unless the Supreme Court is satisfied that the Magistrates Court had or has no jurisdiction conferred by or under this Act in respect of the proceedings or that a party to the proceedings has been denied natural justice.

- (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.]

Part IV — Rights and obligations of owner and tenant

Division 1 — Rent and security bonds

27. Restriction on consideration for tenancy agreement

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

Penalty: \$1 000.

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

- (a) any amount required or received as consideration for an option to enter into a residential tenancy agreement if, upon the option being exercised, the amount is refunded or applied towards the rent payable under the agreement;
- (b) any amount that the owner is authorised by any other provision of this Act to require or receive; and

[(c) deleted]

- (d) any other payment of a prescribed class.

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

28. Rent in advance

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

Penalty: \$1 000.

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

Penalty: \$1 000.

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

29. Security bonds

- (1) A person shall not —
- (a) require the payment of, or receive, more than one security bond in relation to any residential tenancy agreement; or
 - (b) require the payment of, or receive, a security bond of an amount exceeding in the aggregate —
 - (i) 4 weeks' rent under the residential tenancy agreement in relation to which it is required or received; and
 - (ii) where the tenant is permitted to keep any cat or dog on the premises, the amount of \$50, or such other amount as is prescribed, to meet the cost of any fumigation of the premises that may be required on the termination of the tenancy.

Penalty: \$1 000.

- (2) Subsection (1)(b) does not apply in relation to a residential tenancy agreement where —
- (a) the weekly rate of rent payable under the agreement exceeds a prescribed amount; or
 - (b) the premises to which the agreement relates were during the whole of the 3 months immediately preceding the entering into of the agreement the principal private residence of the owner.
- (3) Where, during the period of 6 months after the day on which the tenancy under a residential tenancy agreement commenced, the rent payable under the agreement decreases or is decreased, the amount paid in excess of the lower or, as the case may be, lowest rate of rent payable under the agreement during that period, together with the amount (if any) allowed by subsection (1)(b)(ii), shall be deemed to have been paid as a security bond.

- (4) A person who receives a security bond paid in relation to a residential tenancy agreement —
- (a) shall forthwith give or cause to be given to the person paying the bond a receipt specifying the date on which the bond was received, the name of the person paying the bond, the amount paid and the premises in respect of which it is paid;
 - (b) shall pay the amount of the security bond in accordance with the provisions contained in Schedule 1;
 - (c) shall keep, or cause to be kept, in a form approved by the Minister a record of the payment referred to in paragraph (b) that includes the following details —
 - (i) the date on which the amount was paid;
 - (ii) the amount paid; and
 - (iii) if the payment was under clause 2(1)(b) of Schedule 1, the name of the financial institution to which the amount was paid and the name and number of the account into which the amount was paid;
- and
- (d) shall give or cause to be given to the person who paid the bond within such period as is prescribed a copy of the record referred to in paragraph (c).

Penalty: \$4 000.

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

Penalty: \$1 000.

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

Penalty: \$1 000.

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

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

- (1) The Commissioner may require the manager or other officer for the time being in charge of an authorised financial institution as defined in Schedule 1 to give to the Commissioner such information as the Commissioner requires in relation to accounts referred to in clause 2(3)(a) and (b) of that Schedule, including information as to the balances of and amounts of interest paid on such accounts.
- (2) A requirement under subsection (1) —
- (a) shall be given by notice in writing to the manager or other officer required to give the information;
 - (b) shall specify the time at or within which the information is to be given;
 - (c) may, by its terms, require that the information be —
 - (i) given in writing;
 - (ii) certified as correct by a person who is registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001* of the Commonwealth and is specified in the requirement;
 - (iii) given at or sent or delivered to any place specified in the requirement;
 - (iv) sent or delivered by any means specified in the requirement; and

Residential Tenancies Act 1987

Part IV Rights and obligations of owner and tenant

Division 1 Rent and security bonds

s. 30

- (v) given on oath or affirmation or by statutory declaration;
 - and
 - (d) shall state that the manager or other officer is required under this Act to give the information.
- (3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).
Penalty: \$3 000.
- (4) A person shall not give information in response to a requirement under subsection (1) that the person knows is false or misleading in a material particular.
Penalty: \$3 000.
- (5) It is a defence in proceedings for an offence against subsection (3) for the person to show that —
- (a) the notice under subsection (2)(a) did not state that the person was required under this Act to give the information; or
 - (b) the time specified in the requirement did not give the person sufficient notice to enable compliance with the requirement.
- (6) Where a person is required to give information under subsection (1), the person shall not refuse to comply with that requirement on the ground that the information may tend to incriminate the person or render the person liable to any penalty.
- (7) Despite subsection (6), information given under this section is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against subsection (4).

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

30. Variation of rent

- (1) Subject to this section, the rent payable under a residential tenancy agreement may be increased by the owner by notice in writing to the tenant specifying the amount of the increased rent and the day as from which the increased rent becomes payable, being a day —
- (a) not less than 60 days after the day on which the notice is given; and
 - (b) not less than 6 months after the day on which the tenancy commenced, or, if the rent has been increased under this section, the day on which it was last so increased,
- but otherwise the rent shall not increase or be increased.
- (2) The right of the owner to increase rent in accordance with subsection (1) —
- (a) is not exercisable in relation to an agreement that creates a tenancy for a fixed term during the currency of that term unless the agreement provides that the rent may increase or be increased; and
 - (b) in any case, may be excluded or limited by agreement between the owner and the tenant.
- (3) A notice of increase of rent that has been given in accordance with this section and that has not been withdrawn by the owner varies the residential tenancy agreement to the effect that the increased rent specified in the notice is payable under the agreement as from the day specified in the notice.

31. Increase in security bond

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

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

- (a) not less than 60 days after the day on which the notice is given; and
- (b) not less than 12 months after the day on which the tenancy commenced, or, if the amount of the security bond has been increased under this section, the day on which it was last so increased,

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

- (2) The amount of a security bond may not be increased under this section to an amount that would exceed the aggregate of —
 - (a) 4 weeks' rent under the residential tenancy agreement at the time at which the amount of the increase would be payable; and
 - (b) any amount provided for by section 29(1)(b)(ii).
- (3) A notice of increase of the amount of a security bond that has been given in accordance with this section and that has not been withdrawn by the owner varies the residential tenancy agreement to the effect that the amount of the increase specified in the notice is payable under the agreement on the day specified in the notice.
- (4) Section 29(4) applies to an amount paid under this section.

32. Limitation of excessive rents in certain circumstances

- (1) A tenant under a residential tenancy agreement may apply to a competent court for an order declaring that the rent payable in respect of the premises is excessive.
- (2) An application under subsection (1) may only be made on one or more of the following grounds —
 - (a) that since the tenancy was entered into, renewed or extended there has been, without any default on the part of the tenant, a significant reduction in the chattels

provided with the premises or in the facilities provided, or both;

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

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

- (3) The court shall, in determining whether or not the rent payable in respect of the premises is excessive, have regard to —
 - (a) the general level of rents for comparable premises in the locality or a similar locality;
 - (b) the estimated capital value of the premises at the date of the application;
 - (c) the amount of the outgoings in respect of the premises required to be borne by the owner under the agreement;
 - (d) the estimated cost of any services provided by the owner or tenant under the agreement;
 - (e) the value and nature of the chattels provided with the premises for use by the tenant;
 - (f) the accommodation and amenities provided in the premises and the state of repair and general condition thereof; and
 - (g) any other relevant matter.
- (4) Where a court determines on an application under this section that the rent payable in respect of the premises is excessive, it may, having regard to the justice and merits of the case, order that from a specified day, not being earlier than the date of the application by the tenant, the rent payable in respect of the premises under the residential tenancy agreement shall not exceed a specified amount.
- (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

Residential Tenancies Act 1987

Part IV Rights and obligations of owner and tenant

Division 1 Rent and security bonds

s. 33

order or of such period not exceeding 6 months as is fixed by the court commencing on the day on which the order is made, whichever is the earlier.

- (6) A court may, upon application by the owner of any premises in respect of which an order under this section has been made, if satisfied having regard to the matters set out in subsection (3) that it is just to do so, vary or revoke the order.
- (7) A person shall not demand or receive any rent in respect of premises of an amount that exceeds the amount fixed by an order under this section in respect of the premises.

Penalty: \$1 000.

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

33. Duty to give receipt for rent

- (1) A person who receives any rent under a residential tenancy agreement shall, within 3 days of receiving the rent (not including an “excluded day” as defined in section 61(2) of the *Interpretation Act 1984*), prepare and give, or cause to be prepared and given, to the person paying the rent a receipt specifying the date on which the rent was received, the name of the person paying the rent, the amount paid, the period of the tenancy in respect of which it is paid, and the premises in respect of which it is paid.
Penalty: \$1 000.
- (2) Subsection (1) does not apply to rent paid under an agreement between the owner and tenant into an account at an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth nominated by the owner.
- (3) Nothing in subsection (1) shall be read as limiting section 69 of the *Real Estate and Business Agents Act 1978*.

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

34. Proper records of rent to be kept

- (1) An owner shall keep, or cause to be kept, a record showing the rent received in respect of the premises.
Penalty: \$1 000.
- (2) No person shall make in any record referred to in subsection (1) any entry that is to his knowledge false in a material particular.
Penalty: \$1 000.

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

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

No person shall require a post-dated cheque or other negotiable instrument that is post-dated in payment of rent.
Penalty: \$1 000.

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

36. Apportionment of rent

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

Division 2 — General

37. Term used in this Division

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

38. Tenant's responsibility for cleanliness and damage

- (1) It is a term of every agreement that the tenant —
 - (a) shall keep the premises in a reasonable state of cleanliness;

- (b) shall notify the owner as soon as practicable but within 3 days of any damage to the premises; and
- (c) shall not intentionally or negligently cause or permit damage to the premises.

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

39. Tenant's conduct on premises

It is a term of every agreement that the tenant —

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

40. Vacant possession

- (1) It is a term of every agreement that the tenant shall have vacant possession of the premises on the day on which the tenant is entitled to enter into occupation of the premises under the agreement.
- (2) In subsection (1) *premises* does not include any part of the premises in respect of which the tenant does not have a right of exclusive occupation.

41. Legal impediments to occupation as residence

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

42. Owner's responsibility for cleanliness and repairs

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

- (a) shall provide the premises in a reasonable state of cleanliness;
 - (b) shall provide and maintain the premises in a reasonable state of repair having regard to their age, character and prospective life; and
 - (c) shall comply with all requirements in respect of buildings, health and safety under any other written law in so far as they apply to the premises.
- (2) In this section *premises* includes chattels provided with the premises (whether under the agreement or not) for use by the tenant.

43. Compensation where tenant sees to repairs

- (1) It is a term of every agreement that the owner shall compensate the tenant for any reasonable expense incurred by the tenant in making urgent repairs to premises where —
- (a) the state of disrepair has arisen otherwise than as a result of a breach of the agreement by the tenant and is likely to cause injury to person or property or undue inconvenience to the tenant; and
 - (b) the tenant has made a reasonable attempt to give to the owner notice of the state of disrepair and of his intention to incur expense in repairing the premises.
- (2) An owner is not obliged to compensate the tenant under the term prescribed by subsection (1) unless —
- (a) the repairs are carried out by a person who holds a licence that he is required to hold under any written law to perform such work; and
 - (b) the tenant has furnished to the owner a report prepared by that person as to the apparent cause of the state of disrepair.
- (3) The term prescribed by subsection (1) applies notwithstanding that the tenant has notice of the state of the premises at the time when the agreement is entered into.

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

44. Quiet enjoyment

- (1) It is a term of every agreement —
- (a) that the tenant shall have quiet enjoyment of the premises without interruption by the owner or any person claiming by, through or under the owner or having superior title to that of the owner;
 - (b) that the owner shall not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises; and
 - (c) that the owner shall take all reasonable steps to enforce the obligation of any other tenant of the owner in occupation of adjacent premises not to cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises.
- (2) In this section *premises* includes chattels provided with the premises (whether under the agreement or not) for use by the tenant.

45. Locks

- (1) It is a term of every agreement —
- (a) that the owner shall provide and maintain such locks or other devices as are necessary to ensure that the premises are reasonably secure; and
 - (b) that neither the owner nor the tenant shall alter, remove or add any lock or device without the consent of the other given at, or immediately before, the time that the alteration, removal or addition is carried out.
- (2) An owner or tenant who, without reasonable excuse, breaches the term prescribed by subsection (1)(b) is, in addition to any

civil liability that he might incur by so doing, guilty of an offence and liable to a penalty not exceeding \$4 000.

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

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

46. Owner's right of entry

- (1) It is a term of every agreement that the owner may enter the premises in the following circumstances but not otherwise —
 - (a) in any case of emergency;
 - (b) for the purpose of inspecting the premises or any other purpose, on a day and at a reasonable hour, specified in a notice given to the tenant not less than 7 nor more than 14 days in advance;
 - (c) at any reasonable hour for the purpose of collecting the rent under the agreement, where it is payable not more frequently than once every week and it is agreed that the rent be collected at the premises;
 - (d) for the purposes of inspecting the premises, on the occasion of a rent collection referred to in paragraph (c), but not more frequently than once every 4 weeks;
 - (e) for the purpose of carrying out or inspecting necessary repairs to or maintenance of the premises, at any reasonable hour, after giving the tenant not less than 72 hours notice;
 - (f) for the purpose of showing the premises to prospective tenants, at any reasonable hour and on a reasonable

number of occasions during the period of 21 days preceding the termination of the agreement, after giving the tenant reasonable notice;

- (g) for the purpose of showing the premises to prospective purchasers, at any reasonable hour and on a reasonable number of occasions, after giving the tenant reasonable notice; or
 - (h) with the consent of the tenant given at, or immediately before, the time of entry.
- (2) In subsection (1) *premises* does not include any part of the premises used by the tenant in common with the owner or any other tenant of the owner.

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

- (1) An agreement may provide that the tenant —
- (a) shall not affix any fixture or make any renovation, alteration or addition to the premises; or
 - (b) may affix any fixture or make any renovation, alteration or addition to the premises, but only with the owner's consent.
- (2) Where an agreement makes the provision described in subsection (1)(b) it is a term of the agreement that —
- (a) the owner shall not unreasonably withhold such consent;
 - (b) the tenant may remove any fixture that he has affixed to the premises, with the owner's consent, during the period that he has continued in possession of the premises under the agreement, unless the removal of the fixture would cause irreparable damage to the premises; and
 - (c) where the tenant causes any damage to the premises by removing any fixture, he shall notify the owner and, at the option of the owner, repair the damage or compensate the owner for any reasonable expenses incurred by the owner in repairing the damage.

48. Owner to bear outgoings in respect of premises

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

- (a) the *Local Government Act 1995*;
- (b) the *Land Tax Act 2002*;
- (c) any written law under which a rate, tax or charge is imposed for “water services”, as defined in the *Water Agencies (Powers) Act 1984*, other than a charge for water consumed.

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

49. Right of tenant to assign or sub-let

- (1) An agreement may provide that the tenant —
 - (a) may assign his interest under the agreement or sub-let the premises;
 - (b) shall not assign his interest under the agreement or sub-let the premises; or
 - (c) may assign his interest under the agreement or sub-let the premises only with the written consent of the owner.
- (2) Where an agreement makes or is deemed to make the provision described in subsection (1)(c), it is a term of the agreement —
 - (a) that the owner shall not unreasonably withhold such consent; and
 - (b) that the owner shall not make any charge for giving such consent other than his reasonable expenses incidental thereto.
- (3) Where an agreement does not make any of the provisions described in subsection (1), the agreement shall be deemed to contain the provision described in subsection (1)(c).

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

- (1) It is a term of every agreement that, where a person other than the tenant is lawfully on the premises, the tenant is vicariously responsible for any act or omission by that person that would, if it had been an act or omission by the tenant, have constituted a breach of the agreement.
- (2) Subsection (1) does not extend to a person who is lawfully on the premises and whose authority to be on the premises does not derive from the permission, express or implied, of the tenant.

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

- (1) An owner under an agreement shall, at the time of entering into the agreement, notify the tenant, or cause the tenant to be notified, in writing of —
 - (a) the full name and address of the owner and any person having superior title to that of the owner; and
 - (b) where the owner or such person is a body corporate, the full name and business address of the secretary of the body corporate.

Penalty: \$1 000.

- (2) Notwithstanding subsection (1)(a), so long as the premises are managed by a real estate agent who is licensed under the *Real Estate and Business Agents Act 1978*, it is sufficient for an owner instead of notifying the tenant, or causing him to be notified, of the address of the owner to notify him, or cause him to be notified, of the address of that agent.
- (3) Where a person succeeds another person as the owner under an agreement, the new owner shall within 14 days notify the tenant, or cause the tenant to be notified, in writing of —
 - (a) the full name and address of the new owner; and

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

Penalty: \$1 000.

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

Penalty: \$1 000.

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

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

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

Penalty: \$1 000.

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

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

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

Penalty: \$1 000.

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

Penalty: \$1 000.

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

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

(b) his postal address.

Penalty: \$1 000.

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

54. Owner to deliver copy of agreement to tenant

- (1) An owner, or agent of an owner who has required or invited a tenant to sign a written agreement or memorandum thereof shall —
- (a) provide the tenant with a copy of the document at the time at which it is signed by the tenant; and
 - (b) ensure that a fully executed copy of the document is delivered to the tenant within 21 days after it has been signed and delivered by the tenant, or, where that is not reasonably practicable in the circumstances, within such longer period as is so practicable.

Penalty: \$1 000.

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

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

55. Cost of written agreement to be borne by owner

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

56. Discrimination against tenants with children

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

Penalty: \$1 000.

- (2) A person shall not —
- (a) instruct any person not to grant; or
 - (b) state his intention, whether by advertisement or otherwise, not to grant,

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

Penalty: \$1 000.

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

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

57. Accelerated rent and liquidated damages prohibited

- (1) Where an agreement provides that, upon breach by the tenant of the agreement to pay rent or any other term of the agreement or breach of this Act or any other written law, the tenant is liable to pay —
- (a) all or any part of the rent remaining payable under the agreement;
 - (b) rent of an increased amount;
 - (c) any amount by way of a penalty; or
 - (d) any amount by way of liquidated damages,

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

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

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

58. Duty of mitigation

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

Part V — Termination of residential tenancy agreements

59. Term used in this Part

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

60. How residential tenancy agreements are terminated

- (1) Notwithstanding any Act or law to the contrary, an agreement shall not terminate or be terminated except —
 - (a) where the owner or tenant gives notice of termination under this Act and —
 - (i) the tenant delivers up vacant possession of the premises on or after the expiration of the period of notice required under this Act; or
 - (ii) a competent court, upon application by the owner, terminates the agreement under section 71;
 - (b) in the case of a tenancy for a fixed term, where the term expires and —
 - (i) the tenant delivers up vacant possession of the premises on or after the expiration of the term; or
 - (ii) a competent court, upon application by the owner, terminates the agreement under section 72;
 - (c) where a competent court terminates the agreement under section 73, 74 or 75;
 - (d) where a person having superior title to that of the owner becomes entitled to possession of the premises;
 - (e) where a mortgagee in respect of the premises takes possession of the premises in pursuance of the mortgage;
 - (f) where the tenant abandons the premises;

s. 61

- (g) where the tenant delivers up vacant possession of the premises pursuant to an agreement in writing between the owner and the tenant to terminate the residential tenancy agreement;
 - (h) by merger.
- (2) Where an agreement continues beyond the day on which it would upon its terms have terminated by effluxion of time or the happening of an event, subject to subsection (3), the same terms as last applied before that day continue to apply.
- (3) A competent court may, upon application by the owner or tenant, make such modification of the terms of an agreement referred to in subsection (2) as may be necessary for or appropriate to its continuance.

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

61. Form of notice of termination by owner

Notice of termination of an agreement by the owner shall —

- (a) be in writing and in the prescribed form;
- (b) be signed by the owner or his agent;
- (c) identify the premises the subject of the agreement;
- (d) specify the day on which possession of the premises is to be delivered up by the tenant; and
- (e) specify and give particulars of the ground, if any, upon which the notice is given.

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

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

- (2) Where an owner gives notice of termination under this section, the period of notice shall be not less than 7 days.
- (3) Where notice of termination is given under this section upon the ground of a breach of the agreement other than the agreement to pay rent, the notice is ineffectual unless a notice specifying the breach and requiring that it be remedied is given to the tenant not less than 14 days before the notice of termination is given.
- (4) Where notice of termination is given under this section upon the ground of a breach of the agreement to pay rent —
- (a) the notice is ineffectual unless a notice specifying the breach of the agreement and requiring payment of the rent is given to the tenant not less than 14 days before the notice of termination is given; and
 - (b) the notice is not rendered ineffectual by failure by the owner to make a prior formal demand for payment of the rent.
- (5) Despite subsection (4)(a), notice of termination upon the ground of a breach of the agreement to pay rent may be given immediately the breach occurs but where notice is so given —
- (a) the owner shall not make an application under section 71 if the rent due under the agreement is paid in full before the day specified in the notice as the day on which the tenant is to deliver up possession of the premises;
 - (b) the owner shall not continue proceedings in respect of an application under section 71 if —
 - (i) the rent due under the agreement; and
 - (ii) the amount of any fee paid by the owner under section 18(1),are paid in full to the owner not less than one day before the hearing of application; and
 - (c) the hearing of an application under section 71 shall take place not less than 21 days after notice is given.

s. 63

- (5a) Where an application is made, or proceedings in respect of an application are continued, in contravention of subsection (5), any order made under section 71(2) in respect of the application is of no effect.
- (6) Where notice of termination is given under this section in respect of an agreement that creates a tenancy for a fixed term, the notice is not ineffectual by reason of the fact that the day specified as the day on which the tenant is to deliver up possession of the premises is earlier than the last day of that term.
- (7) Failure by a tenant under an agreement that creates a tenancy for a fixed term to deliver up vacant possession of the premises at the expiration of the term does not constitute a breach of the agreement.

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

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

- (1) An owner may give notice of termination of an agreement to the tenant on the ground that he has entered into a contract for sale of the premises to which the agreement relates and under that contract he is required to give vacant possession of the premises.
- (2) Where an owner gives notice of termination under subsection (1) the period of notice shall be not less than 30 days.
- (3) An owner or agent of an owner shall not give notice of termination under this section that falsely states the ground of the notice.
Penalty: \$2 000.
- (4) This section does not apply to an agreement that creates a tenancy for a fixed term during the currency of that term.

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

64. Notice of termination by owner without any ground

- (1) An owner may give notice of termination of an agreement to the tenant without specifying any ground for the notice.
- (2) Where an owner gives notice of termination under this section, the period of notice must be not less than 60 days.
- (3) This section does not apply in relation to an agreement that creates a tenancy for a fixed term during the currency of that term.

65. Termination by owner where section 32 invoked

- (1) Where proceedings are pending for an order, or an order is in force, under section 32 fixing the maximum rent in respect of premises the subject of an agreement —
 - (a) any notice of termination of the agreement given by the owner under section 64 is ineffectual; and
 - (b) any other notice of termination of the agreement given by the owner is ineffectual unless first authorised by a competent court under subsection (2).
- (2) A competent court may, upon application by an owner, authorise the owner to give notice of termination, if it is satisfied that neither the institution of the proceedings for the order nor the making of the order has wholly or partly motivated the owner to give notice of termination.

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

66. Notice by owner not waived by acceptance of rent

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

s. 67

67. Form of notice of termination by tenant

Notice of termination of an agreement by the tenant shall —

- (a) be in writing;
- (b) be signed by the tenant and identify the premises the subject of the agreement; and
- (c) specify the day on which the tenant will deliver up possession of the premises.

68. Notice of termination by tenant

- (1) A tenant may give notice of termination of an agreement to the owner without specifying any ground for the notice.
- (2) Where a tenant gives notice of termination under this section, the period of notice must be not less than 21 days.
- (3) This section does not apply in relation to an agreement that creates a tenancy for a fixed term during the currency of that term.

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

- (1) Where, otherwise than as a result of a breach of an agreement, the premises, or a part of the premises, the subject of that agreement are destroyed or rendered uninhabitable or cease to be lawfully usable as a residence or are appropriated or acquired by any authority by compulsory process —
 - (a) the rent shall abate accordingly; and
 - (b) the owner or tenant may give notice of termination of the agreement to the other upon that ground.
- (2) Where an owner gives notice of termination under this section, the period of notice shall be not less than 7 days.
- (3) Where a tenant gives notice of termination under this section, the period of notice shall be not less than 2 days.

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

70. Effect of notice of termination of periodic tenancy

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

- (a) that the period of the notice, being not less than the period required under this Act, is less than that which would otherwise have been required at law; or
- (b) that the day specified as the day on which the tenant is to, or will, deliver up possession of the premises is not the last day of a period of the tenancy.

71. Application by owner for termination and order for possession

- (1) Where an owner or a tenant under an agreement gives notice of termination to the other under this Act and the tenant fails to deliver up possession of the premises on the day specified, the owner may, subject to section 62(5)(a), within 30 days after that day, apply to a competent court for an order terminating the agreement and an order for possession of the premises.
- (2) Subject to this section, a competent court shall, upon application under this section, make an order terminating the agreement and an order for possession of the premises, if it is satisfied —
 - (a) that notice of termination was given by the owner or tenant to the other and that it complied with and was given in accordance with this Act; and
 - (b) where the notice was given by the owner upon a particular ground prescribed by this Act, that the owner has established that ground and, in the case of notice upon the ground of a breach by the tenant of a term of the agreement, that the breach is in all the circumstances such as to justify termination of the agreement.

s. 71

- (3) Notwithstanding subsection (2) the court may —
- (a) except where the premises the subject of the agreement are the principal place of residence of the owner, suspend the operation of orders made under that subsection for a period not exceeding 30 days, if it is satisfied that it is desirable to do so having regard to the relative hardship that would be caused —
 - (i) to the owner by suspending the orders; or
 - (ii) to the tenant by not suspending the orders;or
 - (b) refuse to make the orders under that subsection, if it is satisfied —
 - (i) that the owner was wholly or partly motivated to give the notice by the fact that the tenant had complained to a public authority or taken steps to secure or enforce his rights as a tenant;
 - (ii) in the case of notice given by the owner upon the ground of a breach by the tenant, that the tenant has remedied the breach, but in every case the court shall take into account any previous breaches of the agreement by the tenant; or
 - (iii) in the case of notice given by the owner upon the ground referred to in section 69, that the consequences of the owner continuing to be bound by the agreement would not be unduly burdensome to the owner.
- (4) Where in any proceedings upon an application under this section the court is satisfied that the tenant had, within the period of 6 months before notice was given by the owner, complained to a public authority or taken steps to secure or enforce his rights as a tenant, the burden shall lie on the owner to prove that he was not wholly or partly motivated to give notice by that fact.

- (5) Subject to subsection (3)(a), where the court terminates an agreement and makes an order for possession of the premises under this section, it shall specify the day as from which the orders shall operate, being not more than 7 days after the day on which the orders are made.
- (6) The *Limitation Act 2005* does not apply to or in relation to an application under this section.

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

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

- (1) Where an agreement creates a tenancy for a fixed term and the tenant fails to deliver up possession of the premises on or after the expiration of the term, the owner may, within 30 days after the expiration of the term, apply to a competent court for an order terminating the agreement and an order for possession of the premises.
- (2) Subject to this section, a competent court shall, upon application under this section, make an order terminating the agreement and an order for possession of the premises.
- (3) Notwithstanding subsection (2), except where the premises the subject of the agreement are the principal place of residence of the owner, the court —
- (a) may suspend the operation of orders under that subsection for a period not exceeding 30 days, if it is satisfied that it is desirable to do so having regard to the relative hardship that would be caused —
 - (i) to the owner by suspending the orders; or
 - (ii) to the tenant by not suspending the orders;
- and

s. 73

- (b) shall refuse to make the orders under that subsection where the term of the tenancy under the agreement is less than 90 days unless it is satisfied —
 - (i) that the owner genuinely proposed, at the time that he entered into the agreement, to use the premises after the expiration of the term for purposes inconsistent with the tenant continuing to occupy the premises; or
 - (ii) that the tenant of his own initiative sought a tenancy of a term of less than 90 days.
- (4) Subject to subsection (3)(a), where the court terminates an agreement and makes an order for possession of the premises under this section, it shall specify the day as from which the orders shall operate, being not more than 7 days after the day on which the orders are made.
- (5) The *Limitation Act 2005* does not apply to or in relation to an application under this section.

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

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

- (1) A competent court may, upon application by the owner under an agreement, terminate the agreement if it is satisfied that the tenant has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit, serious damage to the premises or injury to the owner or his agent or any person in occupation of or permitted on adjacent premises.
- (2) Where a court terminates an agreement under this section, it shall also make an order for possession of the premises of immediate effect.

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

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

- (1) A competent court may, upon application by the owner under an agreement, terminate the agreement, if it is satisfied that the owner would, in the circumstances of the case, suffer undue hardship if he were required to terminate the agreement under any other provision of this Act.
- (2) Where a court terminates an agreement under this section, it —
 - (a) shall also make an order for possession of the premises and shall specify a day as from which the orders shall operate that it considers is, in the circumstances of the case, appropriate; and
 - (b) may make such other orders as to compensation of the tenant for any loss caused thereby or as to any other matter that it considers is, in the circumstances of the case, appropriate.

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

75. Termination of agreement for breach by owner

- (1) A competent court may, upon application by the tenant under an agreement, terminate the agreement, if it is satisfied that the owner has breached the agreement and the breach is in the circumstances of the case such as to justify termination of the agreement.
- (2) Where a court terminates an agreement under this section, it shall also make an order for possession of the premises and shall specify a day as from which the orders shall operate.

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

s. 76

76. Compensation to owner for holding over

- (1) Where a tenant fails to comply with an order for possession made by a court under this Part, the owner shall be entitled to compensation for any loss caused by that failure.
- (2) A competent court may, upon application by the owner, order the tenant to pay to the owner any compensation to which the owner is entitled under this section.

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

77. Order that premises are abandoned

- (1) Where the owner under an agreement believes that the tenant has abandoned the premises, the owner may apply to a competent court for an order declaring that the tenant has abandoned the premises.
- (2) A court may, upon application by an owner under this section, declare that the premises were abandoned by the tenant on a day specified by the court and the tenant shall be deemed to have abandoned the premises on that day.

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

78. Right of owner to compensation where tenant abandons premises

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

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

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

79. Abandoned goods

- (1) Where an agreement is terminated and goods are left on the premises that were subject to the agreement, the owner may, after the expiration of 2 days from the termination of the agreement, remove and destroy or dispose of the goods if —
- (a) the goods are perishable foodstuffs; or
 - (b) the estimated value of the goods is less than the total estimated cost of the removal, storage and sale of the goods.
- (2) Where an agreement is terminated and goods are left on the premises that were subject to the agreement and have not been removed for destruction or disposal under subsection (1), the owner shall store them in a safe place and manner for a period of not less than 60 days.
- (3) An owner shall before the expiration of 7 days after he has stored goods under subsection (2) —
- (a) where the former tenant has informed him of his forwarding address, send a notice to the tenant at that address in or to the effect of the form prescribed for the purpose of this paragraph; and
 - (b) cause a notice in or to the effect of the form prescribed for the purposes of this paragraph to be inserted in a newspaper circulating generally throughout the State.
- (4) At the request of an owner, the Commissioner may state in writing whether or not in his opinion there are reasonable grounds for believing that subsection (1) applies in respect of particular goods.

s. 79

- (5) Where an owner has been found liable to the owner of goods in respect of the removal, destruction or disposal of the goods, being goods that were left on premises that were subject to a former agreement, and it is proved that he removed and destroyed or disposed of the goods in reliance upon a statement of the Commissioner under subsection (4), the owner shall be entitled to be paid from moneys standing to the credit of the Rental Accommodation Account, in accordance with clause 3(3)(a) of Schedule 1, an amount equal to the amount in respect of which he has been found liable.
- (6) Where —
- (a) an agreement has been terminated;
 - (b) goods have been left on the premises that were subject to the agreement;
 - (c) at the request of the owner, the Commissioner has made a statement in writing that in his opinion there are reasonable grounds for believing that subsection (1) does not apply to the goods; and
 - (d) the total cost of removing, storing and selling the goods does in fact exceed the value of the goods,
- a competent court may on application by the owner make an order for the payment to him out of moneys standing to the credit of the Rental Accommodation Account, in accordance with clause 3(3)(a) of Schedule 1, of an amount equal to the difference between the value of the goods and the reasonable cost of removal, storage and sale.
- (7) A person who has a lawful right to goods removed and stored under subsection (2) may at any time before the goods are sold under subsection (8) reclaim the goods upon paying to the owner the reasonable costs of the removal and storage of the goods.
- (8) Where goods are stored under subsection (2) and have not been reclaimed within 60 days after the day on which they were

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

- (9) If goods are stored, removed and sold by public auction under this section, the owner is entitled to retain out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods.
- (10) Where goods have been sold under this section by an owner, he may, upon application containing the prescribed information, pay into court an amount that a competent court is satisfied represents the balance of the proceeds of the sale after deduction of any amount to which the owner is entitled under subsection (9) and any amount that he is owed under the former agreement, and, where such payment is made, the receipt of the court for the moneys paid shall be sufficient discharge to the owner of his liability in respect of the moneys.
- (11) Any moneys paid into court under subsection (10) shall be credited to the Rental Accommodation Account as provided by clause 3(2)(c) of Schedule 1.
- (12) Where any application is made to a competent court by any person claiming any amount credited to the Rental Accommodation Account under this section, the court may, upon being satisfied that the person is entitled to the amount, order that the amount be paid to him.
- (13) Where goods are sold by public auction under this section, the purchaser shall, unless he has actual notice of any interest in the goods of any person other than the former tenant, acquire a good title to the goods in defeasance of any such interest.
- (14) An owner shall not incur any liability —
- (a) in respect of the removal, destruction or disposal of goods under subsection (1); or
 - (b) in respect of the removal, storage or sale under this section of goods to which subsection (1) does not apply, except liability for intentional or negligent damage to the

s. 80

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

- (15) Where a dispute arises between an owner and a former tenant in respect of goods to which this section applies, a competent court may, upon application by such person, order the payment of any amount or make such other order as it considers appropriate in the circumstances.
- (16) In this section —
- (a) **owner** means the former grantor of a right of occupancy under a residential tenancy agreement; and
 - (b) **Rental Accommodation Account** means the Rental Accommodation Account referred to in clause 3 of Schedule 1.

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

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

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

Penalty: \$4 000.

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

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

- (1) Where a person is proceeding before a court to recover possession of premises, the court shall not make the order sought by that person unless it is satisfied —
 - (a) as to whether or not any person has possession of the premises, or any part of the premises, as a tenant under a residential tenancy agreement or a former tenant holding over after termination of such an agreement, not being the immediate tenant or former tenant of that person; and
 - (b) that any such tenant or former tenant has had reasonable notice of the proceedings.
- (2) Where a person, by application before a court, is proceeding for, or has recovered, possession of premises, and, at the time of the proceedings or recovery, a person has or had possession of the premises, or any part of the premises, as a tenant under an agreement or a former tenant holding over after termination of an agreement, not being the immediate tenant or former tenant of that person —
 - (a) the court before which any such proceedings are brought; or
 - (b) where such proceedings have been completed, or are not by way of application to a competent court, a competent court,

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

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

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

Part VI — Miscellaneous

82. Contracting out

- (1) Except as provided in subsection (3) or by or under any other provision of this Act —
 - (a) any agreement or arrangement that is inconsistent with a provision of this Act or purports to exclude, modify or restrict the operation of this Act is to that extent void and of no effect; and
 - (b) any purported waiver of a right conferred by or under this Act is void and of no effect.
- (2) Except as permitted by subsection (3) or by or under any other provision of this Act, no person shall enter into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act.
Penalty: \$2 000.
- (3) A residential tenancy agreement may contain a provision by which section 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 55 or 56 is excluded, modified or restricted if the residential tenancy agreement is in writing and is signed by the owner and the tenant.

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

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

- (a) upon application to a competent court, recover that amount from the other party; or
- (b) in the case of payment by the tenant, deduct the amount from rent payable under the agreement.

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

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

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

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

85. Service

- (1) Any notice or document required or authorised to be given under this Act to any person may —
 - (a) be given to that person personally; or
 - (b) be sent by post addressed to that person at his last known place of residence, employment or business.
- (2) If a letter is sent in accordance with subsection (1)(b) the giving of the notice or document so sent is deemed to be effected at the time when the letter would have been delivered in the ordinary course of post.
- (3) Any notice or document required or authorised to be given under this Act to any person whose address is unknown shall be deemed to have been given to that person if a copy of it is published in a daily newspaper circulating throughout the State.
- (4) Any notice or document required or authorised to be given under this Act to any tenant under a residential tenancy agreement shall be deemed to have been duly given to the tenant if it is given —
 - (a) to any person apparently over the age of 16 years apparently residing in the premises the subject of the agreement; or

s. 87

- (b) to the person who ordinarily pays the rent under the agreement.
- (5) A notice or document required or authorised to be given under this Act to an owner under a residential tenancy agreement shall be deemed to have been duly given to the owner if it has been given to the agent of the owner, to any person apparently over the age of 16 years apparently residing at the place of residence of the owner, or to the person who ordinarily receives the rent under the agreement.
- (6) Where 2 or more persons are owners or tenants under a residential tenancy agreement it shall be sufficient compliance with a provision of this Act requiring or authorising that a notice or document be given to the owner or tenant under a residential tenancy agreement if the notice or document is given to any one of the owners or tenants, as the case may be.

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

87. Time for bringing proceedings

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

88. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations made under that subsection may —
 - (a) provide for the practice and procedure to be followed, and the payment of fees, in relation to proceedings under this Act;

- (b) require the parties to a residential tenancy agreement to record on an inspection sheet, before the commencement, and after the termination, of the tenancy, their opinions of the state of the premises and prescribe the form of such inspection sheets and the manner in which the parties record their opinions;
- (c) require the provision of information by the owner to the tenant at the time of entering into the residential tenancy agreement;
- (d) prescribe the form of written residential tenancy agreements and authorise or require the use of such form; and
- (e) prescribe penalties not exceeding \$500, for breach of, or non-compliance with, any regulation.

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

90. Review of the Act

- (1) The Minister shall carry out, or cause to be carried out, a review of the operation of this Act as soon as practicable after the expiration of 5 years from the coming into operation of Part 3 of the *Real Estate Legislation Amendment Act 1995*¹.
- (2) The Minister shall prepare a report based on his review of this Act and shall as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

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

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

[s. 29(4)]

[Heading amended by No. 19 of 2010 s. 29(2).]

Part A — Preliminary matters

[Heading amended by No. 19 of 2010 s. 29(2).]

1. Terms used in this Schedule

In this Schedule —

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

authorised financial institution means —

- (a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth;
- (b) a bank constituted by a law of a State, a Territory or the Commonwealth; or
- (c) any other body,

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

bond administrator means the chief executive officer of the Department.

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

2. Where bond moneys to be paid

- (1) A person who receives a security bond paid in relation to a residential tenancy agreement shall pay the amount of the bond —
 - (a) to the bond administrator either directly, including by electronic means, or by lodging the amount with an authorised agent of the bond administrator, in which case Parts B and D apply to that security bond; or
 - (b) to an authorised financial institution, in which case Parts C and D apply to that security bond.

Residential Tenancies Act 1987

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

Part A Preliminary matters

cl. 3

- (3) The income referred to in subclause (2)(b) and the moneys referred to in subclause (2)(c) shall be applied —
- (a) in payment of any amount required to be paid by or under section 79(5) or (6);
 - (aa) in payment of any amount required to be paid out of the fund under section 51 of the *Residential Parks (Long-stay Tenants) Act 2006* or under an order under section 76(3) or 77(2) of that Act;
 - (ab) in reimbursement of the costs and expenses incurred for the purposes of the *Residential Parks (Long-stay Tenants) Act 2006* by the bond administrator, bond agents and the Commissioner in carrying out their respective functions;
 - (b) in reimbursement of the costs and expenses incurred, so far as such income and moneys will allow —
 - (i) in the operation and administration of the Magistrates Court in connection with dealing with minor cases (within the meaning of the *Magistrates Court (Civil Proceedings) Act 2004*); and
 - (ii) in the performance by the bond administrator and his authorised agents, the Department and the Commissioner of their respective functions, that are attributable to the carrying out of this Act or the *Residential Parks (Long-stay Tenants) Act 2006*; and
 - (c) in payment of any amount required to be paid under subclause (5).
- (3a) The income referred to in subclause (2)(b) and the moneys referred to in subclause (2)(c) may, with the approval of the Minister, be applied in payment of grants to bodies, other than public sector bodies within the meaning of the *Public Sector Management Act 1994*, which provide educational or advisory services to tenants.
- (4) The amount to be reimbursed under subclause (3)(b) —
- (a) shall be determined by the Treasurer after consultation with the Ministers responsible for the administration of this Act and the Department respectively; and
 - (b) shall be credited to the Consolidated Account.

Residential Tenancies Act 1987

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

Part C Financial institution

cl. 6

- (b) a copy of an order under clause 8,
pay the amount of the bond, or where subclause (2) applies part of that amount, in accordance with the application or the order.
- (2) An application under subclause (1)(a) may relate to part of the amount of a security bond.
- (3) If a party is deceased, the signature of his executor or administrator to an application is sufficient for the purposes of subclause (1)(a), and if a party is represented by a manager or administrator under any written law, the signature of the manager or administrator is sufficient for such purposes.
- (4) If 6 months have elapsed since termination of a residential tenancy agreement and a bond has not been paid in accordance with an application under this clause or an application has not been made under clause 8, the bond shall be disposed of in such manner as is, and subject to compliance with such provisions as are, prescribed by regulations made under section 88.
- (5) Regulations made under section 88 may provide for a scheme designed to establish whether any bond is one which should be dealt with under subclause (4).

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

Part C — Financial institution

[Heading amended by No. 19 of 2010 s. 29(4).]

6. Terms on which bond held by financial institution

- (1) An authorised financial institution to which the amount of a security bond is paid under clause 2(1)(b) shall hold that amount on the following terms —
- [(a) deleted]*
- (b) interest at a rate not less than the prescribed rate shall accrue on the amount for the period during which it is held;
- (c) the amount of interest at the prescribed rate shall be paid, at such times as are prescribed, to the Rental Accommodation Account and if interest is paid at a rate exceeding the prescribed rate, the amount representing interest above the

Residential Tenancies Act 1987

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

Part D Referee

cl. 8

- (3) Where a security bond is held in an account referred to in clause 2(3)(b), the authorised financial institution which holds the account shall on receipt of —
- (a) an application in a form approved by the Minister signed by both parties to the residential tenancy agreement to which the bond relates; or
 - (b) a copy of an order under clause 8,
- pay the amount of the bond, or where subclause (4) applies part of that amount, in accordance with the application or the order.
- (4) An application under subclause (1)(a) or (3)(a) may relate to part of the amount of a security bond.
- (5) The provisions of clause 5(3), (4) and (5) apply for the purposes of this clause, and with the further provision that regulations made under section 88 may authorise the payment of an unclaimed bond to the credit of the Rental Accommodation Account referred to in clause 3.

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

Part D — Referee

[Heading amended by No. 19 of 2010 s. 29(5).]

8. Referee may determine disposal of bond

- (1) Subject to this clause, a competent court may, upon application by an owner or a tenant, order that the amount of any security bond be paid to the tenant in full, or, where the court is satisfied that the tenant is liable to pay an amount to the owner by reason of a breach of a term of a residential tenancy agreement or for fumigation of the premises as mentioned in section 29(1)(b)(ii), that the amount of the security bond be applied in payment of, or towards, that amount and the balance, if any, be paid to the tenant.
- (2) Notwithstanding anything in this clause a court shall not order that any amount held under section 29(1)(b)(ii) be paid to the tenant until the expiry of the period of 14 days after the tenant has delivered up vacant possession of the premises.

- (3) Where a person makes an application under subclause (1), section 18(2) shall not apply but the court shall give to the other party notice in writing of the application inviting him to indicate by notice in writing in the prescribed form, filed in the office in which the application was filed within 7 days after service of the court's notice, whether he intends to dispute the application.
- (4) Notwithstanding any other provision of this Act, where —
- (a) a person makes an application under subclause (1) and notice has been given to the other party in accordance with subclause (3); and
 - (b) that other party does not within 7 days after service of that notice, file in the office in which the application was filed a notice in writing in the prescribed form indicating that he intends to dispute the application,
- a competent court may, without conducting a formal hearing, order payment in accordance with the application.
- (5) If the other party indicates in the manner referred to in subclause (4) that he intends to dispute the application, section 18(2) and the other provisions of this Act relating to proceedings shall thereupon apply in relation to the application.
- (6) A tenant may not make an application under subclause (1) before the termination of the residential tenancy agreement.
- (7) Where more than one person is the tenant under a residential tenancy agreement, an application may be made under subclause (1) by any one or more of the tenants, and the court may, subject to subclause (2) —
- (a) if it is satisfied that it would be just to do so, order that the full amount of the bond be paid to the applicant or applicants; or
 - (b) order that a tenant be paid any share of the bond to which he is entitled,
- in either case, less any deduction referred to in subclause (1).
- (8) An application under this clause is a prescribed dispute within the meaning of section 12 irrespective of the amount claimed.

Residential Tenancies Act 1987

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

Part D Referee

cl. 8

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

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

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

Notes

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

Compilation table

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

Residential Tenancies Act 1987

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

Short title	Number and year	Assent	Commencement
s. 698			<i>Gazette</i> 27 Feb 2009 p. 511)
<i>Standardisation of Formatting Act 2010</i> s. 29	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Acts Amendment (Fair Trading) Act 2010</i> s. 189	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and <i>Gazette</i> 24 Dec 2010 p. 6805)

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

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Residential Tenancies Amendment Act 2011</i> s. 3 and Pt. 2-4 ⁸	60 of 2011	14 Dec 2011	To be proclaimed (see s. 2(b))

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

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

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

- (2) A financial institution which held a security bond under Schedule 1 to the principal Act immediately before the commencement of this section may continue to hold the bond after that commencement as if this section had not been enacted and for that purpose, subject to subsection (3), regulations in force under section 88 of the principal Act immediately before that commencement continue to apply.
- (3) The interest payable by a financial institution after the commencement of this section on the amount of a security bond referred to in subsection (2) is interest at the prescribed rate in force from time to time under clause 6(1) of Schedule 1 to the principal Act as amended by this section.

⁵ The *Real Estate Legislation Amendment Act 1995* s. 46 and 52 were purported to be proclaimed on 1 January 1997 in *Gazette* 25 June 1996 p. 2902, but the

proclamation was revoked before it came into force — see *Gazette* 6 September 1996 p. 4405.

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:

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 Act 1983* does not cease merely because that paragraph is deleted by this Act.

155. Interpretation

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

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

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

⁸ On the date as at which this compilation was prepared, the *Residential Tenancies Amendment Act 2011* s. 3 and Pt. 2-4 had not come into operation. They read as follows:

3. Act amended

This Act amends the *Residential Tenancies Act 1987*.

Part 2 — General amendments

4. Long title amended

In the long title delete “owners” and insert:

lessors

5. Section 3 amended

(1) In section 3 delete the definitions of:

owner

tenant

(2) In section 3 insert in alphabetical order:

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;

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 —

- (i) a personal representative, successor or assignee of a lessor; and
- (ii) where the context requires, a prospective, or former, lessor;

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;

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

- (3) In section 3 in the definition of **residential tenancy agreement** before “whether express” insert:

whether or not in writing and

- (4) In section 3 in the definition of **security bond** delete “his” and insert:

the tenant's

6. Section 5 amended

(1) In section 5(2):

- (a) delete "agreement —" and insert:

agreement in any of the following circumstances —

- (b) in paragraph (a) delete "premises;" and insert:

premises, unless the period of the tenancy is one month or longer;

- (c) in paragraph (f) delete "as owner," and insert:

as lessor,

- (d) in paragraph (f) delete "Crown; or" and insert:

Crown;

(2) In section 5(3):

- (a) delete "to —" and insert:

to any of the following —

- (b) delete paragraph (b) and insert:

- (b) accommodation for students provided —

(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) delete paragraph (d) and insert:
- (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);

7. Section 7 amended

In section 7(3):

- (a) in paragraph (b) delete “his” and insert:

the lessor’s
- (b) delete “apply, notwithstanding section 29(4) — ” and insert:

apply —
- (c) in paragraph (c) delete “in accordance with either paragraph (a) or (b) of clause 2(1) of Schedule 1;” and insert:

to the bond administrator;
- (d) in paragraph (d) delete “agreement; and” and insert:

agreement;
- (e) delete paragraph (e) and insert:

(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).

Note: The heading to amended section 7 is to read:
Transitional provisions relating to the commencement of this Act

8. Section 9 amended

- (1) Before section 9(1) insert:

(1A) In this section —
party, in relation to a residential tenancy agreement, means a lessor or tenant under that agreement.

(2) In section 9(2) delete “he” and insert:

the Commissioner

(3) In section 9(3)(b) delete “him” and insert:

the Commissioner

(4) In section 9(4)(e) delete “his” and insert:

the party’s

(5) In section 9(5) delete “he” and insert:

the Commissioner

(6) In section 9(6) delete “he” and insert:

the Commissioner

(7) Delete section 9(10).

9. Section 10 amended

In section 10 delete “his” and insert:

the Commissioner’s

10. Section 11A amended

In section 11A(1) delete the Penalty and insert:

Penalty: a fine of \$20 000.

11. Section 13 amended

In section 13(5) delete “he” and insert:

the plaintiff

12. Section 13A amended

- (1) In section 13A(3) delete “situated but, with the consent of the parties, may be made to the court at any other place.” and insert:

situated.

- (2) After section 13A(3) insert:

- (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.

13. Section 15 amended

- (1) In section 15(1) delete “he” and insert:

the lessor or tenant

- (2) In section 15(4):

- (a) delete “an agreement,” and insert:

a residential tenancy agreement,

- (b) after “by the” insert:

lessor or

- (3) After section 15(4) insert:

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

14. Section 16 amended

In section 16(1) delete the Penalty and insert:

Penalty: a fine of \$10 000.

15. Section 17A inserted

After section 16 insert:

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 tenant's portion of the amount referred to in subsection (1); and
 - (c) make such ancillary or incidental order as the court considers appropriate.

16. Section 17 amended

- (1) In section 17(1):

- (a) delete “the court that heard and determined the proceedings” and insert:

a competent court

- (b) delete “his” and insert:

the person’s

- (2) In section 17(2) delete “within 14 days of” and insert:

within 14 days after

17. Section 19 amended

- (1) In section 19(1)(b):

- (a) in subparagraph (ii) delete “he” and insert:

the person

- (b) in subparagraph (ii) delete “him” and insert:

the person

- (c) in subparagraph (iii) delete “he” and insert:

the person

- (d) in subparagraph (iii) delete “him” and insert:

the person

- (2) In section 19(2):

- (a) delete “him” and insert:

the person

- (b) delete the Penalty and insert:

Penalty: a fine of \$10 000.

18. Section 20 amended

In section 20(f) delete “application or other step in respect of proceedings must be made or” and insert:

action must be

19. Section 22 amended

(1) Before section 22(1) insert:

(1A) In this section —

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

(2) In section 22(1) delete “his” (each occurrence) and insert:

the party’s

(3) Delete section 22(2) and insert:

(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 —

- (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.

- (4) In section 22(3):
- (a) delete “if —” and insert:

if any of the following applies —
 - (b) in paragraph (d) delete “appear personally or conduct the proceedings properly himself; or” and insert:

conduct the proceedings without representation by a legal practitioner;
- (5) In section 22(4):
- (a) in paragraph (a) delete “he” and insert:

the officer or employee
 - (b) in paragraph (b) delete “his” and insert:

the person’s
- (6) In section 22(5):
- (a) in paragraphs (a) and (b) delete “he” and insert:

the person
 - (b) delete paragraph (c) and insert:
 - (c) where the party is a lessor, the person is a property manager of the premises the subject of the proceedings.
 - (c) delete the Penalty and insert:

Penalty: a fine of \$5 000.
 - (d) after paragraph (a) insert:

or

20. Section 23 amended

- (1) In section 23(1)(a) delete “his” and insert:

the party’s
- (2) In section 23(2) delete “he” and insert:

the judicial officer
- (3) After section 23(3) insert:
- (4) The order is valid despite any inconsistency with Part IV or V.

21. Part IV heading replaced

Delete the heading to Part IV and insert:

Part IV — Residential tenancy agreements

22. Part IV Division 1A inserted

At the beginning of Part IV insert:

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

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.

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.

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.

- (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.

23. Section 27 amended

- (1) In section 27(1):
 - (a) delete “or prospective tenant”;
 - (b) delete “consideration for or in relation to entering into, renewing, extending or continuing” and insert:

amount for or in relation to

- (c) delete the Penalty and insert:

Penalty: a fine of \$5 000.

- (2) Delete section 27(2)(a) and insert:

- (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

24. Section 28 amended

- (1) In section 28(1) delete the Penalty and insert:

Penalty: a fine of \$5 000.

- (2) Delete section 28(2) and insert:

- (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.

25. Section 29 amended

- (1) Before section 29(1) insert:

- (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.

- (2) In section 29(1):
- (a) delete paragraph (b)(ii) and insert:
 - (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.
 - (b) delete the Penalty and insert:

Penalty: a fine of \$5 000.

- (3) Delete section 29(2) and insert:
- (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.
- (4) In section 29(4):
- (a) delete paragraphs (b) and (c) and insert:
 - (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.
 - (b) delete paragraph (d);
 - (c) delete the Penalty and insert:

Penalty: a fine of \$20 000.

(d) after paragraph (a) insert:

and

(5) Delete section 29(5).

(6) In section 29(6):

(a) after “false” insert:

or misleading

(b) delete the Penalty and insert:

Penalty: a fine of \$5 000.

(7) After section 29(6) insert:

(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

(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.

26. Section 29A deleted

Delete section 29A.

27. Section 30 amended

(1) In section 30(1):

(a) delete “section,” and insert:

section and except where rent payable under a residential tenancy agreement is calculated by reference to the tenant’s income,

- (b) delete “notice in writing to the tenant” and insert:

written notice to the tenant, in a form approved by the Minister,

- (2) In section 30(2)(a) delete “the agreement provides that the rent may increase or be increased; and” and insert:

the amount of the increase, or the method of calculating the amount of the increase, is set out in the agreement; and

Note: The heading to amended section 30 is to read:
Variation of rent (except where calculated by reference to tenant’s income)

28. Sections 31A and 31B inserted

After section 30 insert:

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.

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 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.

29. Section 31 amended

In section 31(1)(b) delete “12 months” and insert:

6 months

30. Section 32 amended

(1) Delete section 32(2) and insert:

(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.

(2) In section 32(4) delete “not being” and insert:

which may be a day

- (3) In section 32(7) delete the Penalty and insert:

Penalty: a fine of \$5 000.

31. Section 33 amended

- (1) In section 33(1):

- (a) delete “within 3 days of” and insert:

within 3 days after

- (b) delete “give, or cause to be prepared and given, to” and insert:

give to

- (c) delete the Penalty and insert:

Penalty: a fine of \$5 000.

- (2) In section 33(2) delete “of the Commonwealth” and insert:

(Commonwealth)

32. Section 34A inserted

After section 33 insert:

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).

33. Section 34 amended

- (1) In section 34(1):

- (a) after “record” insert:

in accordance with subsection (2A)

- (b) delete the Penalty and insert:

Penalty: a fine of \$5 000.

- (2) After section 34(1) insert:

- (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.

- (3) In section 34(2):

- (a) delete “is to his knowledge false” and insert:

the person knows is false or misleading

- (b) delete the Penalty and insert:

Penalty: a fine of \$5 000.

34. Section 35 amended

In section 35 delete the Penalty and insert:

Penalty: a fine of \$5 000.

35. Part IV Division 2 heading amended

In the heading to Part IV Division 2 delete “**General**” and insert:

Standard terms

36. Section 37 deleted

Delete section 37.

37. Section 38 amended

- (1) In section 38(1) delete “every agreement” and insert:

every residential tenancy agreement

- (2) In section 38(1)(b) delete “but within 3 days of” and insert:

after

38. Section 39 amended

In section 39 delete “every agreement” and insert:

every residential tenancy agreement

39. Section 40 replaced

Delete section 40 and insert:

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.

- (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.

40. Section 41 amended

In section 41:

- (a) delete “every agreement” and insert:

every residential tenancy agreement

- (b) delete “he” and insert:

the lessor

41. Sections 42 to 46 replaced

Delete sections 42 to 46 and insert:

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
- (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.

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
 - (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.

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
 - (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.

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).

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
- (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.
- (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).

42. Section 47 amended

- (1) In section 47(1) delete "An agreement" and insert:

A residential tenancy agreement
- (2) In section 47(2)(b) and (c) delete "he" (each occurrence) and insert:

the tenant
- (3) After section 47(2) insert:
 - (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.

43. Section 48 amended

- (1) In section 48:
 - (a) delete “It is a term of every agreement” and insert:
 - (1) It is a term of every residential tenancy agreement
 - (b) in paragraph (c) delete ““water services”, as defined in the *Water Agencies (Powers) Act 1984*,” and insert:

water supply or sewerage services under the *Water Agencies (Powers) Act 1984*,
- (2) At the end of section 48 insert:
 - (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.

44. Section 49A inserted

After section 48 insert:

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 —
 - (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.

45. Section 49 amended

- (1) In section 49(1):

- (a) delete “An agreement” and insert:

A residential tenancy agreement

- (b) in paragraphs (a), (b) and (c) delete “his” and insert:

the tenant’s

- (2) In section 49(2)(b) delete “his” and insert:

the lessor’s

46. Section 50 amended

In section 50(1) delete “every agreement” and insert:

every residential tenancy agreement

47. Part IV Division 3 heading inserted

After section 50 insert:

Division 3 — General

48. Section 51 replaced

Delete section 51 and insert:

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

(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.

49. Section 52 amended

In section 52 delete the Penalty and insert:

Penalty: a fine of \$5 000.

50. Section 53 replaced

Delete section 53 and insert:

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.

51. Section 54 amended

- (1) In section 54(1):
 - (a) delete "An owner, or agent of an owner" and insert:

A lessor or a property manager of residential premises
 - (b) after "written" insert:

residential tenancy

- (c) in paragraph (b) delete “within 21 days” and insert:

within 14 days

- (d) delete the Penalty and insert:

Penalty: a fine of \$5 000.

- (2) In section 54(2):

- (a) delete “an owner, or agent of an owner,” and insert:

a lessor or a property manager of residential premises

- (b) delete “the owner, or agent of the owner,” and insert:

the lessor or property manager

Note: The heading to amended section 54 is to read:
Lessor to deliver copy of agreement to tenant

52. Section 55 replaced

Delete section 55 and insert:

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.

53. Section 56 amended

- (1) In section 56(1) delete the Penalty and insert:

Penalty: a fine of \$5 000.

- (2) In section 56(2)(b):

- (a) delete “his” and insert:

the person's

- (b) delete "person, if it" and insert:

person on the ground that it

- (c) delete the Penalty and insert:

Penalty: a fine of \$5 000.

- (3) Delete section 56(3).

54. Section 57 amended

After section 57(1) insert:

- (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.

55. Section 58 amended

In section 58 delete "an agreement." and insert:

a residential tenancy agreement.

56. Sections 59A to 59F inserted

At the end of Part IV insert:

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.

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
 - (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.

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.

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.

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.

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.

57. Part V Division 1 heading inserted

At the beginning of Part V insert:

Division 1 — How residential tenancy agreements are terminated

58. Section 59 deleted

Delete section 59.

59. Section 60 amended

- (1) In section 60(1):
 - (a) delete “(1) Notwithstanding” and insert:

Despite
 - (b) delete “except —” and insert:

except in one of the following circumstances —
 - (c) delete paragraph (b) and insert:
 - (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;
 - (d) delete paragraph (h) and insert:
 - (h) where the agreement terminates by merger;
 - (e) after paragraph (h) insert:
 - (i) where every tenant dies.
- (2) Delete section 60(2) and (3).

60. Part V Division 2 heading inserted

After section 60 insert:

Division 2 — Notices of termination

61. Section 61 replaced

Delete section 61 and insert:

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.

62. Section 62 amended

In section 62(2) delete “7 days.” and insert:

7 days before the day on which the tenant is required under the notice to give the lessor possession of the premises.

63. Sections 63 and 64 replaced

Delete sections 63 and 64 and insert:

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 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.

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 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.

64. Section 65 amended

In section 65(1) delete “an agreement —” and insert:

a residential tenancy agreement —

65. Section 66 amended

In section 66 delete “he” and insert:

the lessor

66. Section 68 amended

In section 68(2) delete “21 days.” and insert:

21 days before the termination day.

67. Section 69 amended

- (1) In section 69(2) delete “7 days.” and insert:

7 days before the termination day.

- (2) In section 69(3) delete “2 days.” and insert:

2 days before the termination day.

68. Section 70A inserted

After section 69 insert:

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);

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).

69. Part V Division 4 heading inserted

Before section 71 insert:

Division 4 — Orders for termination of residential tenancy agreement

70. Section 71 amended

- (1) In section 71(1) after “under this Act” insert:

except under section 70A

- (2) In section 71(3)(a) delete “30 days,” and insert:

30 days after the day on which the orders are made,

- (3) In section 71(4):

- (a) delete “his” and insert:

the tenant’s

- (b) delete “he” and insert:

the lessor

- (4) In section 71(5) delete “not more than” and insert:

within

71. Section 72 amended

(1) Delete section 72(1) and insert:

(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) In section 72(3)(b):

(a) in subparagraph (i) delete “he” and insert:

the lessor

(b) in subparagraph (ii) delete “his” and insert:

the tenant’s

(3) In section 72(4) delete “not more than” and insert:

within

72. Section 73 amended

In section 73(1) delete “the owner or his agent” and insert:

the lessor or the property manager of the premises

73. Section 74 amended

(1) In section 74(1):

- (a) delete “the owner” (each occurrence) and insert:

the lessor or tenant

- (b) delete “he” and insert:

the lessor or tenant

- (2) In section 74(2)(b) after “tenant” insert:

or lessor

Note: The heading to amended section 74 is to read:

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

74. Sections 76A and 76B, Part V Division 5 heading and section 76C inserted

After section 75 insert:

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.

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.

Division 5 — General

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.
- (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.

75. Section 77 replaced

Delete section 77 and insert:

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.
- (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.

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.

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.
- (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.

76. Section 79 amended

- (1) Before section 79(1) insert:

- (1A) In this section —
goods does not include a tenant's document as defined in section 80A.

- (2) In section 79(2) delete "60 days." and insert:

60 days after the day on which the agreement is terminated.

- (3) At the end of section 79(2) insert:

Penalty: a fine of \$5 000.

- (4) In section 79(3):

- (a) delete "he" and insert:

the lessor

- (b) in paragraph (a) delete "former";

- (c) in paragraph (a) delete "him" and insert:

the lessor

- (d) in paragraph (a) delete "his" and insert:

the tenant's

- (5) At the end of section 79(3) insert:
- Penalty: a fine of \$5 000.
- (6) In section 79(4) delete “his” and insert:
- the Commissioner’s
- (7) In section 79(5):
- (a) delete “an owner” and insert:
- a lessor
- (b) delete “he” (each occurrence) and insert:
- the lessor
- (c) delete “the owner” (second occurrence) and insert:
- the lessor
- (8) In section 79(6):
- (a) in paragraph (c) delete “his” and insert:
- the Commissioner’s
- (b) delete “him” and insert:
- the lessor
- (9) In section 79(10):
- (a) delete “he” (each occurrence) and insert:
- the lessor
- (b) delete “his” and insert:

the lessor's

- (10) In section 79(12) delete "him." and insert:

the person.

- (11) In section 79(13):

- (a) delete "he" and insert:

the purchaser

- (b) delete "former".

- (12) In section 79(14)(b):

- (a) delete "he" and insert:

the lessor

- (b) delete "former".

- (13) In section 79(15) delete "former".

- (14) Delete section 79(16).

77. Section 80A inserted

After section 79 insert:

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.
- 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.

78. Section 80 amended

In section 80 delete the Penalty and insert:

Penalty: a fine of \$20 000.

79. Section 81 replaced

Delete section 81 and insert:

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.
- (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.

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.
- (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.

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
 - (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.

80. Section 82 amended

- (1) In section 82(1) delete “in subsection (3) or by or under any other provision of” and insert:

under

- (2) In section 82(2):
 - (a) delete “Except as permitted by subsection (3) or by or under any other provision of this Act, no person shall” and insert:

A person must not

- (b) delete the Penalty and insert:

Penalty: a fine of \$10 000.

- (3) Delete section 82(3).

81. Section 85 amended

- (1) In section 85(1)(b) delete “his” and insert:

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

- (2) In section 85(3) delete “if a copy of it is published in a daily newspaper circulating throughout the State.” and insert:

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.

- (3) In section 85(5):

- (a) delete “to the owner” and insert:

to the lessor

- (b) delete “agent of the owner,” and insert:

property manager of the residential premises,

- (4) In section 85(6) delete “owners” (each occurrence) and insert:

lessors

82. Sections 86 and 87A inserted

After section 85 insert:

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.

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.

83. Section 88A inserted

After section 87 insert:

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 —

- (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 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.

84. Section 88 amended

In section 88(2):

- (a) delete paragraphs (b), (c) and (d);
(b) in paragraph (e) delete "\$500," and insert:

\$5 000

- (c) after paragraph (a) insert:

and

85. Section 90 amended

In section 90(2) delete "his" and insert:

the Minister's

86. Part VII inserted

After section 90 insert:

**Part VII — Savings and transitional provisions relating
to the *Residential Tenancies Amendment Act 2011***

Division 1 — Contracting out

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.

- (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*.

Division 2 — Security bonds held in AFI

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
- (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;

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.

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.

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.

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.
- (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).

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,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.

Division 3 — Residential tenancy databases

97. Application of Part VIA to listings existing before commencement

- (1) In this section —
commencement day means the day on which the *Residential Tenancies Amendment Act 2011* section 96 comes into operation.
- (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.

87. Schedule 1 amended

- (1) Delete the heading to Schedule 1 and the reference after it and insert:

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)]

- (2) Delete the heading to Schedule 1 Part A and insert:

Division 1 — General

- (3) In Schedule 1 clause 1 delete the definitions of:

authorised financial institution

bond administrator

- (4) In Schedule 1 clause 1 in the definition of *authorised agent*:

- (a) delete “his” and insert:

the bond administrator’s

- (b) delete “*Gazette*,” and insert:

Gazette.

(5) Delete Schedule 1 clause 2.

(6) In Schedule 1 clause 3(2):

(a) delete “Account —” and insert:

Account all of the following —

(b) delete paragraphs (a) and (aa) and insert:

(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);

(c) in paragraph (b) delete “Treasurer; and” and insert:

Treasurer;

(7) In Schedule 1 clause 3(3):

(a) after “The” insert:

interest referred to in subclause (2)(bb), the amounts referred to subclause (2)(bc), the

(b) in paragraph (a) delete “section 79(5) or (6);” and insert:

section 79(5) or (6) or 80A(8); and

(c) in paragraph (ab) delete “bond agents” and insert:

authorised agents

- (d) in paragraph (b)(ii) delete “his” and insert:

the bond administrator’s
 - (e) in paragraph (c) delete “subclause (5).” and insert:

subclause (5); and
 - (f) after paragraph (c) insert:

(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.
 - (g) after each of paragraphs (aa) and (ab) insert:

and
- (8) In Schedule 1 clause 3(4):
- (a) in paragraph (a) delete “Department” and insert:

Magistrates Court (Civil Proceedings) Act 2004
 - (b) in paragraph (b) delete “the Consolidated Account.” and insert:

an operating account of the Department and the department principally assisting in the administration of the *Magistrates Court (Civil Proceedings) Act 2004* respectively.
- (9) In Schedule 1 clause 3(5):
- (a) delete “Account he may” and insert:

Account the Treasurer may, after consulting the Minister,

- (b) delete “for the purpose of public housing in such manner as he may specify.” and insert:

by the Housing Authority as defined in section 71A for the purpose of social housing premises in such manner as the Treasurer might specify.

- (10) In Schedule 1 clause 4:

- (a) in paragraph (a) delete “Rental Accommodation Account established under clause 3; and” and insert:

Rental Accommodation Account; and

- (b) in paragraph (b) delete “him” and insert:

the bond administrator

- (c) in paragraph (b) delete “clause 2(1)(a) —” and insert:

section 29(4)(b) —

- (d) in paragraph (b)(ii) delete “clause 5.” and insert:

clause 5;

- (e) after paragraph (b) insert:

- (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.

- (f) after paragraph (b) insert:

and

- (11) Delete the heading to Schedule 1 Part B and insert:

Division 2 — Security bonds

- (12) Before Schedule 1 clause 5 insert:

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.

- (13) In Schedule 1 clause 5(1):

- (a) in paragraph (a)(i) before "bond relates" insert:

security

- (b) in paragraph (a)(ii) delete "his" and insert:

the bond administrator's

- (c) before "bond," insert:

security

- (14) In Schedule 1 clause 5(3):

- (a) delete "party" (each occurrence) and insert:

tenant

- (b) delete "his" and insert:

the tenant's

(15) In Schedule 1 clause 5(4):

(a) after "If" insert:

the bond administrator is satisfied that

(b) before "bond has" insert:

security

(c) delete "bond shall" and insert:

amount of the bond or any remaining portion of that amount must

(16) Delete Schedule 1 Part C.

(17) Delete the heading to Schedule 1 Part D.

(18) In Schedule 1 clause 8(3):

(a) delete "him" and insert:

the party

(b) delete "he" and insert:

the party

(19) In Schedule 1 clause 8(4):

(a) in paragraph (b) after "that notice," insert:

or such longer period as the court hearing the application
thinks fit,

(b) in paragraph (b) delete "he" and insert:

the party

(c) delete “a competent court” and insert:

the court

(20) In Schedule 1 clause 8(5) delete “he” and insert:

the party

(21) In Schedule 1 clause 8(7)(b) delete “he” and insert:

the tenant

(22) In Schedule 1 clause 8(9) delete “or 7(4)”.

(23) At the end of Schedule 1 insert:

Division 3 — Tenant compensation bonds

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).

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 —
 - (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).

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.

Note: The heading to amended Schedule 1 clause 8 is to read:
Court may determine disposal of security bond

88. Various references to “agreement” amended

In the provisions listed in the Table delete “an agreement” and insert:

a residential tenancy agreement

Table

s. 30(2)(a)	s. 33(2)
s. 47(2)	s. 49(2)
s. 49(3)	s. 52
s. 57(1)	s. 57(2)
s. 60(1) (first occurrence)	s. 62(1)
s. 62(6)	s. 62(7)
s. 67	s. 68(1)
s. 68(3)	s. 69(1)
s. 69(4)	s. 70
s. 71(1)	s. 71(5)
s. 72(4)	s. 73(1)
s. 73(2)	s. 74(1)
s. 74(2)	s. 75(1)
s. 75(2)	s. 78(1)
s. 79(1)	s. 79(2)
s. 79(6)	s. 80 (each occurrence)

89. Various references to “owner” amended

In the provisions listed in the Table:

- (a) delete “An owner” (each occurrence) and insert:

A lessor

(b) delete “an owner” (each occurrence) and insert:

a lessor

(c) delete “new owner” (each occurrence) and insert:

new lessor

(d) delete “the owner” (each occurrence) and insert:

the lessor

(e) delete “owner’s” (each occurrence) and insert:

lessor’s

Table

s. 7(3)(b), (c)	s. 15(1)
s. 27(2)(b)	s. 30(1)
s. 30(2)	s. 30(3)
s. 31(1)	s. 31(3)
s. 32(3)(c), (d)	s. 32(6)
s. 33(2)	s. 34(1)
s. 38(1)(b)	s. 41
s. 47(1)(b)	s. 47(2)(a), (b), (c)
s. 48	s. 49(1)(c)
s. 49(2)(a), (b)	s. 52

s. 60(1)(a), (d), (g)	s. 62(1)
s. 62(2)	s. 62(4)(b)
s. 62(5)(a), (b)	s. 65(1)(a), (b)
s. 65(2)	s. 66
s. 68(1)	s. 69(1)(b)
s. 69(2)	s. 71(1)
s. 71(2)(a), (b)	s. 71(3)(a), (b)(i), (ii), (iii)
s. 71(4)	s. 72(3)(a)(i), (b)(i)
s. 73(1)	s. 75(1)
s. 76(1)	s. 76(2)
s. 78(1)	s. 78(2)
s. 79(1)	s. 79(2)
s. 79(3)	s. 79(4)
s. 79(6)	s. 79(7)
s. 79(8)	s. 79(9)
s. 79(10)	s. 79(14)
s. 79(15)	s. 85(5)
s. 85(6)	Sch. 1 cl. 4(b)(i)
Sch. 1 cl. 8(1)	

Note: The headings to the amended sections listed in the Table are to read as set out in the Table.

Table

Amended section	Section heading
s. 42	Lessor's responsibility for cleanliness and repairs
s. 46	Lessor's right of entry
s. 48	Lessor to bear outgoings in respect of premises
s. 62	Notice of termination by lessor upon ground of breach of term of agreement
s. 65	Termination by lessor where section 32 invoked
s. 66	Notice by lessor not waived by acceptance of rent
s. 69	Notice of termination by lessor or tenant where agreement frustrated
s. 71	Application by lessor for termination and order for possession
s. 75	Termination of agreement for breach by lessor
s. 76	Compensation to lessor for holding over
s. 78	Right of lessor to compensation where tenant abandons premises

Part 3 — Amendments relating to terminating social housing tenancy agreements

90. Section 3 amended

In section 3 insert in alphabetical order:

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;

91. Section 60 amended

In section 60(1)(c) delete "74" and insert:

74, 75A

92. **Part V Division 3 inserted**

After section 70 insert:

Division 3 — Special provisions about terminating social housing tenancy agreements

Subdivision 1 — Preliminary

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;
- (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.

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.

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

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.

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.

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

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.

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.

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

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

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 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.

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.
- (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.

93. Section 71 amended

- (1) In section 71(2):
 - (a) in paragraph (b) after “Act,” insert:

other than a notice given by a lessor on a ground referred to in section 71C or 71H,
 - (b) in paragraph (b) delete “agreement.” and insert:

agreement; and
 - (c) after paragraph (b) insert:

(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).
- (2) After section 71(2) insert:
- (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 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.

94. Section 73A inserted

After section 72 insert:

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.

95. Section 75A inserted

After section 74 insert:

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.

- (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).

Part 4 — Amendments relating to residential tenancy databases

96. **Part VIA inserted**
After section 81 insert:

Part VIA — Residential tenancy databases

Division 1 — Preliminary

- 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

- (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
- (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*.

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.

Division 2 — Tenancy database information

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 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.

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.
- (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.

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.

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 —
- (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.

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.

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 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.

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.

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.

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.