

Western Australia

Residential Tenancies Amendment Act 2011

As at 14 Dec 2011

No. 60 of 2011

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Residential Tenancies Amendment Act 2011

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Western Australia

Residential Tenancies Amendment Act 2011

No. 60 of 2011

**An Act to amend the *Residential Tenancies Act 1987* and to
consequentially amend various other Acts.**

[Assented to 14 December 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Residential Tenancies Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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;

s. 7

(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.

s. 9

- (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

s. 14

- (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

s. 17

(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

s. 19

- (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

s. 43

- (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

s. 52

(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

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- (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.

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- (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.

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- (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

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(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

Amended section	Section heading
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.

Part 5 — Amendments to other Acts

Division 1 — *Disposal of Uncollected Goods Act 1970* amended

97. Act amended

This Division amends the *Disposal of Uncollected Goods Act 1970*.

98. Schedule amended

In the Schedule delete “Section 79 of the *Residential Tenancies Act 1987*.” and insert

Residential Tenancies Act 1987 sections 79 and 80A.

Division 2 — *Housing Act 1980* amended

99. Act amended

This Division amends the *Housing Act 1980*.

100. Section 62G amended

- (1) In section 62G(1)(b) delete “owner,” and insert

lessor,

- (2) In section 62G(2) delete “owner” and insert

lessor

**Division 3 — *Magistrates Court (Civil Proceedings)*
Act 2004 amended**

101. Act amended

This Division amends the *Magistrates Court (Civil Proceedings) Act 2004*.

102. Section 7 amended

In section 7(1) in the definition of *trader* delete “an owner” and insert

a lessor

**Division 4 — *Rates and Charges (Rebates and Deferments)*
Act 1992 amended**

103. Act amended

This Division amends the *Rates and Charges (Rebates and Deferments) Act 1992*.

104. Section 29B amended

- (1) In section 29B(1) delete the definition of *owner*.
- (2) In section 29B(1) insert in alphabetical order:

lessor, in relation to land, has the meaning given in the *Residential Tenancies Act 1987* section 3;

- (3) In section 29B(3) delete “the owner” and insert:

the lessor

**Division 5 — *Residential Parks (Long-stay Tenants)*
Act 2006 amended**

105. Act amended

This Division amends the *Residential Parks (Long-stay Tenants) Act 2006*.

106. Section 22 amended

- (1) In section 22(1)(a) delete “a bond agent; or” and insert:

an authorised agent as defined in the
Residential Tenancies Act 1987 Schedule 1
clause 1; or

- (2) Delete section 22(2)(a) and insert:

- (a) an account in the name of the agent entitled
“tenancy bond trust account”, used for the
purpose of holding a security bond under this
subsection or the *Residential Tenancies*
Act 1987 and for no other purpose; or

107. Glossary amended

- (1) In the Glossary delete the definitions of:

authorised financial institution

bond administrator

bond agent

Rental Accommodation Fund

- (2) In the Glossary insert in alphabetical order:

authorised financial institution has the meaning given in
the *Residential Tenancies Act 1987* section 92;

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

Rental Accommodation Account means the Rental Accommodation Account established under the *Residential Tenancies Act 1987* Schedule 1 clause 3;

108. Various references to “Fund” changed to “Account”

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

Account

Table

s. 51	s. 75(3)
s. 76(3)	s. 77(1)
s. 77(2)	s. 92(b)
s. 94(a)	

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