

Queensland



Subordinate Legislation 1995 No. 36

Residential Tenancies Act 1994

**RESIDENTIAL TENANCIES REGULATION
1995**

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PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Residential Tenancies Regulation 1995*.

Commencement

2. This regulation commences on 3 April 1995.

Definitions

3. In this regulation—

“Act’s general maintenance provisions” means—

- (a) section 103(2) of the Act¹ (other than paragraphs (a) and (b)); or
- (b) section 103(3) of the Act (other than paragraph (b)).

“approved supported accommodation agreement” means an agreement under which the tenant’s right of occupancy of the premises arises out of approved supported accommodation.

“essential term provision” see section 11.

“non-standard items”, for an agreement, see section 10.

“qualifying provision” see section 11.

“rental bond instalments” see section 7.

“rental bond notice” means a notice about a rental bond given to the Authority under section 59 of the Act.²

“rental purchase plan agreement” means an agreement entered into between the State and another person (the **“buyer”**) about residential premises—

- (a) under which the buyer agrees to buy, or after the buyer has

¹ Section 103 (Lessor’s obligations generally)

² Section 59 (Duty to pay rental bond)

- bought, a part interest (a “**share**”) in the premises; and
- (b) under which the State gives the buyer the right to occupy the premises; and
 - (c) under which the buyer is required to make payments to the State and—
 - (i) if the buyer is buying a share—the payments are divided by the State between the amount owing for the purchase of the share and rent for the right to occupy the premises; or
 - (ii) if the buyer has bought a share and is not buying a further share—the payments are payments of rent for the right to occupy the premises.

“**replacement cotenant**”, for an agreement for which there is a rental bond, means a person who, after the rental bond notice is given to the Authority, becomes a cotenant in place of a former cotenant mentioned in the notice as a contributor to the rental bond (whether the person becomes a cotenant directly from the former cotenant or indirectly through another former cotenant or other former cotenants).

“**share**” see definition “**rental purchase plan agreement**”.

PART 2—CHANGES TO ACT’S APPLICATION

Purpose of Part

4. The purpose of this Part is to prescribe changes affecting the application of the Act.³

³ Under section 20 of the Act, regulations may be made declaring the Act, or a provision of the Act, does not apply to, or applies with prescribed changes to, residential tenancy agreements, residential premises or entities.

Rental purchase plan agreements

5. The Act does not apply to residential tenancy agreements that are rental purchase plan agreements.

Approved supported accommodation agreements—Act, s 27

6.(1) For section 27 of the Act,⁴ the tenant under an approved supported accommodation agreement is a person to whom the Act does not apply if the tenant has occupied the premises for a continuous period of not more than 13 weeks.

(2) If the tenant under an approved supported accommodation agreement has occupied the premises for a continuous period of more than 13 weeks, the Act applies to the agreement as if the tenant's occupancy started on the day after the period of 13 weeks ended.

Payment of rental bond to Authority

7.(1) This section applies to a lessor who—

- (a) receives financial or other assistance from the State to supply rented accommodation to persons; and
- (b) enters into a residential tenancy agreement using the assistance; and
- (c) receives from the tenant a number of rental bonds for the agreement (the “**rental bond instalments**”).

(2) Section 59 of the Act⁵ applies to the lessor—

- (a) only when the lessor has received all the rental bond instalments; or
- (b) if the agreement is terminated before all the rental bond instalments are received—only when the agreement is terminated.

(3) For the application of section 59 of the Act to the lessor, each rental bond instalment is taken to have been received by the lessor—

⁴ Section 27 (Approved supported accommodation)

⁵ Section 59 (Duty to pay rental bond)

- (a) if the agreement is not terminated—on the day the last instalment is received by the lessor; or
- (b) if the agreement is terminated—on the day of termination.

“Allowed period” for applying to tribunal about rental bond dispute—Act, s 69

8.(1) Subsection (2) prescribes a period for section 69(b) of the Act⁶ but only if the mediation process about the payment of the rental bond ends not earlier than 7 days after the giving of the Authority’s notice without a mediated resolution having been reached about the payment.

(2) The period is the period ending 7 days after the Authority advises the applicant of the ending of the mediation process.

Maximum rental bond for agreements if rent subsidised by tenant’s employer

9.(1) This section applies to an agreement only if the lessor—

- (a) is the tenant’s employer; and
- (b) gives the tenant a rental subsidy.

(2) In the application of section 77(1) of the Act⁷ to the agreement, the maximum rental bond for the agreement is not the amount fixed under the Act but the amount fixed under subsection (3).

(3) The amount is the greater of the following amounts—

- (a) \$400;
- (b) the amount equal to the rent payable under the agreement for the period of—
 - (i) for moveable dwelling premises—2 weeks; or
 - (ii) for other premises—4 weeks.

⁶ Section 69 (Allowed period for tenant’s and lessor’s notices)

⁷ Section 77 of the Act (Payments above the maximum amount)

Maintenance of non-standard items

10.(1) This section applies to fixtures attached to premises, and inclusions supplied with premises, (the “**non-standard items**”) if—

- (a) the lessor is the State; and
- (b) the non-standard items are specified in the agreement and the agreement states the lessor is not responsible for their maintenance; and
- (c) the non-standard items are not necessary and reasonable to make the premises a fit place in which to live; and
- (d) the non-standard items are not a risk to health or safety; and
- (e) for fixtures—the fixtures were not attached to the premises by the lessor.

(2) The Act’s general maintenance provisions do not apply to non-standard items to which this section applies.

PART 3—ESSENTIAL TERMS**Essential terms of agreements—Act, s 38**

11.(1) Each provision of the Act (the “**essential term provision**”) specified in Schedule 1, column 1 is an essential term of a residential tenancy agreement.

(2) If a provision of the Act (the “**qualifying provision**”) is specified in Schedule 1, column 2 opposite an essential term provision, the essential term provision applies as an essential term subject to the qualifying provision.

(3) A penalty or example mentioned in an essential term provision is not part of an essential term.

PART 4—RENTAL BONDS

Payment to cotenants—Act, s 71(1)(b)

12. For section 71(1)(b) of the Act,⁸ a cotenant is taken to have contributed to a rental bond if—

- (a) the cotenant is mentioned as a contributor in the rental bond notice; or
- (b) for a replacement cotenant—written notice about the change of cotenants is given to the Authority by the replacement cotenant and the former cotenant; or
- (c) the Authority is satisfied the cotenant contributed to the rental bond.

Payment under person's direction—Act, s 75(2)

13. For section 75(2) of the Act,⁹ a person is taken to have contributed to a rental bond if the Authority is satisfied the person contributed to the rental bond.

PART 5—ABANDONED GOODS

Value of abandoned goods—Act, s 223(2)(a)

14. For section 223(2)(a) of the Act,¹⁰ the prescribed amount is \$1 000.

Storage period for abandoned goods—Act, s 223(3)

15. For section 223(3) of the Act, the prescribed period is—

⁸ Section 71 (Payment to cotenants)

⁹ Section 75 (Payment under person's direction)

¹⁰ Section 223 (Abandoned goods)

- (a) for a caravan, its contents and other goods used in occupying the caravan—3 months; and
- (b) for any other goods—1 month.

Procedures for selling abandoned goods by auction

16.(1) This section applies to a person selling abandoned goods by auction under section 223 of the Act.

(2) The person must give notice of the auction by publishing the notice in a newspaper circulating generally in the area where the goods were abandoned.

(3) The notice must—

- (a) describe the goods; and
- (b) state the day, time and place the auction is to be held.

(4) The day stated in the notice must be at least 7 days after the notice is published.

PART 6—WHEN PERSONS ARE RELATED TO OTHER PERSONS

When a person is “related” to a director—Act, s 299(1)(a)

17. A person is related to a director if—

- (a) the person—
 - (i) is, or has been, married to the director; or
 - (ii) although not married to the director, is living, or has lived, with the director as the director’s husband or wife; or
- (b) the person is the director’s child and is entirely or substantially dependent on the director; or
- (c) the person is entirely or substantially dependent on the director and the person’s affairs are so closely connected with the affairs

of the director that a benefit derived by the person, or a substantial part of it, could pass to the director.

When a director is “related” to a person—Act, s 299(3)

18. A director is related to a person if—

- (a) the director—
 - (i) is, or has been, married to the person; or
 - (ii) although not married to the person, is living, or has lived, with the person as the person’s husband or wife; or
- (b) the director is the person’s child and is entirely or substantially dependent on the person; or
- (c) the director is entirely or substantially dependent on the person and the director’s affairs are so closely connected with the affairs of the person that a benefit derived by the director, or a substantial part of it, could pass to the person.

When a person is “related” to an employee—Act, s 311(1)(a)

19. A person is related to an employee if—

- (a) the person—
 - (i) is, or has been, married to the employee; or
 - (ii) although not married to the employee, is living, or has lived, with the employee as the employee’s husband or wife; or
- (b) the person is the employee’s child and is entirely or substantially dependent on the employee; or
- (c) the person is entirely or substantially dependent on the employee and the person’s affairs are so closely connected with the affairs of the employee that a benefit derived by the person, or a substantial part of it, could pass to the employee.

PART 7—GENERAL

Proceeding in which lessor's agent may stand in lessor's place—Act, s 116(1)(b)

20. For section 116(1)(b) of the Act,¹¹ an application a lessor or tenant may make to a tribunal is a prescribed proceeding.

Fees

21. The fees payable under the Act are in Schedule 2.

PART 8—TRANSITIONAL PROVISIONS

Application of Act to existing agreements

22.(1) The Act applies to written periodic agreements in force at the commencement.

(2) However, sections 39 and 41 of the Act¹² do not apply to the agreements until—

- (a) 6 months after the commencement; or
- (b) if the lessor is the State—3 years after the commencement.

Continuing application of former Act to existing agreements

23.(1) This section applies to agreements in force at the commencement other than written periodic agreements.

(2) This section applies—

¹¹ Section 116 (Lessor's name and other details)

¹² Section 39 (Written agreements required)
Section 41 (Lessor to give agreement to tenant)

- (a) despite section 342 of the Act;¹³ and
- (b) subject to section 339(2) of the Act.¹⁴

(3) The *Residential Tenancies Act 1975* continues to apply to agreements to which this section applies.

Application of rental bond provisions to agreements

24.(1) This section applies to an agreement if—

- (a) the agreement is an agreement to which section 23 applies; and
- (b) a person receives a rental bond for the agreement after the commencement.

(2) The rental bond is taken to be a rental bond under the Act.

¹³ Section 342 (Repeals—Sch 1)

¹⁴ Section 339 (Agreements in force at commencement)

SCHEDULE 1

ESSENTIAL TERMS

section 11 of the regulation

Essential term provision	Qualifying provision
1. s 47 (How rent to be paid)	—
2. s 48 (Where rent to be paid)	—
3. s 49(2) (Rent in advance)	—
4. s 89(1) (Outgoings other than service charges)	s 89(2)
5. s 99 (Legal impediments to occupation as residence)	—
6. s 100 (Vacant possession)	—
7. s 101(1) (Quiet enjoyment)	—
8. s 102 (Tenant's use of premises)	—
9. s 103(2), (3) and (4) (Lessor's obligations generally)	s 103(1)
10. s 104(3) and (4) (Lessor's obligations for facilities in moveable dwelling parks)	s 104(1) and (2)
11. s 105(2) and (3) (Lessor's obligations for moveable dwelling site)	s 105 (1)
12. s 106(2) and (3) (Tenant's obligations generally)	s 106(1)
13. s 107(2) (Tenant's obligations for facilities in moveable dwelling parks)	s 107(1)
14. s 108(2) and (3) (Tenant's obligation for moveable dwelling site)	s 108(1)

 SCHEDULE 1 (continued)

15.	s 109 (Grounds for entry)	—
16.	s 110 (Notice of entry)	—
17.	s 111(1) to (5) (General qualifications about entry)	—
18.	s 117 (Attaching fixtures and making structural changes)	—
19.	s 118(1), (3) and (4) (Agreement about fixtures and structural changes)	—
20.	s 119(1) Attaching fixture or making structural change without lessor's agreement)	—
21.	s 120 (Supply of locks and keys)	—
22.	s 121(1) and (2) (Changing locks)	s 121(4)
23.	s 122(1) (Agreement about changing locks)	s 122(3)
24.	s 125 (Notice of damage)	—
25.	s 126(1)(a) and (2) (Tenant may arrange for emergency repairs to be made)	s 126(1)(b)
26.	s 127 (Costs of emergency repairs arranged by tenant)	—
27.	s 130 (Notice to relocate)	s 129 (Application of Part)
28.	s 132(1) (Costs of relocation)	s 129 (Application of Part)
29.	s 143(2) (Tenant's action subject to lessor's unqualified discretion)	s 143(1)
30.	s 144(2) and (3) (Tenant's action subject to lessor's qualified discretion)	s 144(1)
31.	s 146 (Lessor's expenses for transfer or subletting)	—

SCHEDULE 2

FEES

section 21 of the regulation

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|----|--|---|
| 1. | Lessor's fee for service supplied in sale or attempted sale of caravan (s 147 of the Act)— | |
| | (a) if the sale price is not more than \$18 000 | 5% of the sale price |
| | (b) if the sale price is more than \$18 000 | \$900 plus 2.5% of the part of sale price over \$18 000 |
| 2. | Mediation fee (s 236 of the Act) | 10.00 |

ENDNOTES

1. Made by the Governor in Council on 23 February 1995.
2. Notified in the Gazette on 24 February 1995.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Housing, Local Government and Planning.