



Residential Tenancies Act 1994

**Reprinted as in force on 1 January 2005
(includes commenced amendments up to 2004 Act No. 37)**

Reprint No. 7

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Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

Residential Tenancies Act 1994

Contents

		Page
Chapter 1	Preliminary	
Part 1	Introductory provisions	
1	Short title	17
Part 2	Interpretation	
Division 1	Location of definitions	
3	Definitions and dictionary	17
Division 2	Meaning of key terms	
3A	Caravan	18
4	Lessor	18
5	Premises	19
6	Residential premises	19
7	Residential tenancy	19
8	Residential tenancy agreement	19
9	Tenant	20
Part 3	Operation of Act	
10	Act applies only to certain residential tenancy agreements etc..	20
11	References to agreements	21
12	Reference to lessors and tenants	21
13	References to premises	22
14	References to tenancies	22
14A	Provision stating that lessor or lessor's agent must do something	22
14B	Lessor's agent	22
Part 4	Application of Act	
Division 1	General	
15	Act binds all persons	23
16	State as lessor	23
17	Application of Property Law Act to agreements	24

18	Rights and remedies of persons	24
19	Minors	25
20	Changes to Act's application	25
Division 2	Agreements to which this Act applies and does not apply	
20A	Contracts of sale and mortgages	25
21	Premises used for holidays	25
22	Residential service agreements, boarders and lodgers	26
23	Educational institutions, hospitals, nursing homes and retirement villages	26
23A	Rental purchase plan agreements	26
24	Temporary refuge accommodation	26
25	Agreements under Manufactured Homes (Residential Parks) Act 2003	27
25A	Headleases for employee housing	27
25B	Headleases for affordable housing agreements	27
26	Hotels and motels	28
27	Headleases for approved supported accommodation	28
Division 3	Moveable dwelling premises	
28	Application of division	28
29	Purpose of division	28
30	Short tenancy statements	29
31	Extending short tenancy statements	29
32	Setting aside short tenancy (extension) statements	29
33	Short tenancies	30
34	Long tenancies	30
Chapter 2	Residential tenancy agreements	
Part 1	Agreements	
Division 1	General	
35	Terms of agreements include duties under Act etc.	30
36	Contracting out prohibited	31
37	Inconsistency	31
38	Standard terms	31
38A	Lessor to give proposed agreement to tenant	32
39	Written agreements required	32
40	Giving and signing written agreement	33
41	Orders of tribunal about giving and signing written agreement	33

Division 2	Associated documents	
42	Condition report at start of tenancy	34
42A	Condition report at end of tenancy	35
43	Information statement.	36
44	Park rules	37
45	By-laws	37
Division 3	Fixed term agreements	
46	Continuation of fixed term agreements.	38
Part 2	Rent	
47	How rent to be paid	39
48	Where rent to be paid.	39
49	Rent in advance	40
50	Receipts and other records	40
51	Keeping of records	41
52	False, misleading or incomplete rent records.	42
53	Rent increases	42
53A	Tenant's application to tribunal about rent increase	43
54	Rent decreases	44
55	Seizure of tenant's goods for rent etc.	45
56	Apportionment	45
Part 3	Rental bonds	
Division 1	Payments to authority	
57	Meaning of rental bond.	46
58	Contributor for a rental bond.	46
58A	Share of a rental bond	47
59	Duty to pay rental bond	47
59A	Duty to pay rental bond instalments	48
60	Duty to pay rental bond if financial protection given.	48
60A	Acknowledging receipt of rental bond.	49
61	No entitlement to interest	49
62	Continuance of rental bond	49
Division 2	Payments by authority	
Subdivision 1	Preliminary	
63	Purpose of division.	50
64	Making payment	50
65	Application for payment	50

Subdivision 2	Payment of bond if only 1 contributor	
66	Application of sdiv 2	50
67	Joint application by lessor and contributor	51
68	Application by lessor	51
69	Application by contributor	51
Subdivision 3	Payment of bond if more than 1 contributor	
69A	Application of sdiv 3	51
69B	Joint application by lessor and every contributor	52
69C	Joint application by lessor and some contributors	52
69D	Application by lessor	52
69E	Application by every contributor	53
69F	Application by some contributors	53
Subdivision 4	Other matters about payment	
69G	Payment for which notice must be given	54
70	Payment under tribunal order	56
72	Payment to rental bond supplier	56
73	Limitation affecting payment	56
74	Withdrawal of application	57
75	Payment under person's direction	57
Division 3	Enforcement provisions	
76	Receipt	58
77	Payments above maximum amount	58
78	Order for payment if guilty of offence	59
Division 4	Accounts and investments	
79	Accounts	60
80	Rental bond account	60
80A	Unclaimed amounts in rental bond account	60
81	Rental bond interest account	61
82	Other payments from rental bond interest account	61
Division 5	Miscellaneous	
83	Increase in rental bond	62
84	Rental bond resulting from rent decrease	62
Part 4	Key and holding deposits	
Division 1	Key deposits	
84A	Payment of key deposits	63
84B	Receipts for key deposits	63
84C	Refunding key deposit	64

Division 2	Holding deposits	
85	Payment of holding deposits	64
86	Receipts for holding deposits	64
87	Rights and obligations about holding deposits	65
88	Orders of tribunal	66
Part 5	Outgoings of lessor	
Division 1	Outgoings other than service charges	
89	Outgoings other than service charges	66
Division 2	Service charges	
90	Meaning of service charge	67
91	General service charges for premises other than moveable dwelling premises	67
91A	Water service charge for premises other than moveable dwelling premises	68
92	Service charges for moveable dwelling premises individually metered	69
93	Service charges absorbed in rent for moveable dwelling premises	69
94	Orders of tribunal	70
Part 6	Penalties and premiums	
95	Collateral contracts prohibited	71
95A	Incentive amounts prohibited	71
96	Certain terms about penalties and other payments void	72
97	Terms about rent reductions etc.	72
98	Premiums for letting moveable dwelling premises	73
Chapter 3	Rights and obligations of lessors and tenants	
Part 1	Occupation and use of the premises	
99	Legal impediments to occupation as residence	74
100	Vacant possession	74
101	Quiet enjoyment	74
102	Tenant's use of premises	74
Part 2	General standard of the premises	
103	Lessor's obligations generally.	75
104	Lessor's obligations for facilities in moveable dwelling parks	76
105	Lessor's obligations for moveable dwelling site	77
106	Tenant's obligations generally.	77
107	Tenant's obligations for facilities in moveable dwelling parks	78
108	Tenant's obligation for moveable dwelling site	78

108A	Orders of tribunal	78
Part 3	Lessor's right of entry	
109	Grounds for entry	79
110	Notice of entry	80
111	General qualifications about entry	81
112	Rules of entry	82
113	Entry under order of tribunal.	82
114	Unlawful entry of premises	83
Part 4	Personal details of the parties and agents	
115	Tenant's name and other details.	83
116	Lessor's or agent's name and other details	83
Part 5	The dwelling	
Division 1	Fixtures and structural changes	
117	Attaching fixtures and making structural changes	84
118	Agreement about fixtures and structural changes	84
119	Attaching fixture or making structural change without lessor's agreement	85
Division 2	Locks and keys	
120	Supply of locks and keys	86
121	Changing locks	86
122	Agreement about changing locks	87
123	Orders of tribunal	87
Division 3	Damage and repairs	
123A	Meaning of emergency repairs.	88
123B	Meaning of routine repairs	89
124	Nominated repairer for emergency repairs.	89
125	Notice of damage	89
126	Tenant may arrange for emergency repairs to be made.	90
127	Costs of emergency repairs arranged by tenant	90
128	Orders of tribunal about emergency repairs.	91
Part 6	Additional provisions for moveable dwelling premises	
Division 1	Application of part	
129	Application of part	92
Division 2	Relocation	
130	Notice to relocate	92
130A	Restriction against enforcing relocation	93
131	Effect of relocation	94

132	Costs of relocation	94
132A	Application to tribunal	94
Division 3	Park rules	
133	Park rules	95
134	Notice of proposed change of park rule	95
135	Objection to proposal	96
136	Park liaison committee	96
137	Consideration of objections by committee	97
138	Application to tribunal about proposal	97
139	Decision of tribunal about proposal	98
140	When proposal takes effect	98
141	When changes of park rules have no effect	100
Division 4	Goods and services	
142	Supply of goods and services	100
Part 7	Change of lessor or tenant	
Division 1	Transfer or subletting by tenant	
143	Tenant's action subject to lessor's unqualified discretion	101
144	Tenant's action subject to lessor's qualified discretion	101
145	Order of tribunal about transfer or subletting	102
146	Lessor's expenses for transfer or subletting	102
147	Lessor's fee for sale of caravan	102
Division 2	Transfer by lessor	
148	Transfer by lessor	103
Division 3	Replacement of tenant	
149	End of tenant's occupation	104
149A	Death of a cotenant	105
150	Injury to spouse	106
150A	Injury or damage affecting occupants	107
Chapter 4	Termination of agreements	
Part 1	General	
151	Termination of agreements	108
152	Acceptance of rent does not operate as waiver of tenant's breach	109
152A	Offer or payment of rent does not operate as waiver of lessor's breach	109

Part 2	Action by lessor	
Division 1	Notices to remedy breach	
153	Notice to remedy tenant's breach	110
Division 2	Notices to leave premises	
155	Notice to leave for unremedied breach	110
156	Notice to leave for tenant's non-compliance with tribunal order . .	111
157	Notice to leave for non-compliance (moveable dwelling relocation)	111
158	Notice to leave if agreement frustrated	111
159	Notice to leave if agreement frustrated (moveable dwelling premises)	112
160	Notice to leave if premises being sold	113
161	Notice to leave if closure of moveable dwelling park involved . . .	113
162	Notice to leave if tenant's employment ends	114
163	Notice to leave if tenant's entitlement to supported accommodation ends	114
163A	Notice to leave if tenant's entitlement under affordable housing scheme	115
165	Notice to leave without ground	115
165A	Application to tribunal about notice to leave without ground	116
Division 3	Applications for termination	
166	Application for termination for failure to leave	117
167	Application for termination for failure to leave as intended	117
168	Application for termination for excessive hardship	118
169	Application for termination for damage or injury	118
170	Application for termination for tenant's objectionable behaviour . .	119
171	Application for termination for incompatibility	119
171A	Application for termination for repeated breaches	119
172	Application for interim order about damage or injury	120
Part 3	Action by tenant	
Division 1	Notices to remedy breach	
173	Notice to remedy lessor's breach	121
Division 2	Notices of intention to leave premises	
175	Notice of intention to leave for unremedied breach	121
176	Waiver of breach	122
177	Notice of intention to leave for lessor's non-compliance with tribunal order	122
178	Notice of intention to leave if agreement frustrated	123

179	Notice of intention to leave if agreement frustrated (moveable dwelling premises)	123
181	Notice of intention to leave without ground.	124
Division 3	Applications for termination	
182	Application for termination for excessive hardship	124
183	Application for termination for damage or injury	125
184	Application by cotenant for termination for damage or injury	125
185	Application for termination for lessor's objectionable behaviour.	126
186	Application for termination for incompatibility	126
186A	Application for termination for repeated breaches	126
187	Application for interim order about damage or injury	127
Part 4	Action by other persons	
Division 1	Mortgagees	
187A	Notice about proposed action of mortgagee	128
187B	Acceptance of rent does not operate as consent	128
Division 2	Other persons	
188	Application by tenant's spouse for termination for damage or injury	129
189	Application by occupant for termination for damage or injury.	129
190	Application for interim order about damage or injury	130
191	References to applications	130
Part 5	Procedural requirements for action taken by lessor or tenant	
192	Notice to remedy breach	130
193	Notice to leave	131
194	Notice of intention to leave	132
196	Allowed remedy period	132
197	Handover day for notice to leave for premises that are not moveable dwelling premises	133
198	Handover day for notice to leave for moveable dwelling premises	134
199	Handover day for notice of intention to leave for premises that are not moveable dwelling premises	135
200	Handover day for notice of intention to leave for moveable dwelling premises	136
200A	Withdrawing notice to leave for unremedied breach.	137
201	Withdrawing notice of intention to leave	137
202	Applications for termination orders	137
203	Applications to tribunal	138

Part 6	Orders of tribunal	
204	Failure to leave for unremedied breach	138
205	Failure to leave for non-compliance (tribunal order)	139
206	Failure to leave for non-compliance (moveable dwelling relocation)	139
207	Failure to leave for other grounds	140
208	Failure to leave without ground	140
209	Failure to leave as intended	140
210	Excessive hardship	141
211	Damage or injury	141
212	Objectionable behaviour	141
213	Incompatibility	142
213A	Repeated breaches	142
214	Interim order about damage or injury	143
215	Defects in notices	143
Part 7	Recovery of possession of premises	
216	Issue of warrant of possession	143
217	Warrant of possession	144
218	Execution of warrant of possession	145
219	Way of recovering possession of premises	145
220	Obstruction of person executing warrant of possession	145
Part 8	Abandonment	
221	Termination of agreement by lessor if premises abandoned	146
221A	Dispute about abandonment termination notice	146
222	Order about abandonment	147
Part 9	Compensation	
225	Tenant remaining in possession	148
226	Compensation on abandonment termination notice	149
227	Compensation on termination by tribunal	149
228	Review of abandonment order	149
230	Duty to mitigate loss or expense	150
Part 10	Goods and documents left behind on premises	
230A	Goods left on premises	151
230B	Documents left on premises	153
230C	Application about goods left on premises	154

Chapter 5	Resolution of tenancy issues	
Part 1	Conciliation of tenancy disputes	
Division 1	Requirement for conciliation	
231	Meaning of urgent application	155
232	Applications to tribunal	157
Division 1A	Conciliation	
232A	Conciliation process	157
232B	Some matters not suitable for conciliation	157
232C	Conciliators.	158
Division 2	Starting the conciliation process	
233	Making dispute resolution request	159
234	Reference to making of tribunal application includes making of dispute resolution request	159
235	Action to be taken on dispute resolution request	159
Division 3	Conduct of conciliation process	
236	Conciliation fee	160
237	Limited right of representation	160
239	Parties' participation in conciliation process not compellable.	160
240	Parties to conciliation process	161
241	Conciliation agreements.	161
242	No record of conciliation process	161
Division 4	Withdrawal of disputes	
244	Withdrawal of disputes	162
Division 5	Confidentiality, privilege and immunity	
245	Conciliators to maintain secrecy.	162
246	Ordinary protection and immunity allowed	163
247	Admissions made in conciliation process.	163
Part 2	General powers of tribunals	
248	Application of Act to agreements	163
249	Applications about breach of agreements	164
250	Orders about breach of agreements	164
251	Application of Aboriginal tradition	165
252	Application of Island custom.	166
253	Disputes about tenants' notices	167
253A	Disputes about lessors' notices	167
254	General disputes between lessors and tenants	168
255	Disputes between cotenants about rental bonds	168

256	Different applications may be decided together	168
257	Joining applications	169
Chapter 6	Enforcement	
Part 1	Authorised persons	
258	Authorised persons under this chapter	169
259	Appointment	169
260	Limitation of authorised person's powers	170
261	Authorised person's conditions of appointment	170
262	Authorised person's identity card	170
263	Production or display of authorised person's identity card	171
Part 2	Powers of authorised persons for places	
264	Entry to places	172
265	Warrants for entry	172
266	Warrants—applications made other than in person	173
267	Authorised person's general powers for places	174
Part 3	Other enforcement matters	
267A	Procedure after document seized	176
267B	Power to require information from certain persons	176
268	False or misleading information	177
269	False, misleading or incomplete documents	177
270	Authorised person to give notice of damage	178
271	Compensation	178
272	Agreement to entry	179
273	Evidence of agreement	180
274	Obstruction of authorised person	180
275	Impersonation of authorised person	180
276	Executive officers must ensure corporation complies with Act	181
Part 4	Evidence	
277	Evidentiary provisions	181
Chapter 7	Causing nuisance in moveable dwelling parks	
278	Behaviour in moveable dwelling park causing serious nuisance	182
283	Application to tribunal for order to exclude person from park	183
284	Order of tribunal excluding person from park	183
Chapter 7A	Tenancy databases	
284A	Definitions for ch 7A	185
284B	Non-application to internal databases	185
284C	Restriction on listing	186

284D	Application to tribunal about breach	186
284E	Application to tribunal about incorrect or unjust listing	187
284F	Application to tribunal about proposed listing	188
284G	Offence of contravening tribunal order	188
284H	Order for compensation	188
Chapter 8	Residential Tenancies Authority	
Part 1	Establishment of authority	
286	Establishment of authority	189
287	Legal status of authority	189
288	Authority represents the State	189
Part 2	Functions and powers of authority	
289	Authority's functions	190
290	Authority's powers	191
291	Reserve power of Minister to give directions in public interest	191
Part 3	The board	
292	The board	192
293	Role of the board	192
294	Composition of board	192
295	Duration of appointment	192
296	Conditions of appointment	193
Part 4	Proceedings of the board	
297	Time and place of meetings	193
298	Conduct of proceedings	193
299	Disclosure of interests	194
300	Minutes	195
Part 5	Financial matters	
301	Application of Financial Administration and Audit Act	195
301A	Authority is statutory body for Statutory Bodies Financial Arrangements Act 1982	195
302	Administration budget	195
Part 6	Other things about the authority	
303	Seal	196
304	Application of certain Acts	196
305	Delegation	196
Part 7	Staff of the authority	
Division 1	Chief executive officer	
306	Chief executive officer	197

307	Chief executive officer not to engage in other paid employment .	197
308	Acting chief executive officer	197
308A	Delegation	198
Division 2	Staffing the authority	
309	Authority staff	198
310	Alternative staffing arrangements.	198
Division 3	Conflict of interest	
311	Disclosure of interests	199
Chapter 9	Legal proceedings	
Part 1	Offences	
312	False, misleading or incomplete documents	199
313	Attempts to commit offences	200
314	Offences are summary offences.	200
314A	Limitation on time for starting proceedings.	200
Part 2	Evidentiary provisions	
315	Responsibility for acts or omissions of representatives	201
316	Condition reports	201
317	Rental bonds	201
Chapter 10	Miscellaneous	
318	Applications for more than prescribed amount.	202
319	Protection from liability	202
320	Forms	203
321	Regulation-making power.	203
322	Non-application of Act to long-term leases on Hamilton Island . .	203
Chapter 11	Transitional, repeals and amendments	
Part 1	Transitional provisions for Act No. 86 of 1994	
Division 2	Transitional references	
323	Application of division.	204
324	References to former Acts	204
325	References to former authority	204
Division 4	Other transitional provisions	
Part 2	Transitional provisions for Residential Tenancies Amendment Act 1998	
340	Definitions for pt 2.	205
341	Fixed term agreements in force at commencement.	205
342	Periodic agreements in force at commencement	205

343	Short tenancy (moveable dwelling) agreements in force at commencement	206
Part 3	Transitional provisions for Residential Tenancies and Other Legislation Amendment Act 2003	
Division 1	Preliminary	
344	Meaning of amendment Act for pt 3	206
Division 2	Miscellaneous	
345	Application for payment of rental bond	207
346	Supply of locks and keys	207
347	Conciliators	207
Division 3	Tenancy databases	
348	Application of certain tenancy database provisions	208
349	Application to tribunal about listing made in certain circumstances	208
350	Application to tribunal about incorrect or unjust listing	209
Schedule 3	Dictionary	210
 Endnotes		
1	Index to endnotes	222
2	Date to which amendments incorporated	222
3	Key	223
4	Table of reprints	223
5	Tables in earlier reprints	224
6	List of legislation	224
7	List of annotations	227
8	List of forms notified or published in the gazette	244

Residential Tenancies Act 1994

[as amended by all amendments that commenced on or before 1 January 2005]

An Act about residential tenancy agreements, and related matters

Chapter 1 Preliminary

Part 1 Introductory provisions

1 Short title

This Act may be cited as the *Residential Tenancies Act 1994*.

Part 2 Interpretation

Division 1 Location of definitions

3 Definitions and dictionary

- (1) The dictionary in schedule 3 defines particular words used in this Act.
- (2) Division 2 of this part defines key terms used in this Act.
- (3) The key terms and definitions found elsewhere in the Act are signposted in the dictionary.

Division 2 Meaning of key terms

3A Caravan

- (1) A *caravan* is a trailer—
 - (a) designed principally for residential purposes; and
 - (b) designed to be attached to and towed by a self-propelled vehicle; and
 - (c) that, as originally designed, was capable of being registered under a law of the State about the use of vehicles on public roads.
- (2) Also, a *caravan* is something—
 - (a) not fitted with wheels; and
 - (b) not designed for permanent attachment to land but designed for attachment to a motor vehicle and for use for residential purposes.
- (3) In addition, a *caravan* is a self-propelled vehicle—
 - (a) that—
 - (i) is designed to be used both as a vehicle and for residential purposes; or
 - (ii) was designed to be used solely as a vehicle but has been modified to be suitable for use both as a vehicle and for residential purposes; and
 - (b) that, as originally designed, was capable of being registered under a law of the State about the use of vehicles on public roads.

4 Lessor

- (1) A *lessor*¹ is the person who gives the right to occupy residential premises under a residential tenancy agreement.

¹ Under the *Acts Interpretation Act 1954*, section 35A (References to person with interest in land includes personal representative etc.), a reference in an Act to a person as lessor includes a reference to the person's personal representatives, successors and assigns.

- (2) A *lessor* also includes—
- (a) the person who is to give the right to occupy residential premises under a proposed residential tenancy agreement; and
 - (b) a tenant who has given, or is to give, the right to occupy residential premises to a subtenant.

5 Premises

- (1) *Premises* include a part of premises and land occupied with premises.
- (2) *Premises* also include—
- (a) a caravan or its site, or both the caravan and site; and
 - (b) a manufactured home in, or intended to be situated in, a moveable dwelling park or its site, or both the manufactured home and site; and
 - (c) a houseboat.

6 Residential premises

Residential premises are premises used, or intended to be used, as a place of residence or mainly as a place of residence.

7 Residential tenancy

A *residential tenancy* is the right to occupy residential premises under a residential tenancy agreement.

8 Residential tenancy agreement

- (1) A *residential tenancy agreement* is an agreement under which a person gives to someone else a right to occupy residential premises as a residence.
- (2) Subsection (1) applies whether or not the right is a right of exclusive occupation.
- (3) Subsection (1) also applies whether the agreement is—
- (a) wholly in writing, wholly oral or wholly implied; or

- (b) partly in a form mentioned in paragraph (a) and partly in 1 or both of the other forms.

9 Tenant

- (1) A *tenant*² is the person to whom the right to occupy residential premises under a residential tenancy agreement is given.
- (2) A *tenant* also includes—
 - (a) the person to whom the right to occupy residential premises is to be given under a proposed residential tenancy agreement; and
 - (b) the subtenant of a tenant.

Part 3 Operation of Act

10 Act applies only to certain residential tenancy agreements etc.

- (1) This Act applies only to residential tenancy agreements and to—
 - (a) lessors, tenants and their respective rights and obligations under residential tenancy agreements; and
 - (b) premises under residential tenancy agreements; and
 - (c) a tenancy under a residential tenancy agreement.
- (2) However, this Act does not apply to all residential tenancy agreements.

2 Under the *Acts Interpretation Act 1954*, section 35A (References to person with interest in land includes personal representative etc.), a reference in an Act to a person as lessee includes a reference to the person's personal representatives, successors and assigns. Under section 36 (Meaning of commonly used words and expressions) of that Act, a lessee includes a tenant.

- (3) For example, under part 4, this Act, or some of its provisions, do not apply to certain residential tenancy agreements.³

Examples of residential tenancy agreements to which the Act does not apply—

- 1 Under section 16, this Act does not apply to a lease given by the State under certain other Acts.
- 2 A regulation under section 20 may declare that this Act does not apply to an agreement.
- 3 Under section 21, this Act does not apply to an agreement giving a right of occupancy for holiday purposes.
- 4 Under section 22, this Act generally does not apply to an agreement if the tenant is a boarder or lodger.
- 5 Under section 23, this Act generally does not apply to an agreement for premises that are part of an educational institution, hospital, nursing home or retirement village.
- 6 Under section 24, this Act does not apply to certain agreements under which the tenant is being supplied with temporary refuge accommodation.
- 7 Under section 25, this Act does not apply to agreements under the *Manufactured Homes (Residential Parks) Act 2003*.

11 References to agreements

In this Act (other than part 2, division 2⁴), a reference to an agreement is a reference to a residential tenancy agreement to which this Act applies.

12 Reference to lessors and tenants

In this Act (other than in part 2, division 2), a reference to a lessor or tenant is a reference to a lessor or tenant under a residential tenancy agreement to which this Act applies.

3 Part 4 deals with the application of this Act.

4 Part 2, division 2 deals with the meaning of key terms.

13 References to premises

In this Act (other than part 2, division 2), a reference to premises is a reference to a residential premises under a residential tenancy agreement to which this Act applies.

14 References to tenancies

In this Act (other than in part 2, division 2), a reference to a tenancy is a reference to a residential tenancy under a residential tenancy agreement to which this Act applies.

14A Provision stating that lessor or lessor's agent must do something

- (1) This section applies to a provision of this Act stating that the lessor or lessor's agent must do something (the *required act*).
- (2) The reference in the provision to the lessor's agent is a reference to a person who is the agent of the lessor to do the required act.
- (3) If the required act is done, whether by the agent or personally by the lessor, both the lessor and the agent are taken to have complied with the provision.
- (4) If the required act is omitted to be done, both the lessor and the agent are taken to have contravened the provision and, if the contravention is an offence—
 - (a) each of them may be dealt with for the offence; and
 - (b) section 315(2)⁵ applies to a proceeding for the offence.

14B Lessor's agent

A reference in a provision of this Act to something being done by a lessor, without mentioning an agent of the lessor, does not, by implication, limit the extent to which the thing may be done by an agent of the lessor.

5 Section 315 (Responsibility for acts or omissions of representatives)

Part 4 Application of Act

Division 1 General

15 Act binds all persons

- (1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, some provisions of this Act do not apply to the State.

Examples of provisions not applying to State—

- 1 section 53 (Rent increases)
- 2 section 53A (Tenant's application to tribunal about rent increase)
- 3 section 89 (Outgoings other than service charges)

16 State as lessor

- (1) This Act does not apply to a lease, even if the lease is for, or for purposes that include, residential purposes, if—
 - (a) the lease is granted under the authority of an authorising law; and
 - (b) the State is the lessor.
- (2) However, if the lessee sublets the land or a part of the land, under the authorising law, this Act applies to the sublease to the extent to which this Act is not inconsistent with the authorising law.
- (3) To remove any doubt, it is declared that this Act does not apply to a long term lease entered into or granted by the South Bank Corporation in relation to premises within the South Bank corporation area even if the lease is for, or for purposes that include, residential purposes.
- (4) However, if the lessee of a lease mentioned in subsection (3) sublets the land or a part of the land for, or for purposes that include, residential purposes, this Act applies to the sublease.

(5) In this section—

authorising law means an Act other than this Act, the repealed *State Housing Act 1945* or the *Housing Act 2003*.

long term lease means—

- (a) a lease for a term, including renewal options, of at least 100 years; or
- (b) a perpetual lease as defined under the *South Bank Corporation Act 1989*.

South Bank corporation area means the corporation area as defined under the *South Bank Corporation Act 1989*.

17 Application of Property Law Act to agreements

- (1) The *Property Law Act 1974* does not apply to residential tenancy agreements.
- (2) However, a regulation may declare that the *Property Law Act 1974*, or a provision of that Act, applies, or applies with prescribed changes, to residential tenancy agreements or a particular type of residential tenancy agreement.
- (3) Nothing in subsection (1) affects the application of the *Property Law Act 1974* to an agreement about a tenancy if the agreement is not a residential tenancy agreement.

18 Rights and remedies of persons

- (1) A right or remedy given to a person under this Act is in addition to, and not in substitution for, a right or remedy the person would have apart from this Act.
- (2) Without limiting subsection (1), this Act does not operate to reduce the effect of a right or remedy a person would have apart from this Act.
- (3) In subsections (1) and (2), a reference to a right or remedy a person would have apart from this Act is a reference to a right or remedy that is not inconsistent with this Act.

19 Minors

- (1) A minor has the capacity to enter into a residential tenancy agreement.
- (2) A residential tenancy agreement entered into by a minor is enforceable in the same way as if the agreement had been entered into by an adult.

20 Changes to Act's application

A regulation may declare that this Act, or a provision of this Act, does not apply to, or applies with prescribed changes to, any of the following—

- (a) residential tenancy agreements;
- (b) residential premises;
- (c) entities.

**Division 2 Agreements to which this Act
applies and does not apply****20A Contracts of sale and mortgages**

To remove any doubt, it is declared that this Act does not apply to an agreement for a tenancy if the tenancy is created or arises—

- (a) between the parties to a contract of sale of residential premises under a term of the contract; or
- (b) between the parties to a mortgage of residential premises under a term of the mortgage.

21 Premises used for holidays

- (1) This Act does not apply to a residential tenancy agreement if the right of occupancy of the premises is given for holiday purposes.
- (2) For subsection (1), a right to occupy premises given for 6 weeks or longer is taken not to be given for holiday purposes unless the contrary is proved.

22 Residential service agreements, boarders and lodgers

- (1) This Act does not apply to a residential tenancy agreement if—
 - (a) the agreement is a residential service agreement; or
 - (b) the tenant is a boarder or lodger.
- (2) However, if a rental bond is paid for a residential tenancy agreement, other than a residential service agreement, under which the tenant is a boarder or lodger, the provisions of this Act about rental bonds apply to the agreement.

23 Educational institutions, hospitals, nursing homes and retirement villages

- (1) This Act does not apply to a residential tenancy agreement for premises that are part of an educational institution, hospital, nursing home or retirement village.
- (2) However, this Act applies to a residential tenancy agreement for premises mentioned in subsection (1) if the premises are used as a person's place of residence under the person's employment at the institution, hospital, nursing home or retirement village.
- (3) Despite subsection (1), this Act applies to a residential tenancy agreement for premises that are part of a retirement village if the agreement is declared under the regulations to be a residential tenancy agreement to which this Act applies.

23A Rental purchase plan agreements

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

24 Temporary refuge accommodation

This Act does not apply to a residential tenancy agreement if the tenant is being supplied with temporary refuge accommodation at the premises and the accommodation is not approved supported accommodation.

25 Agreements under Manufactured Homes (Residential Parks) Act 2003

- (1) This Act does not apply to a residential tenancy agreement if the agreement is a site agreement.
- (2) However, subsection (1) does not prevent this Act from applying to a subsequent agreement.
- (3) A regulation may declare that this Act, or a provision of this Act, does not apply to a subsequent agreement or applies with prescribed changes to a subsequent agreement.
- (4) In this section—

subsequent agreement means an agreement under which a home owner becomes a lessor under this Act.

25A Headleases for employee housing

- (1) This Act does not apply to an agreement relating to the letting of premises (the *headlease*) entered into by the Commonwealth, the State, a local government or a corporation as tenant for the purpose of subletting the premises to an employee of the tenant.
- (2) Subsection (1) does not prevent this Act from applying to a residential tenancy agreement under which the tenant under the headlease lets the premises to an employee of the tenant.
- (3) This section applies only to a headlease entered into after the commencement of this section.

25B Headleases for affordable housing agreements

- (1) This Act does not apply to an agreement relating to the letting of premises (the *headlease*) entered into by the Commonwealth, the State, a local government or a nonprofit corporation as tenant for the purpose of subletting the premises to a person under an affordable housing scheme.
- (2) Subsection (1) does not prevent this Act from applying to a residential tenancy agreement under which the tenant under the headlease lets the premises to a person whose right of occupancy arises under an affordable housing scheme.

- (3) This section applies only to a headlease entered into after the commencement of this section.

26 Hotels and motels

This Act applies to a residential tenancy agreement even if the premises are part of a hotel or motel.

27 Headleases for approved supported accommodation

- (1) This Act does not apply to an agreement relating to the letting of premises (the *headlease*) entered into by an entity as tenant for the purpose of using the premises to provide approved supported accommodation.
- (2) Subsection (1) does not prevent this Act from applying to a residential tenancy agreement under which the tenant under the headlease lets the premises to a person to provide the person with approved supported accommodation.
- (3) Despite subsection (2), this Act does not apply to an agreement under which the tenant's right of occupancy arises out of approved supported accommodation if the tenant is a person declared under the regulations⁶ to be a person to whom this Act does not apply.

Division 3 Moveable dwelling premises

28 Application of division

This division applies only to agreements for moveable dwelling premises.

29 Purpose of division

- (1) This division provides for the classifying of tenancies of moveable dwelling premises as either short or long tenancies.

⁶ See the *Residential Tenancies Regulation 1995*, section 15 (Approved supported accommodation agreements—Act, s 27).

- (2) For some matters, the way this Act applies to a residential tenancy of moveable dwelling premises depends on whether the tenancy is a short or long tenancy.

Examples—

- 1 Section 39 (which requires written agreements) applies to a long tenancy (moveable dwelling), but does not apply to a short tenancy (moveable dwelling).
- 2 Section 44 requires a copy of park rules to be given to the tenant at different times depending on whether the tenancy is a long tenancy (moveable dwelling) or short tenancy (moveable dwelling).

30 Short tenancy statements

- (1) If the lessor and tenant intend that the tenant's occupation of the premises is not to continue for more than 42 days (the *base period*), they may make a written statement to that effect (the *short tenancy statement*).
- (2) The short tenancy statement must be made before, or when, the tenancy starts.

31 Extending short tenancy statements

- (1) If the parties make a short tenancy statement, they may make another written statement (the *short tenancy (extension) statement*) agreeing that this Act should continue to apply to the tenancy for another period stated in the statement (the *extended period*) in the same way it applies during the base period.
- (2) A short tenancy (extension) statement may only be made in the base period.
- (3) Only 1 short tenancy (extension) statement may be made about the tenancy.
- (4) The extended period may not be more than 42 days.

32 Setting aside short tenancy (extension) statements

- (1) If the parties made a short tenancy (extension) statement, the tenant may apply to a tribunal for an order setting aside the

statement because the lessor exerted undue influence on the tenant to make the statement.

- (2) The tribunal may make the order if it is satisfied the tenant has established the ground of the application.

33 Short tenancies

For any period for which a short tenancy statement or short tenancy (extension) statement applies to the tenancy, the tenancy is a *short tenancy (moveable dwelling)*.

34 Long tenancies

If the tenancy is not a short tenancy (moveable dwelling), it is a *long tenancy (moveable dwelling)*.

Chapter 2 Residential tenancy agreements

Part 1 Agreements

Division 1 General

35 Terms of agreements include duties under Act etc.

- (1) If, under this Act, a duty is imposed on, or an entitlement is given to, a lessor or tenant, the duty or entitlement is taken to be included as a term of the residential tenancy agreement.
- (2) If the premises are moveable dwelling premises in a moveable dwelling park, any park rules for the time being in force also are taken to be included as terms of the agreement.⁷

⁷ See chapter 3 (Rights and obligations of lessors and tenants), part 6 (Additional provisions for moveable dwelling premises), division 3 (Park rules) for provisions about park rules.

- (3) If there is a conciliation agreement⁸ in force about the residential tenancy agreement, the terms of the conciliation agreement also are taken to be included as terms of the residential tenancy agreement.
- (4) This section applies even if the duty, entitlement or rule is not included as a term of a written agreement.

36 Contracting out prohibited

- (1) An agreement or arrangement is void to the extent to which it purports to exclude, change or restrict the application or operation of a provision of this Act about the terms of a residential tenancy agreement.
- (2) A person must not enter into an agreement or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.

Maximum penalty—50 penalty units.

- (3) In this section—

agreement includes an agreement that is not a residential tenancy agreement.

37 Inconsistency

- (1) If a provision of this Act is inconsistent with a term of a residential tenancy agreement, the provision prevails and the term is void to the extent of the inconsistency.
- (2) If a standard term of a residential tenancy agreement is inconsistent with a special term of the agreement, the standard term prevails and the special term is void to the extent of the inconsistency.

38 Standard terms

- (1) A regulation may prescribe terms for inclusion in a residential tenancy agreement.

⁸ A conciliation agreement is an agreement mentioned in section 241 (Conciliation agreements).

- (2) The terms prescribed for this section are the *standard terms* for a residential tenancy agreement.

38A Lessor to give proposed agreement to tenant

- (1) Before entering into a residential tenancy agreement, the lessor or lessor's agent must give the tenant a written copy of—
 - (a) the proposed standard terms; and
 - (b) any proposed special terms.
- (2) This section does not apply to an agreement for a short tenancy (moveable dwelling).

39 Written agreements required

- (1) The lessor or lessor's agent must ensure the agreement is in writing to the extent, and in the way, required by this section.
Maximum penalty—20 penalty units.
- (2) The written agreement must—
 - (a) include the standard terms for the agreement; and
 - (b) include any special terms of the agreement.
- (3) If, for a standard term to be effective, the term requires stated information to be included in it, (including, for example, the names of the parties and a description of the premises) the agreement is taken to include the standard term only if the information is properly included.
- (5) The agreement must be written in a clear and precise way.
- (6) The costs of preparing the agreement are payable by the lessor.
- (7) Nothing in this section—
 - (a) requires the tenant to prepare the written agreement; or
 - (b) affects the enforceability of an agreement that is not in writing.
- (8) This section does not apply to—

- (a) an agreement for a short tenancy (moveable dwelling);
or
- (b) a periodic tenancy mentioned in section 46(3).⁹

40 Giving and signing written agreement

- (1) The lessor or lessor's agent must give the document prepared for section 39 to the tenant for signing.
- (2) Within 5 days after receiving the document, the tenant must sign the document and return it to the lessor or lessor's agent.
- (3) Within 14 days after receiving the document signed by the tenant, the lessor or lessor's agent must sign the document and return a copy signed by both parties to the tenant.

Maximum penalty—10 penalty units.

- (4) This section does not apply to an agreement for a short tenancy (moveable dwelling).

41 Orders of tribunal about giving and signing written agreement

- (1) If the tenant reasonably believes the lessor has contravened section 38A, the tenant may apply to a tribunal for an order that the lessor give a copy of the proposed written agreement to the tenant by a stated day.
- (2) If the tenant reasonably believes the lessor has contravened section 40(1), the tenant may apply to a tribunal for an order that the lessor give the relevant document to the tenant for signing by a stated day.
- (3) If the tenant reasonably believes the lessor has contravened section 40(3), the tenant may apply to a tribunal for an order that the lessor sign the relevant document and return a copy of it to the tenant by a stated day.
- (4) If the lessor reasonably believes the tenant has contravened section 40(2), the lessor may apply to a tribunal for an order that the tenant sign the relevant document and return it to the lessor by a stated day.

⁹ Section 46 (Continuation of fixed term agreements)

- (5) If, on an application made to a tribunal by the tenant, the lessor fails to satisfy the tribunal that the lessor acted reasonably in failing to comply with the provision the subject of the application, the tribunal may make the order sought.
- (6) If, on an application made to a tribunal by the lessor, the tenant fails to satisfy the tribunal that the tenant acted reasonably in failing to comply with section 40(2), the tribunal may order the tenant to sign and return the relevant document to the lessor by a stated day.

Division 2 Associated documents

42 Condition report at start of tenancy

- (1) This section applies to a lessor or lessor's agent only if at least some of the terms of the agreement are required to be in writing.
- (2) The lessor or lessor's agent must—
 - (a) prepare, in the approved form, a condition report for the premises and any inclusions; and
 - (b) sign the report; and
 - (c) give 2 copies of the report to the tenant as required by this section.

Maximum penalty—20 penalty units.

- (3) The lessor or lessor's agent must give the copies to the tenant—
 - (a) if paragraph (b) does not apply—when the written agreement is given to the tenant for signing; or
 - (b) if the tenant is not entitled to occupy the premises under the agreement until a day (the *occupation day*) that is later than the day the lessor or agent gives the written agreement to the tenant for signing (the *delivery day*)—at a time in the period starting at the start of the delivery day and ending at the end of the occupation day.

Residential Tenancies Act 1994

(3A) Despite subsection (3), if a written agreement is not given to the tenant for signing before the day (also the *occupation day*) the tenant becomes entitled to occupy the premises under the agreement, the lessor or lessor's agent must give the copies to the tenant on the occupation day.

(4) The tenant must, within the required period—

- (a) sign the copies; and
- (b) if the tenant does not agree with the report—show the parts of the report the tenant disagrees with by marking the copies in an appropriate way; and
- (c) return a copy to the lessor or lessor's agent.

Maximum penalty—20 penalty units.

(5) For subsection (4), the required period is—

- (a) if the copies of the report are given to the tenant under subsection (3)(a)—the period ending 3 days after receiving the copies; or
- (b) if the copies of the report are given to the tenant under subsection (3)(b) or (3A)—the period ending 3 days after the occupation day.

(6) The lessor or lessor's agent must keep, at least until 6 months after the agreement ends—

- (a) the signed copy of the report returned to the lessor or agent by the tenant; or
- (b) if the tenant does not return a signed copy—another copy of the report.

Maximum penalty—20 penalty units.

(7) If the lessor is the State, this section does not apply until a date prescribed under a regulation.

42A Condition report at end of tenancy

(1) The tenant must—

- (a) prepare, in the approved form, a condition report for the premises and any inclusions; and

Residential Tenancies Act 1994

- (b) sign the report; and
 - (c) as soon as practicable after the agreement ends, give 2 copies of the report to the lessor or lessor's agent.
- (2) The lessor or lessor's agent must, within 3 business days after receiving the copies of the report—
- (a) sign the copies; and
 - (b) if the lessor or agent does not agree with the report—show the parts of the report the lessor or agent disagrees with by marking the copies in an appropriate way; and
 - (c) either—
 - (i) if the tenant has given a forwarding address to the lessor or agent—return a copy to the tenant at the address; or
 - (ii) if subparagraph (i) does not apply—keep the copies.
- (3) The lessor or lessor's agent must keep a copy of the condition report signed by both parties for at least 6 months after the agreement ends.
- (4) If the lessor is the State, this section does not apply until a date prescribed under a regulation.

43 Information statement

- (1) The lessor or lessor's agent must give to the tenant, as required by this section, a statement in the approved form containing information for the benefit of the tenant.

Maximum penalty—10 penalty units.

- (2) Without limiting subsection (1), the information may be about—
- (a) the duties and entitlements of the lessor and tenant; and
 - (b) the procedures for resolving disputes under the agreement (including conciliation processes); and
 - (c) entities to which issues about the agreement may be referred.

- (3) For an agreement that is not an agreement for a short tenancy (moveable dwelling), the statement must be given to the tenant on the earlier of the following—
 - (a) when the written agreement is given to the tenant for signing;
 - (b) the day the tenant becomes entitled to occupy the premises under the agreement.
- (4) For an agreement that is an agreement for a short tenancy (moveable dwelling), the statement must be given to the tenant when the tenancy commences.

44 Park rules

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) The lessor or lessor's agent must give to the tenant, as required by this section—
 - (a) a copy of the park rules; and
 - (b) if a park rule is changed—a copy of the rule as changed.Maximum penalty—20 penalty units.
- (3) The copy of the park rules must be given to the tenant—
 - (a) if the tenancy is a long tenancy (moveable dwelling)—when the agreement is given to the tenant for signing; or
 - (b) if the tenancy is a short tenancy (moveable dwelling)—at the start of the agreement.
- (4) The copy of a park rule as changed must be given to the tenant as soon as practicable after the change takes effect.

45 By-laws

If by-laws under the *Building Units and Group Titles Act 1980* or *Body Corporate and Community Management Act 1997* are to apply to the occupation of premises by a tenant, the lessor or lessor's agent must inform the tenant of the application of

the by-laws, when giving the written agreement to the tenant for signing.

Maximum penalty—20 penalty units.

Division 3 Fixed term agreements

46 Continuation of fixed term agreements

- (1) This section applies to an agreement if—
 - (a) it creates a residential tenancy for a fixed term; and
 - (b) it does not provide for its continuance after the day the term ends (the *end day*); and
 - (c) none of the following notices is given by lessor or tenant to the other party before the end day—
 - notice to leave
 - notice of intention to leave
 - abandonment termination notice.
- (2) However, this section does not apply to an agreement if the tenancy is a short tenancy (moveable dwelling).
- (3) If the tenant continues to occupy the premises after the end day, the agreement continues to apply—
 - (a) on the same terms on which it applied immediately before the end day (other than any term about the agreement's term); and
 - (b) on the basis the tenant is holding over under a periodic tenancy.
- (4) This section does not stop the lessor and tenant under an agreement that creates a residential tenancy for a fixed term from entering into another agreement with each other for a tenancy of the premises starting at the end of the fixed term.

Part 2 Rent

47 How rent to be paid

- (1) The tenant must pay the rent in an approved way.
- (2) If an approved way for payment of rent is stated in the agreement, the tenant must pay the rent in the way stated.
- (3) However, if, after signing the agreement—
 - (a) the lessor or tenant gives to the other party a written notice stating an approved way, or a different approved way, as the way in which rent is required, or is proposed, to be paid; and
 - (b) the other party agrees in writing (the *rent agreement*) to payments of rent being made in the way stated;the tenant must pay the rent in the way stated while the rent agreement remains in force.
- (4) Rent is paid in an *approved* way if it is paid by—
 - (a) cash; or
 - (b) cheque; or
 - (c) deposit to a financial institution account nominated by the lessor; or
 - (d) credit card; or
 - (e) an EFTPOS system; or
 - (f) deduction from pay, or a pension or other benefit, payable to the tenant; or
 - (g) another way agreed on by the lessor and tenant.

48 Where rent to be paid

- (1) If the place for payment of rent is stated in an agreement, the tenant must pay the rent at the place stated.
- (2) However, if, after signing the agreement, the lessor gives the tenant a written notice stating a place, or a different place, as the place at which rent is required to be paid and the place is

reasonable, the tenant must pay the rent at the place stated in the notice while the notice is in force.

- (3) If the place for payment of rent is not stated, the tenant must pay the rent at an appropriate place.

49 Rent in advance

- (1) A lessor or lessor's agent must not require, as payment of rent in advance under an agreement, more than—
 - (a) for a periodic agreement or an agreement for moveable dwelling premises—2 weeks rent; or
 - (b) for another agreement—1 month rent.

Maximum penalty—20 penalty units.

- (2) A lessor or lessor's agent must not require a payment of rent under an agreement in a period for which rent has already been paid.

Maximum penalty for subsection (2)—10 penalty units.

50 Receipts and other records

- (1) If rent under an agreement is paid in cash, the person receiving the payment must give a receipt as required by this section.

Maximum penalty—10 penalty units.

- (2) If rent under an agreement is paid by cheque, the person receiving the payment must give a receipt, as required by this section, if the person making the payment asks for a receipt when making the payment.

Maximum penalty—10 penalty units.

- (3) A receipt must be signed by the person receiving the payment.
- (4) A receipt must be given to the person making the payment—
 - (a) if the payment is made by the person personally and in cash—when the payment is made; or
 - (b) if the payment is made by the person in cash but not personally—before the end of the next business day after the day the payment is received; or

Residential Tenancies Act 1994

- (c) if the payment is made by cheque—within 3 business days after the day the payment is received.
- (5) The lessor or lessor's agent must, for a payment of rent under an agreement—
- (a) make a written record of the payment (the ***rent payment record***) as required by this section; and
 - (b) give a copy of the record to the tenant as required by this section, if the tenant asks for it.
- Maximum penalty—10 penalty units.
- (6) Subsection (5) does not apply if the rent payment—
- (a) is made in cash; or
 - (b) is made by cheque and a receipt is given for the payment.
- (7) A copy of a rent payment record asked for by a tenant must be given within 7 days after the request is made.
- (8) A receipt or rent payment record must state—
- (a) the tenant's name; and
 - (b) the address of the premises; and
 - (c) the date the payment is received; and
 - (d) the period for which the payment is made; and
 - (e) the amount of the payment; and
 - (f) that the payment is a payment of rent.

51 Keeping of records

- (1) The lessor or lessor's agent must keep, for at least the required period, for each payment of rent under the agreement—
- (a) if a receipt was required to be given for the payment—a copy of the receipt, or another appropriate written record of the payment; or
 - (b) if a receipt was not required to be given for the payment—the rent payment record for the payment.

Maximum penalty—15 penalty units.

- (2) For subsection (1), the ***required period*** is—
- (a) the period fixed under the regulations and ending more than 1 year after the agreement ends; or
 - (b) if a period is not fixed under the regulations—the period ending 1 year after the agreement ends.

52 False, misleading or incomplete rent records

- (1) In this section—
- rent record*** means a receipt, rent payment record or another record of a rent payment.
- (2) A person must not—
- (a) in a rent record, make an entry the person knows is false or misleading in a material particular; or
 - (b) fail to enter a material particular in a rent record, unless the person does not know, and cannot reasonably obtain, the necessary information.

Maximum penalty—20 penalty units.

53 Rent increases

- (1) If the lessor proposes to increase the rent, the lessor must give written notice of the proposal to the tenant.
- (2) The notice must state—
- (a) the amount of the increased rent; and
 - (b) the day from when the increased rent is payable.
- (3) The day stated must not be earlier than—
- (a) for a periodic agreement—2 months after the notice is given; or
 - (b) for a fixed term agreement—1 month after the notice is given.
- (4) Subject to an order of a tribunal under section 53A, the increased rent is payable from the day stated in the notice, and the agreement is taken to be amended accordingly.

- (5) However, if the agreement is a fixed term agreement, the rent may be increased before the term ends only if the agreement—
 - (a) provides for a rent increase; and
 - (b) states the amount of the increase or how the amount of the increase is to be worked out.
- (6) A rent increase is payable by the tenant only if the rent is increased under this section.
- (7) This section does not apply if the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State.

53A Tenant's application to tribunal about rent increase

- (1) If the lessor gives the tenant notice of a proposed rent increase under section 53 and the tenant considers the increase is excessive, the tenant may apply to a tribunal for an order under this section.
- (2) The application must be made—
 - (a) within 30 days after the tenant receives the notice; and
 - (b) if the agreement is a fixed term agreement—before the term of the agreement ends.
- (3) The tribunal may make either of the following orders on an application under this section—
 - (a) an order reducing the amount of the proposed increase of rent by a stated amount;
 - (b) an order setting aside the amount of the proposed increase of rent.
- (4) In deciding the application, the tribunal must have regard to the following—
 - (a) the range of market rents usually charged for comparable premises;
 - (b) the proposed increased rent compared to the current rent;
 - (c) the state of repair of the premises;

- (d) the term of the tenancy;
 - (e) the period since the last rent increase (if any);
 - (f) anything else the tribunal considers relevant.
- (5) Without limiting the tribunal's powers, the tribunal may make an interim order about payment of the rent increase pending its final decision on the application.
- (6) This section does not apply if the lessor is the State.

54 Rent decreases

- (1) This section applies if the premises—
- (a) are destroyed, or made completely or partly unfit to live in, in a way that does not result from a breach of the agreement; or
 - (b) no longer may be used lawfully as a residence; or
 - (c) are appropriated or acquired compulsorily by an authority.
- (1A) This section also applies if—
- (a) services, facilities or goods to be provided to the tenant under the agreement are no longer available or are withdrawn other than because the tenant failed to meet the tenant's obligations under the agreement; or
 - (b) the amenity or standard of the premises decreases substantially other than because of malicious damage caused by the tenant.
- (2) The rent payable under the agreement decreases accordingly or, if an order for a decrease in the rent is made by a tribunal, to the extent stated in the order.
- (3) A tribunal may make an order for a rent decrease only if—
- (a) the tenant applies to the tribunal for the order; and
 - (b) if this section applies because of subsection (1)—the premises are partly unfit to live in.

55 Seizure of tenant's goods for rent etc.

- (1) A person must not seize or dispose of any of the goods of a tenant as security for, or in payment of any of the following—
 - (a) rent payable under an agreement;
 - (b) an amount payable to the lessor, or at the lessor's direction, by way of reimbursement for an amount payable by the tenant under the agreement but paid by the lessor for the tenant;
 - (c) a claim for loss or damage caused by the tenant's breach of the agreement.

Maximum penalty—40 penalty units.

- (2) However, subsection (1) does not apply to the seizure or disposal of goods under section 230A¹⁰ or an enforcement warrant.

56 Apportionment

- (1) The rent payable under an agreement accumulates from day to day.
- (2) On termination of the agreement—
 - (a) the rent is to be appropriately apportioned; and
 - (b) the appropriate amount is payable by or to the tenant.
- (3) If there is a dispute between the lessor and tenant about the amount payable, either party may apply to a tribunal and the tribunal may make any order it considers appropriate about the payment of an amount by or to the tenant.

¹⁰ Section 230A (Goods left on premises)

Part 3 Rental bonds

Division 1 Payments to authority

57 Meaning of *rental bond*

- (1) A *rental bond* for an agreement is an amount—
 - (a) paid by or for the tenant under the agreement; and
 - (b) intended to be available for the financial protection of the lessor against the tenant breaching the agreement.
- (1A) However, a *rental bond* does not include rent paid in advance.
- (2) In deciding whether an amount is a rental bond, it does not matter—
 - (a) when the amount is paid; or
 - (b) if the amount is paid directly to the authority; or
 - (c) to or by whom the amount is paid; or
 - (d) how the amount is described in the agreement or arrangement about the payment of the amount.
- (3) A *rental bond* includes a part of a rental bond.

58 Contributor for a rental bond

- (1) A person is a *contributor* for a rental bond—
 - (a) if the person is the tenant and there are no cotenants; or
 - (b) if—
 - (i) the person is a cotenant; and
 - (ii) the authority is satisfied the person is responsible for payment of the bond or part of the bond.
- (2) Without limiting subsection (1)(b)(ii), the authority may be satisfied a person is responsible for payment of a rental bond or part of a rental bond—

- (a) because the rental bond notice for the agreement indicates the person paid the bond or contributed to payment of the bond; or
- (b) because a cotenant—
 - (i) is shown on the rental bond notice for the agreement to have paid the bond; and
 - (ii) has given the authority a written notice naming the person as a contributor for the bond; or
- (c) because a former cotenant—
 - (i) is shown on the rental bond notice for the agreement to have contributed to payment of the bond; and
 - (ii) has given the authority a written notice naming the person as a contributor for the bond in place of the former cotenant.

58A Share of a rental bond

- (1) This section applies if there is more than 1 contributor for a rental bond.
- (2) If the authority is satisfied a contributor for a rental bond is responsible for payment of a certain amount of the bond, that amount is the contributor's *share* of the bond.
- (3) The authority may assume 2 or more contributors for a rental bond are responsible for payment of the bond, or part of the bond, in equal shares if the authority—
 - (a) is satisfied the contributors are responsible for payment of the bond or that part of the bond; but
 - (b) has not been notified, by a rental bond notice or a notice from the contributors, of the amount for which each of the contributors is responsible.

59 Duty to pay rental bond

- (1) A person receiving a rental bond must, within 10 days of receiving it—
 - (a) pay it to the authority; and

- (b) give the authority a notice, in the approved form, about the rental bond.

Maximum penalty—40 penalty units.

- (2) Subsection (1) does not apply to a person to whom section 59A applies.

59A Duty to pay rental bond instalments

- (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) If the lessor has received all the rental bond instalments, the lessor must, within 10 days after receiving the last instalment—
 - (a) pay the instalments to the authority; and
 - (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty—40 penalty units.

- (3) If the agreement is terminated before the lessor receives all the rental bond instalments, the lessor must, within 10 days after the termination of the agreement—
 - (a) pay the instalments received by the lessor to the authority; and
 - (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty for subsection (3)—40 penalty units.

60 Duty to pay rental bond if financial protection given

- (1) This section applies to a lessor under an agreement if—

- (a) financial protection against a breach of the agreement by the tenant is given to the lessor (whether by a guarantee or undertaking given by a financial institution or in another way); and
 - (b) the financial protection is not given in the form of a rental bond; and
 - (c) the maximum rental bond for the agreement is not paid.
- (2) Within 10 days after the financial protection is given, the lessor must pay to the authority an amount equal to—
- (a) the maximum rental bond for the agreement; or
 - (b) if a rental bond less than the maximum rental bond has been paid—the difference between the maximum rental bond and the amount of rental bond actually paid.

Maximum penalty—40 penalty units.

- (3) An amount paid, or required to be paid, by the lessor under subsection (2) is taken to be a rental bond.

60A Acknowledging receipt of rental bond

As soon as practicable after receiving a rental bond, the authority must give separate written acknowledgments of the receipt to the lessor and tenant.

61 No entitlement to interest

No one other than the authority has legal or beneficial entitlement to an amount earned on the investment of a rental bond held by the authority.

62 Continuance of rental bond

- (1) This section applies if—
- (a) the authority holds a rental bond for an agreement; and
 - (b) the agreement ends; and
 - (c) the tenant continues occupying the premises under another agreement (the *new agreement*) with the lessor; and

- (d) the authority does not receive an application for payment of the rental bond.
- (2) The rental bond is taken to be a rental bond for the new agreement.

Division 2 Payments by authority

Subdivision 1 Preliminary

63 Purpose of division

This division deals with the payment by the authority of rental bonds held by it.

64 Making payment

The authority may pay a rental bond only under this division.

65 Application for payment

- (1) An application to the authority for payment of a rental bond must be made in the approved form.
- (2) An application may only direct a payment to be made to the lessor or a contributor for the bond.

Subdivision 2 Payment of bond if only 1 contributor

66 Application of sdiv 2

This subdivision applies to an application to the authority for payment of a rental bond if there is only 1 contributor for the bond.

67 Joint application by lessor and contributor

If the application is made jointly by the lessor and the contributor, the authority must make each payment directed by the application.

68 Application by lessor

- (1) This section applies if the application is made by the lessor only.
- (2) If the application directs that a payment be made to the contributor, the authority must make the payment.
- (3) If the application directs that a payment be made to the lessor—
 - (a) section 69G applies to the directed payment; and
 - (b) the contributor is the interested person for the payment.

69 Application by contributor

- (1) This section applies if the application is made by the contributor only.
- (2) If the application directs that a payment be made to the lessor, the authority must make the payment.
- (3) If the application directs that a payment be made to the contributor—
 - (a) section 69G applies to the directed payment; and
 - (b) the lessor is the interested person for the payment.

Subdivision 3 Payment of bond if more than 1 contributor**69A Application of sdiv 3**

This subdivision applies to an application to the authority for payment of a rental bond if there is more than 1 contributor for the bond.

69B Joint application by lessor and every contributor

If the application is made jointly by the lessor and every contributor, the authority must make each payment directed by the application.

69C Joint application by lessor and some contributors

- (1) This section applies if the application is made jointly by the lessor and some, but not all, of the contributors.
- (2) If there is only 1 non-applicant contributor and the application directs that a payment be made to the non-applicant contributor, the authority must make the payment.
- (3) If the application directs that payments be made to all of the contributors in the same proportions as their shares of the bond, the authority must make the payments.
- (4) If the application directs that each non-applicant contributor be paid his or her entire share of the bond, the authority must make those payments and any other payments directed by the application.
- (5) Otherwise—
 - (a) section 69G applies to a payment directed by the application; and
 - (b) each non-applicant contributor is an interested person for the payment.
- (6) In this section—

non-applicant contributor means a contributor who is not an applicant.

69D Application by lessor

- (1) This section applies if the application is made by the lessor only.
- (2) If the application directs that payments be made to all of the contributors in the same proportions as their shares of the bond, the authority must make the payments.

- (3) Otherwise—
 - (a) section 69G applies to a payment directed by the application; and
 - (b) each contributor is an interested person for the payment.

69E Application by every contributor

- (1) This section applies if the application is made by every contributor but not jointly with the lessor.
- (2) If the application directs that a payment be made to the lessor, the authority must make the payment.
- (3) If the application directs that a payment be made to a contributor—
 - (a) section 69G applies to the directed payment; and
 - (b) the lessor is the interested person for the payment.

69F Application by some contributors

- (1) This section applies if the application is made by some, but not all, of the contributors and not jointly with the lessor.
- (2) If the application directs that a payment be made to the lessor—
 - (a) section 69G applies to the directed payment; and
 - (b) each non-applicant contributor is an interested person for the payment.
- (3) If the application directs that a payment be made to a contributor—
 - (a) section 69G applies to the directed payment; and
 - (b) the lessor and each non-applicant contributor are interested persons for the payment.
- (4) In this section—
non-applicant contributor means a contributor who is not an applicant.

Subdivision 4 Other matters about payment

69G Payment for which notice must be given

- (1) This section concerns a payment, directed by an application for payment of a rental bond, mentioned in any of the following provisions—
 - section 68(3)
 - section 69(3)
 - section 69C(5)
 - section 69D(3)
 - section 69E(3)
 - section 69F(2) or (3).
- (2) The authority must give written notice of the application to the interested person or, if there is more than 1 interested person, to each of them.
- (3) If there is only 1 interested person, the authority must make the directed payment—
 - (a) if the interested person does not make a dispute resolution request to the authority about the payment within 14 days after notice is given under subsection (2); or
 - (b) if a dispute resolution request under paragraph (a) is made but is withdrawn; or
 - (c) if—
 - (i) a dispute resolution request under paragraph (a) is made; and
 - (ii) the conciliation process ends without a conciliated resolution having been reached; and
 - (iii) the authority gives the interested person a written notice about the ending of the conciliation process; and
 - (iv) either—

Residential Tenancies Act 1994

- (A) the interested person does not apply to a tribunal for an order about the payment, and give the authority a written notice informing it of the application, within 7 days after the notice under subparagraph (iii) is given; or
 - (B) an application to a tribunal under sub-subparagraph (A) is made but is withdrawn.
- (4) If there is more than 1 interested person, the authority must make the directed payment—
 - (a) if none of the interested persons makes a dispute resolution request to the authority about the payment within 14 days after notice is given under subsection (2); or
 - (b) if 1 or more dispute resolution requests under paragraph (a) are made but all are withdrawn; or
 - (c) if—
 - (i) 1 or more dispute resolution requests under paragraph (a) are made; and
 - (ii) the conciliation process ends without a conciliated resolution having been reached; and
 - (iii) the authority gives the interested person or persons who made the dispute resolution request a written notice about the ending of the conciliation process; and
 - (iv) either—
 - (A) none of the interested persons applies to a tribunal for an order about the payment, and gives the authority a written notice informing it of the application, within 7 days after the notice under subparagraph (iii) is given; or
 - (B) 1 or more applications to a tribunal under sub-subparagraph (A) are made but all are withdrawn.

(5) In this section—

interested person, for a payment mentioned in a notice provision, means a person stated in the provision to be an interested person for the payment.

notice provision means a provision mentioned in subsection (1).

70 Payment under tribunal order

(1) This section applies if—

- (a) a tribunal makes an order about payment of a rental bond; and
- (b) the authority is given a copy of the order.

(2) The authority must pay the rental bond in accordance with the order.

72 Payment to rental bond supplier

(1) This section applies if—

- (a) a rental bond is payable to a contributor for the bond; and
- (b) the authority is satisfied a person paid the rental bond direct to it as assistance to the contributor.

(2) The authority must pay the rental bond to the person instead of the contributor.

73 Limitation affecting payment

(1) The authority must not pay a rental bond if it knows—

- (a) the lessor or tenant has given a notice to leave, or notice of intention to leave, the premises; and
- (b) the handover day for the notice has not arrived.

(2) Also, the authority must not pay a rental bond if it knows—

- (a) the lessor has given an abandonment termination notice to the tenant; and
 - (b) the agreement has not terminated.¹¹
- (3) However, subsections (1) and (2) do not prevent the authority making a payment it may make without giving notice to the lessor or tenant.

74 Withdrawal of application

- (1) This section applies to an application to the authority for the payment of a rental bond.
- (2) If there is only 1 applicant and the application is withdrawn before the authority makes a payment directed by it, the authority must stop dealing with it.
- (3) For an application with 2 or more applicants—
 - (a) if all of the applicants withdraw before the authority makes a payment directed by the application, the authority must stop dealing with it; or
 - (b) if 1 or more, but not all, of the applicants withdraw before the authority makes a payment directed by the application, the authority must deal with it as an application made by the remaining applicants.

75 Payment under person's direction

- (1) If the authority is required to pay a rental bond to a person, the authority may make the payment in accordance with the person's directions.
- (2) However, if the payment is required to be made to the tenant, the authority may make the payment to a person other than the tenant only if, under the regulations,¹² the person is taken to have contributed to the rental bond.
- (3) Subsection (2) is subject to section 72.¹³

11 See section 151 (Termination of agreements).

12 See the *Residential Tenancies Regulation 1995*, section 18 (Payment under person's direction—Act, s 75(2)).

13 Section 72 deals with payment to a rental bond supplier.

- (4) Also, if the payment is required to be made to the lessor, the authority may make the payment only to the lessor or the lessor's agent.

Division 3 Enforcement provisions

76 Receipt

- (1) A person receiving a rental bond must give a receipt for the rental bond as required by this section.

Maximum penalty—10 penalty units.

- (2) The receipt must—
- (a) be given to the person paying the rental bond when the rental bond is received; and
 - (b) be signed by the person receiving the rental bond.
- (3) The receipt must state the following—
- (a) the name of the person receiving the rental bond;
 - (b) the tenant's name and, if the person receiving the bond is not the lessor, the lessor's name;
 - (c) the address of the premises for which the bond is paid;
 - (d) the date the bond is received;
 - (e) the amount of the bond;
 - (f) if there are cotenants and the cotenants tell the person receiving the bond the proportions in which the bond is paid—the amount paid by each cotenant.
- (4) The person giving the receipt must keep a copy of it for at least 1 year after the agreement ends.

Maximum penalty for subsection (4)—10 penalty units.

77 Payments above maximum amount

- (1) A person must not require payment of, or accept, a rental bond more than, or amounts as rental bond totalling more than—

- (a) if paragraph (b) does not apply—the maximum rental bond for the agreement; or
- (b) if the lessor is the tenant's employer and gives the tenant a rental subsidy—the amount fixed under subsection (2).

Maximum penalty—20 penalty units.

- (2) For subsection (1)(b), the amount is the greater of the following amounts—
 - (a) \$400;
 - (b) the maximum rental bond for the agreement.
- (3) Subsection (1) does not apply if the weekly rent under the agreement is more than—
 - (a) the amount prescribed under a regulation; or
 - (b) if an amount is not prescribed—\$300.

78 Order for payment if guilty of offence

- (1) If a person is found guilty of an offence against section 59, 59A or 60,¹⁴ the court making the finding may order the person to pay to the authority, within a stated time, an amount equal to the rental bond.
- (2) The court may make the order as well as imposing a penalty for the offence.
- (3) An amount ordered to be paid by a person may be recovered by the authority as a debt owing to it by the person.
- (4) Subsection (1) does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

14 Section 59 (Duty to pay rental bond), 59A (Duty to pay rental bond instalments) or 60 (Duty to pay rental bond if financial protection given)

Division 4 Accounts and investments

79 Accounts

- (1) The authority must keep—
 - (a) a rental bond account; and
 - (b) a rental bond interest account.
- (2) The accounts are in addition to other accounts the authority is required or permitted to keep under this or another Act.

80 Rental bond account

- (1) The authority must pay into the rental bond account all rental bonds it receives under this Act or the accommodation Act.
- (2) The authority may pay only the following amounts out of the rental bond account—
 - (a) amounts payable under division 2;¹⁵
 - (b) amounts payable under part 5, division 2¹⁶ of the accommodation Act;
 - (c) amounts invested under the *Statutory Bodies Financial Arrangements Act 1982*;
 - (d) amounts paid under section 80A.

80A Unclaimed amounts in rental bond account

- (1) This section applies if—
 - (a) in order to make a payment out of the rental bond account under section 80(2)(a) or (b), the authority draws a cheque and gives it to the person entitled to the payment; and
 - (b) the cheque is not presented for payment within 15 months after it is drawn; and
 - (c) it is at least 7 years since the cheque was drawn; and

15 Division 2 (Payments by authority)

16 Part 5 (Rental bonds), division 2 (Payments by authority) of the accommodation Act

- (d) since the end of the time mentioned in paragraph (b), the person has not received the amount and has not asked the authority to be paid the amount.
- (2) With the Minister's agreement, the authority may pay the amount out of the rental bond account for—
 - (a) a purpose mentioned in section 82(1)(a) to (d); or
 - (b) conducting a scheme, or helping another entity to conduct a scheme, to provide housing or a related service.
- (3) This section does not affect the person's entitlement to be paid the amount.

81 Rental bond interest account

- (1) The authority must pay into the rental bond interest account all amounts earned on investments or loans made by it.
- (2) The authority may pay only the following amounts out of the rental bond interest account—
 - (a) amounts to meet the cost of performing its functions under this Act or the accommodation Act;
 - (b) amounts invested under the *Statutory Bodies Financial Arrangements Act 1982*;
 - (c) amounts paid out under another provision of this Act.

82 Other payments from rental bond interest account

- (1) The authority may make payments from its rental bond interest account (whether by way of grant or loan) for—
 - (a) establishing or administering rental advisory services;
or
 - (b) establishing schemes for supplying residential accommodation; or
 - (c) researching, or setting up projects about improving, relationships between lessors and tenants or relationships between service providers and residents; or

- (d) facilitating the resolution of disputes about residential tenancy agreements or residential service agreements by tribunals.
- (2) However, the authority may make a payment under subsection (1) only with the Minister's agreement.

Division 5 Miscellaneous

83 Increase in rental bond

The tenant must increase a rental bond if—

- (a) the rent payable under the agreement increases; and
- (b) the lessor gives written notice to the tenant to increase the rental bond; and
- (c) the notice is given at least 11 months after—
 - (i) the agreement started; or
 - (ii) if the rental bond has been increased previously following the giving of a notice under this section—the day stated in the notice, or the last notice, for making the increase; and
- (d) the notice states the day by which the increase must be made; and
- (e) the day stated is at least 1 month after the tenant is given the notice about the increase.

84 Rental bond resulting from rent decrease

- (1) This section applies if, in the first 6 months of the term of an agreement, the rent payable under the agreement decreases or is decreased.
- (2) The amount paid as rent in the 6 month period above the amount that would have been payable if the lower, or lowest, amount of rent payable in the period had applied for the full period is, subject to an order of a tribunal, taken to be a payment of a rental bond.

- (3) If the lessor disputes the amount being treated as a rental bond, the lessor may, within 7 days after the end of the 6 month period, apply to a tribunal and the tribunal may make an order declaring the amount, or a part of the amount, is, or is not, a rental bond.
- (4) If, because of subsection (2), a rental bond above the maximum rental bond is paid, the authority must pay the amount to the tenant on payment of the excess amount to it.

Part 4 Key and holding deposits

Division 1 Key deposits

84A Payment of key deposits

A person may require a prospective tenant to pay an amount as a deposit for a key (a *key deposit*) to enable the prospective tenant to enter and inspect the premises to which the proposed tenancy relates.

84B Receipts for key deposits

- (1) A person receiving a key deposit must give a receipt for the deposit as required by this section.
Maximum penalty—10 penalty units.
- (2) The receipt must—
 - (a) be given to the person paying the deposit when the deposit is received; and
 - (b) be signed by the person receiving the deposit.
- (3) The receipt must state the following—
 - (a) the name of the person receiving the deposit;
 - (b) the name of the person paying the deposit;
 - (c) the address of the premises for which the key is given;

- (d) the date the deposit is received;
- (e) the amount of the deposit;
- (f) that the amount is a key deposit;
- (g) when the key is to be returned.

84C Refunding key deposit

A person who receives a key deposit from a prospective tenant must refund the deposit in full when the key is returned to the person, whether or not the prospective tenant enters into a residential tenancy agreement for the relevant premises.

Maximum penalty—10 penalty units.

Division 2 Holding deposits

85 Payment of holding deposits

A person may require a prospective tenant to pay, or accept from a prospective tenant, a holding deposit for a tenancy of premises.

86 Receipts for holding deposits

- (1) A person receiving a holding deposit must give a receipt for the deposit as required by this section.

Maximum penalty—10 penalty units.

- (2) The receipt must—
- (a) be given to the person paying the deposit when the deposit is received; and
 - (b) be signed by the person receiving the deposit.
- (3) The receipt must state the following—
- (a) the name of the person receiving the deposit;
 - (b) the tenant's name and, if the person receiving the deposit is not the lessor, the lessor's name;
 - (c) the address of the premises for which the deposit is paid;

- (d) the date the deposit is received;
- (e) the amount of the deposit;
- (f) that the payment is a holding deposit;
- (g) when the option to enter into an agreement may be exercised.

87 Rights and obligations about holding deposits

- (1) A holding deposit paid to or for a prospective lessor of residential premises is forfeited to the prospective lessor if—
 - (a) the prospective tenant does not, within the option period—
 - (i) exercise the option to enter into an agreement for the premises; or
 - (ii) notify the prospective lessor of the intention not to exercise the option; or
 - (b) having exercised the option, the prospective tenant fails to take all necessary and reasonable steps to enter into the agreement.
- (2) If the holding deposit is not forfeited but the agreement is not entered into, the prospective lessor must refund the deposit to the prospective tenant within 3 days after the prospective tenant notifies the prospective lessor of the intention not to exercise the option.
- (3) If the holding deposit is not refunded, it may be recovered by the prospective tenant as a debt owing by the prospective lessor to the tenant.
- (4) If the prospective tenant exercises the option, the prospective lessor or prospective lessor's agent must take all necessary and reasonable steps to ensure the prospective lessor enters into the agreement.

Maximum penalty—20 penalty units.
- (5) If the agreement is entered into—
 - (a) the holding deposit must be applied in full or part payment of the rental bond for the agreement; and

- (b) if an amount remains from the deposit after payment of the rental bond—the amount must be applied in payment of rent.
- (6) Sections 14A and 14B¹⁷ apply to this section as if a reference in the sections to the lessor were a reference to the prospective lessor.

88 Orders of tribunal

If an application is made to a tribunal by a person by or to whom a holding deposit is paid, the tribunal may make any order it considers appropriate about the forfeiture, refunding or application of the deposit.

Part 5 Outgoings of lessor

Division 1 Outgoings other than service charges

89 Outgoings other than service charges

- (1) The lessor must pay all charges, levies, premiums, rates or taxes payable for the premises.
- (2) This section does not apply if—
 - (a) the lessor is the State; and
 - (b) rent is not payable under the agreement; and
 - (c) the tenant is an entity receiving financial or other assistance from the State to supply rented accommodation to persons.

¹⁷ Sections 14A (Provision stating that lessor or lessor's agent must do something) and 14B (Lessor's agent)

Division 2 Service charges

90 Meaning of *service charge*

- (1) For premises that are not moveable dwelling premises in a moveable dwelling park, a ***service charge*** is a charge payable by a person as owner or occupier of premises for—
 - (a) electricity, gas or water supplied to the premises; or
 - (b) another service or facility, prescribed under the regulations, supplied to, or used at, the premises.
- (1A) For premises that are not moveable dwelling premises in a moveable dwelling park, a ***service charge*** also includes an amount payable by a person for water fit for human consumption supplied to the premises by delivery by means of a vehicle.
- (2) For premises that are moveable dwelling premises in a moveable dwelling park, a ***service charge*** is a charge payable by a person as owner or occupier of premises for—
 - (a) electricity, gas or water, or a sewerage service, supplied to, or used at, the premises or park; or
 - (b) another service or facility, prescribed under the regulations, supplied to, or used at, the premises or park.

91 General service charges for premises other than moveable dwelling premises

- (1) This section applies to premises that are not moveable dwelling premises if the tenant is required to pay an amount for the lessor's outgoings for a general service charge for the premises because the tenant is enjoying or sharing the benefit of the relevant service or facility.
- (2) If the premises are not individually metered for the service or facility, the tenant may be required to pay an amount for the outgoings only if the agreement states—
 - (a) the service or facility for which the outgoings are payable; and

- (b) how the apportionment of the outgoings to the tenant will be worked out; and
 - (c) how the outgoings may be recovered by the lessor from the tenant.
- (3) The tenant may not be required to pay an amount for the outgoings that is more than—
- (a) if the premises are not individually metered—the amount worked out under the agreement; or
 - (b) if the premises are individually metered and—
 - (i) a way for working out the amount payable by the tenant is prescribed under the regulations—the amount worked out in the way prescribed; or
 - (ii) a way is not prescribed—the amount charged by the relevant supply authority for the quantity of the thing, or the service or facility, supplied to, or used at, the premises.

91A Water service charge for premises other than moveable dwelling premises

- (1) This section applies to premises that are not moveable dwelling premises if the tenant is required to pay an amount for the lessor's outgoings for water service charges for the premises.
- (2) Also, this section applies despite anything in the agreement.
- (3) The tenant does not have to pay an amount for the outgoings for a quantity of water for which the lessor should reasonably be liable.
- (4) The tenant has to pay an amount for the outgoings only if—
 - (a) the premises are individually metered for the water supply; or
 - (b) water is supplied to the premises by delivery by vehicle.
- (5) The tenant does not have to pay an amount for the outgoings that is more than the amount charged by the relevant supply authority for the quantity of water supplied to the premises.

92 Service charges for moveable dwelling premises individually metered

- (1) This section applies to moveable dwelling premises if the tenant is required to pay an amount for the lessor's outgoings for a service charge for the premises because the tenant is enjoying or sharing the benefit of the relevant service or facility.
- (2) The tenant may be required to pay an amount for the outgoings only if the premises are individually metered for the service or facility.
- (3) The tenant must not be required to pay an amount for the outgoings that is more than—
 - (a) if a way for working out the amount payable by the tenant is prescribed under the regulations—the amount worked out in the way prescribed; or
 - (b) if a way is not prescribed—the amount charged by the relevant supply authority for the quantity of the thing, or the service or facility, supplied to, or used at, premises.

93 Service charges absorbed in rent for moveable dwelling premises

- (1) This section applies to moveable dwelling premises if the tenant is not required to pay an amount for the lessor's outgoings for a service charge for the premises, even though the tenant is enjoying or sharing the benefit of the relevant service or facility.
- (2) If—
 - (a) a service or facility becomes unavailable for use by the tenant because of action taken by the lessor; and
 - (b) it is a service or facility for which an amount of rent is attributable;reduced rent is payable under the agreement from the day the service or facility ceases to be available, and the agreement is taken to be amended accordingly.
- (3) The reduced rent is the amount of rent payable under the agreement immediately before the service or facility became unavailable, reduced by—

- (a) the amount agreed on by the lessor and tenant as reflecting the amount of rent attributable to the service or facility; or
 - (b) if they do not agree on an amount—the amount decided by a tribunal as reflecting the amount of rent attributable to the service or facility.
- (4) If the tenant asks the lessor for details of the amount of the rent attributable to service charges for the premises, the lessor must give the tenant a written statement showing—
- (a) each service or facility for which an amount of rent is attributable; and
 - (b) the amount attributed to the service or facility.

94 Orders of tribunal

- (1) This section applies if the lessor and tenant do not agree about—
- (a) the amount of the lessor's outgoings for a service charge payable by the tenant; or
 - (b) the amount of the reduced rent payable under the agreement because a service or facility ceases to be available for use by the tenant.
- (2) Either party may apply to a tribunal for a decision about the amount payable.
- (3) For an application about outgoings, the tribunal may, in addition to deciding the amount of the outgoings payable by the tenant, make an order requiring payment of the amount by the tenant.
- (3A) In deciding an amount payable by a tenant for outgoings for a water service charge, the tribunal must have regard to the following—
- (a) relevant available information about water usage and charges for premises in the local government area in which the relevant premises are situated;
 - (b) the area of the relevant land;

- (c) any terms of the agreement affecting the amount of water used;
 - (d) the presence or absence of water saving devices in the premises;
 - (e) the number of persons occupying the premises;
 - (f) the quantity of water for which the lessor should reasonably be liable;
 - (g) anything else the tribunal considers relevant.
- (4) For an application about reduced rent, the tribunal may, as well as deciding the amount of the reduced rent payable under the agreement, make any order it considers appropriate about rent paid, or payable, under the agreement.

Part 6 Penalties and premiums

95 Collateral contracts prohibited

A person (the *proposer*) must not require another person (the *prospective tenant*) to agree to buy goods or services from the proposer or someone else as a condition of the prospective tenant being accepted as the tenant under an agreement.

Maximum penalty—20 penalty units.

95A Incentive amounts prohibited

The lessor or lessor's agent must not ask for or receive from the tenant or anyone else an amount for entering into, extending or continuing the agreement, other than an amount for rent, a rental bond, or a fee or other amount required or permitted to be paid under this Act.

Maximum penalty—40 penalty units.

96 Certain terms about penalties and other payments void

- (1) A term of an agreement is void to the extent it provides that, if the tenant breaches the agreement or this or another Act, the tenant is liable to pay—
 - (a) all or a part of the rent remaining payable under the agreement; or
 - (b) increased rent; or
 - (c) an amount as a penalty; or
 - (d) an amount as liquidated damages.
- (1A) Despite subsection (1), a term of a fixed term agreement is not void to the extent it provides that, if the tenant terminates the agreement other than in a way permitted under this Act, the tenant is liable to pay the reasonable costs incurred by the lessor in reletting the premises.
- (1B) Subsection (1A) applies to a term only if the only reference in the term to the amount payable by the tenant is a reference to the reasonable costs incurred by the lessor in reletting the premises.
- (2) A lessor or lessor's agent must not require a tenant to enter into an agreement containing a term that is void under subsection (1).

Maximum penalty—20 penalty units.

97 Terms about rent reductions etc.

- (1) This section applies to a term of an agreement providing that, if the tenant does not breach the agreement or this or another Act—
 - (a) the rent will, or may be, reduced; or
 - (b) the tenant will, or may be, given or paid a rebate or refund of rent or other benefit.
- (2) However, this section does not apply to a term of a residential tenancy agreement providing only that, if the tenant pays the rent before or when it is payable—

- (a) the rent will, or may be, reduced; or
 - (b) the tenant will, or may be, given or paid a rebate or refund of rent or other benefit.
- (3) A term to which this section applies is taken to be varied so that the tenant is entitled immediately to the reduction, rebate, refund or other benefit.
- (4) A variation is taken to be made on the commencement of the agreement, or the application of this section to the agreement, whichever happens later.
- (5) In this section—
term includes part of a term.

98 Premiums for letting moveable dwelling premises

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) A person must not require someone else to pay, or accept from someone else an amount—
- (a) for accepting the other person as a tenant under a long tenancy (moveable dwelling); and
 - (b) for which the other person does not receive a benefit as tenant.

Maximum penalty—20 penalty units.

Chapter 3 Rights and obligations of lessors and tenants

Part 1 Occupation and use of the premises

99 Legal impediments to occupation as residence

- (1) The lessor must ensure there is no legal impediment to occupation of the premises by the tenant as a residence for the term of the tenancy.
- (2) Subsection (1) applies only to legal impediments the lessor knew about, or ought reasonably to have known about, when entering into the agreement.

100 Vacant possession

- (1) The lessor must ensure the tenant has vacant possession of the premises on the day the tenant is entitled to occupy the premises under the agreement.
- (2) Subsection (1) does not apply to any part of the premises to which the tenant does not have a right of exclusive occupation.

101 Quiet enjoyment

- (1) The lessor must take reasonable steps to ensure the tenant has quiet enjoyment of the premises.
- (2) The lessor or lessor's agent must not interfere with the reasonable peace, comfort or privacy of the tenant in using the premises.

Maximum penalty for subsection (2)—20 penalty units.

102 Tenant's use of premises

The tenant must not—

- (a) use the premises for an illegal purpose; or

- (b) cause a nuisance by the use of the premises; or
- (c) interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant.

Part 2

General standard of the premises

103 Lessor's obligations generally

- (1) This section does not apply to an agreement if—
 - (a) the premises are moveable dwelling premises consisting only of the site for the dwelling; and
 - (b) the tenancy is a long tenancy (moveable dwelling).
- (2) At the start of the tenancy, the lessor must ensure—
 - (a) the premises and inclusions are clean; and
 - (b) the premises are fit for the tenant to live in; and
 - (c) the premises and inclusions are in good repair; and
 - (d) the lessor is not in breach of a law dealing with issues about the health or safety of persons using or entering the premises.
- (3) While the tenancy continues, the lessor¹⁸—
 - (a) must maintain the premises in a way that the premises remain fit for the tenant to live in; and
 - (b) must maintain the premises and inclusions in good repair; and
 - (c) must ensure any law dealing with issues about the health or safety of persons using or entering the premises is complied with; and

¹⁸ See section 125 (Notice of damage) for the tenant's obligations to notify the lessor about the need for repairs because of damage to the premises.

- (d) if the premises include a common area—must keep the area clean.
- (4) However, the lessor is not required to comply with subsection (2)(c) or (3)(a) for 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.
- (5) In this section—
- premises* include any common area available for use by the tenant with the premises.

104 Lessor's obligations for facilities in moveable dwelling parks

- (1) This section applies only to an agreement for moveable dwelling premises in a moveable dwelling park.
- (2) However, this section does not apply if the lessor is a home owner for the premises.
- (3) At the start of the tenancy, the lessor must ensure—
 - (a) the facilities in the park are clean; and
 - (b) the facilities are fit for the tenant to use; and
 - (c) the facilities are in good repair; and
 - (d) the lessor is not in breach of a law dealing with issues about the health and safety of persons using or entering the facilities.

- (4) While the tenancy continues, the lessor—
 - (a) must keep the facilities clean; and
 - (b) must maintain the facilities in a way that the facilities remain fit for the tenant to use; and
 - (c) must maintain the facilities in good repair; and
 - (d) must ensure any law dealing with issues about the health or safety of persons using the facilities is complied with.

105 Lessor's obligations for moveable dwelling site

- (1) This section applies to an agreement only if—
 - (a) the premises are moveable dwelling premises consisting only of the site for the dwelling; and
 - (b) the tenancy is a long tenancy (moveable dwelling).
- (2) At the start of the tenancy, the lessor must ensure the premises are clean and are a fit site for a moveable dwelling.
- (3) While the tenancy continues, the lessor—
 - (a) must ensure the premises remain a fit site for a moveable dwelling; and
 - (b) may make any improvements to the premises the lessor considers appropriate.

106 Tenant's obligations generally

- (1) This section does not apply to an agreement if—
 - (a) the premises are moveable dwelling premises consisting only of the site for the dwelling; and
 - (b) the tenancy is a long tenancy (moveable dwelling).
- (1A) The tenant must keep the premises and inclusions clean, having regard to their condition at the start of the tenancy.
- (2) The tenant must not maliciously damage, or allow someone else to maliciously damage, the premises or inclusions.

- (3) At the end of the tenancy, the tenant must leave the premises and inclusions, as far as possible, in the same condition they were in at the start of the tenancy, fair wear and tear excepted.¹⁹

107 Tenant's obligations for facilities in moveable dwelling parks

- (1) This section applies only to an agreement for moveable dwelling premises in a moveable dwelling park.
- (2) The tenant must not—
 - (a) do anything to a facility in the park that makes the facility unfit for use or detracts from its appearance; or
 - (b) intentionally or negligently damage a facility in the park.

108 Tenant's obligation for moveable dwelling site

- (1) This section applies—
 - (a) to an agreement for moveable dwelling premises consisting only of the site for the dwelling; and
 - (b) if the tenancy is a long tenancy (moveable dwelling).
- (2) The tenant must keep the premises in a way that does not detract from the general standards of the moveable dwelling park, or other general area, where the premises are situated.
- (3) The tenant's obligation applies having regard to the condition of the premises at the start of the tenancy and any improvements made later by the lessor.

108A Orders of tribunal

- (1) This section applies if, on an application made to a tribunal by the tenant for an order under this section, the tribunal is satisfied—

¹⁹ See section 125 (Notice of damage) for the tenant's obligations to notify the lessor about the need for repairs because of damage to the premises.

- (a) the lessor has failed to comply with the lessor's maintenance obligation under section 103(3) or 104(4); and
 - (b) the failure results in the health or safety of persons being endangered; and
 - (c) the failure is reasonably capable of being remedied.
- (2) The tribunal may order the lessor to remedy the failure within the time decided by the tribunal.

Part 3 Lessor's right of entry

109 Grounds for entry

The lessor or lessor's agent may enter the premises only—

- (a) to inspect the premises; or
- (b) to make routine repairs to, or carry out maintenance of, the premises; or
- (c) to show the premises to a prospective purchaser or tenant; or
- (d) to allow a valuation of the premises to be carried out; or
- (e) if the lessor or agent believes, on reasonable grounds, the premises have been abandoned; or
- (f) if the tenant agrees; or
- (g) in an emergency; or
- (h) if the lessor or agent believes on reasonable grounds that the entry is necessary to protect the premises or inclusions from imminent or further damage.

Example of entry in an emergency—

To make emergency repairs to the roof of the premises.

110 Notice of entry

- (1) The lessor or agent may enter the premises under section 109(a) to (e) only if—
 - (a) the lessor or agent has given notice of the proposed entry (the **entry notice**) to the tenant; and
 - (b) the entry notice is in the approved form; and
 - (c) the entry notice is given—
 - (i) for an entry under section 109(a) if the tenancy is not a short tenancy (moveable dwelling)—at least 7 days before entering the premises; or
 - (ii) for another entry—at least 24 hours before entering the premises.
- (2) An entry under section 109(g) or (h) may be made without giving the tenant notice of the proposed entry.
- (3) Despite subsection (1), the lessor or agent may enter the premises under section 109(b) without giving the entry notice if it is not practicable to give the notice because of—
 - (a) the remoteness of the premises; and
 - (b) the shortage in the general area of the premises of a suitably qualified tradesperson or other person needed to make the repairs or carry out the maintenance.
- (4) Also, despite subsection (1), for premises that are a site only, or a site and a caravan, or a site and a manufactured home, in a moveable dwelling park, the lessor or agent may enter the site under section 109(b) to carry out maintenance of the site without giving the entry notice if—
 - (a) the agreement states—
 - (i) the frequency with which the entry is required for carrying out the maintenance; and
 - (ii) the conditions under which the entry may be made; and
 - (b) the entry is made under the agreement.

111 General qualifications about entry

- (1) A secondary agent of the lessor may enter the premises under section 109(a) to (e) only if—
 - (a) the tenant agrees; or
 - (b) the agent produces for the tenant's inspection written evidence of the agent's appointment; or
 - (c) for an entry under section 109(e) the tenant does not respond to the entry notice within a reasonable time.
- (2) An entry under section 109(a) to (e) must be made at a reasonable time.
- (2A) Unless the tenant otherwise agrees, an entry under section 109(a) may not be made less than 3 months after a previous entry by the lessor, or the renting or a secondary agent, under the paragraph.
- (3) The lessor or agent may enter the premises under section 109(c) only if—
 - (a) a condition mentioned in subsection (3A) is satisfied; and
 - (b) a reasonable time has elapsed since a previous entry by the lessor, or the renting or a secondary agent, under the paragraph; and
 - (c) for a secondary agent of the lessor—the secondary agent has given a copy of the entry notice to the renting agent.
- (3A) For subsection (3), the conditions are that—
 - (a) 1 of the following notices is given to the tenant before, or when, the entry notice is given to the tenant—
 - (i) a notice in the approved form of the lessor's intention to sell the premises; or
 - (ii) a notice to leave the premises; or
 - (b) a notice of intention to leave the premises has been given to the lessor by the tenant.
- (4) The lessor or agent may enter the premises under section 109(f) only at a time agreed with the tenant.

- (5) The lessor or agent may enter the premises with someone else if it is necessary to achieve the purpose of the entry.
- (6) Without limiting subsection (5), the lessor or agent may enter premises under section 109(h) with a police officer.
- (7) In this section—

renting agent, for a lessor, means the agent to whom the tenant normally pays the rent.

secondary agent, for a lessor, means an agent of the lessor who is not the renting agent.

112 Rules of entry

The rights and obligations under sections 109, 110 and 111²⁰ about the entry of premises are called the *rules of entry*.

113 Entry under order of tribunal

- (1) This section applies if, on an application made to a tribunal by the lessor or tenant, the tribunal is satisfied—
 - (a) the tenant has not allowed the lessor or lessor's agent to enter the premises under the rules of entry; or
 - (b) the lessor or lessor's agent has entered the premises in contravention of the rules of entry.
- (2) The tribunal may change the rules of entry in the way it considers appropriate.
- (3) If the tribunal changes the rules on the ground mentioned in subsection (1)(a), the lessor or lessor's agent may enter the premises under the rules of entry or the rules of entry as changed.
- (4) If the tribunal makes an order on the ground mentioned in subsection (1)(b), the lessor or lessor's agent may enter the premises only under the rules as changed.

²⁰ Sections 109 (Grounds for entry), 110 (Notice of entry) and 111 (General qualifications about entry)

114 Unlawful entry of premises

The lessor or lessor's agent, must not enter the premises in contravention of—

- (a) the rules of entry; or
- (b) if the rules have been changed by a tribunal—the rules of entry as changed.

Maximum penalty—20 penalty units.

Part 4 Personal details of the parties and agents**115 Tenant's name and other details**

- (1) If the lessor or the lessor's agent asks the tenant the tenant's name or place of employment, the tenant must not give a false name or place of employment.

Maximum penalty—20 penalty units.

- (2) When handing over possession of the premises, the tenant must tell the lessor or lessor's agent the tenant's new residential or postal address, unless the tenant has a reasonable excuse for not telling the lessor or agent the new address.

Maximum penalty—20 penalty units.

- (3) Subsection (2) applies only if the lessor or lessor's agent asks the tenant in writing to state the new address.

116 Lessor's or agent's name and other details

- (1) On or before the day the tenant starts occupying the premises, the lessor or lessor's agent must give a written notice to the tenant stating—

- (a) the lessor's name and address for service; or
- (b) if the lessor has an agent who is authorised to stand in the lessor's place in a proceeding prescribed under the

regulations²¹ (the *prescribed proceeding*)—the agent’s name and address for service.

Maximum penalty—20 penalty units.

- (2) If a detail mentioned in the notice changes, the lessor or lessor’s agent must give written notice of the change to the tenant within 14 days after the change.

Maximum penalty—20 penalty units.

- (3) If details of the agent mentioned in subsection (1)(b) are given to the tenant under this section, the agent stands in the lessor’s place for a prescribed proceeding and, for example—
- (a) the proceeding may be taken against the agent as if the agent were the lessor; and
 - (b) a tribunal may make an order against the agent as if the agent were the lessor; and
 - (c) settlement may be made with the agent as if the agent were the lessor.

Part 5 The dwelling

Division 1 Fixtures and structural changes

117 Attaching fixtures and making structural changes

The tenant may attach a fixture, or make a structural change, to the premises only if the lessor agrees to the fixture’s attachment or structural change.

118 Agreement about fixtures and structural changes

- (1) The lessor’s agreement to the attaching of a fixture, or making of a structural change, must—

²¹ See the *Residential Tenancies Regulation 1995*, section 19 (Proceeding in which lessor’s agent may stand in lessor’s place—Act, s 116(1)(b)).

- (a) be in writing; and
 - (b) describe the nature of the fixture or change; and
 - (c) include any terms of the agreement.
- (2) For an agreement about attaching a fixture to premises, the terms may include terms about—
- (a) whether the tenant may remove the fixture; and
 - (b) if removal by the tenant is allowed—
 - (i) when and how the removal may be performed; and
 - (ii) the obligation of the tenant to repair any damage caused to the premises in the removal or compensate the lessor for the lessor's reasonable costs of repairing the damage; and
 - (c) if removal by the tenant is not allowed—the obligation of the lessor to compensate the tenant for any improvement the fixture makes to the premises.
- (3) The lessor must not act unreasonably in failing to agree to the attaching of a fixture, or the making of a structural change, to the premises.
- (4) If the lessor agrees to a fixture being attached, or a structural change being made, to the premises by the tenant, the tenant must not contravene a term of the agreement.

119 Attaching fixture or making structural change without lessor's agreement

- (1) If the tenant attaches a fixture, or makes a structural change, to the premises without the lessor's agreement, the lessor may—
- (a) waive the breach; and
 - (b) treat the fixture or change as an improvement to the premises for the lessor's benefit.
- (2) The lessor may take the action under subsection (1) instead of taking action for a breach of a term of the residential tenancy agreement by the tenant.

Division 2 Locks and keys

120 Supply of locks and keys

- (1) The lessor must supply and maintain the locks that are necessary to ensure the premises are reasonably secure.
- (2) If there is only 1 tenant, the lessor must give to the tenant a key for each lock that—
 - (a) secures an entry to the premises; or
 - (b) secures a road or other place that is normally used to gain access to, or leave, the area or building in which the premises are situated; or

Example of a lock for paragraph (b)—

A lock operating a boom gate that must be passed to enter or leave the area in which the premises are situated.

- (c) is part of the premises.

Examples of locks for paragraph (c)—

- 1 A lock on a door to a room in the premises.
 - 2 A lock on the mailbox for the premises.
 - 3 A lock on the door to a toolshed that forms part of the premises.
 - 4 A lock on a built-in cupboard in the premises.
- (3) If there is more than 1 tenant, the lessor must—
 - (a) give one of the tenants a key for each lock mentioned in subsection (2); and
 - (b) give each of the other tenants a key for each lock mentioned in subsection (2)(a) or (b).

- (4) In this section—

tenant means a person named in the agreement as a tenant.

121 Changing locks

- (1) If the lessor or tenant changes a lock, the party must give to the other party a key for the changed lock, unless—
 - (a) the other party agrees to not being given a key; or

- (b) a tribunal orders that a key not be given.
- (2) However, the lessor or tenant may change a lock only if—
 - (a) the party has a reasonable excuse for making the change; or
 - (b) the other party agrees to the change.
- (3) Without limiting subsection (2)(a), it is a reasonable excuse for the lessor or tenant to change a lock if it is changed in an emergency or under an order of a tribunal.

122 Agreement about changing locks

- (1) The lessor or tenant must not act unreasonably in failing to agree to the change of a lock.
- (2) The changing of a lock by the lessor or tenant without the other party's agreement is evidence the party did not have a reasonable excuse for making the change.

123 Orders of tribunal

- (1) If an application is made to a tribunal by the lessor or tenant about a lock or key for the premises, the tribunal may make any of the following orders about locks or keys for the premises—
 - (a) an order requiring the lessor to supply a lock, or a lock of a particular kind;
 - (aa) an order requiring the lessor to carry out stated maintenance of a lock;
 - (ab) an order authorising the lessor or tenant to change a lock;
 - (b) an order that the lessor or tenant is not required to give to the other party a key to a lock;
 - (c) an order requiring the lessor or tenant to give to the other party a key to a lock.
- (2) In making an order mentioned in subsection (1)(a) or (ab), the tribunal may have regard to the following—
 - (a) the likelihood of risk to the tenant's personal safety;

- (b) the requirements of insurance companies for allowing the tenant to obtain insurance for property of the tenant kept at the premises;
- (c) the likelihood of break-ins or other unlawful entry to the premises or nearby premises;
- (d) local community standards about adequate security for premises;
- (e) the physical characteristics of the premises and adjoining areas;
- (f) anything else the tribunal considers relevant.

Division 3 Damage and repairs

123A Meaning of *emergency repairs*

Emergency repairs are works needed to repair any of the following—

- (a) a burst water service;
- (b) a blocked or broken lavatory system;
- (c) a serious roof leak;
- (d) a gas leak;
- (e) a dangerous electrical fault;
- (f) flooding or serious flood damage;
- (g) serious storm, fire or impact damage;
- (h) a failure or breakdown of the gas, electricity or water supply to premises;
- (i) a failure or breakdown of an essential service or appliance on premises for hot water, cooking or heating;
- (j) a fault or damage that makes premises unsafe or insecure;
- (k) a fault or damage likely to injure a person, damage property or unduly inconvenience a resident of premises;

- (l) a serious fault in a staircase, lift or other common area of premises that unduly inconveniences a resident in gaining access to, or using, the premises.

123B Meaning of *routine repairs*

Routine repairs are repairs that are not emergency repairs.

124 Nominated repairer for emergency repairs

- (1) The lessor may nominate a person (the *nominated repairer*)—
 - (a) to act for the lessor in arranging for emergency repairs, or emergency repairs of a particular type, to be made of the premises or inclusions; or
 - (b) to make emergency repairs, or emergency repairs of a particular type, of the premises or inclusions for the lessor.
- (2) The nominated repairer may be stated in the agreement or a written notice given by the lessor to the tenant.
- (3) The agreement or notice must state whether or not the nominated repairer is the tenant's first point of contact for notifying the need for emergency repairs.
- (4) The lessor must give written notice to the tenant of any change of the lessor's nominated repairer.

125 Notice of damage

- (1) If the tenant knows the premises or inclusions have been damaged, the tenant must give notice as soon as practicable of the damage.
- (2) If the premises or inclusions need routine repairs, the notice must be given to the lessor.
- (3) If the premises or inclusions need emergency repairs, the notice must be given to the lessor if—
 - (a) there is no nominated repairer for the repairs; or

- (b) a nominated repairer for the repairs is not the tenant's first point of contact; or
 - (c) a nominated repairer for the repairs is the tenant's first point of contact but the tenant has been unable to contact the repairer after making reasonable efforts.
- (4) If the premises or inclusions need emergency repairs and there is a nominated repairer of the lessor for the repairs, the notice must be given to the repairer if—
- (a) the repairer is the tenant's first point of contact; or
 - (b) the repairer is not the tenant's first point of contact but the tenant has been unable to contact the lessor after making reasonable efforts.

126 Tenant may arrange for emergency repairs to be made

- (1) This section applies—
- (a) if—
 - (i) the tenant has been unable to notify the lessor or nominated repairer of the need for emergency repairs of the premises or inclusions; or
 - (ii) the repairs are not made within a reasonable time after notice is given; and
 - (b) if the residential tenancy is not a short tenancy (moveable dwelling).
- (2) The tenant may arrange for a suitably qualified person to make the repairs.

127 Costs of emergency repairs arranged by tenant

- (1) The maximum amount that may be incurred for emergency repairs arranged to be made by the tenant is an amount equal to the amount payable under the agreement for 2 weeks rent.
- (2) The tenant may require the lessor—
- (a) to reimburse the tenant for any amount properly incurred by the tenant for the repairs; or

- (b) to pay the amount properly incurred for the repairs direct to the actual repairer.
- (3) The requirement must—
 - (a) be made by written notice given to the lessor; and
 - (b) be supported by appropriate documents about the incurring of the amount; and
 - (c) state that, if the lessor does not comply with the requirement within 7 days after receiving the notice, the tenant may apply to a tribunal for an order about the reimbursement or payment of the amount.

Examples of appropriate documents for subsection (3)(b)—
invoices, accounts and receipts

128 Orders of tribunal about emergency repairs

- (1) This section applies if the tenant makes a requirement of the lessor for the reimbursement or payment of an amount for emergency repairs.
- (2) If the lessor objects to the requirement, the lessor may, within 7 days after the requirement is made, apply to a tribunal for an order about the reimbursement or payment.
- (3) If, within the 7 day period, the lessor does not comply with the requirement or make the application, the tenant may apply to a tribunal for an order about the reimbursement or payment.
- (4) An application under subsection (2) must be decided by a tribunal, but an application under subsection (3) may be decided by a tribunal or registrar.
- (5) However, a registrar may decide an application only if—
 - (a) the registrar is satisfied the tenant has given to the lessor appropriate documents to support the incurring of the amount for which reimbursement or payment is sought; and
 - (b) the lessor has not made an application under subsection (2); and
 - (c) the registrar is satisfied a tribunal has not been notified of a dispute between the parties about the amount.

Residential Tenancies Act 1994

- (2) The notice to relocate may be given only if the relocation is necessary—
- (a) to allow the carrying out of necessary or desirable work in the park; or
 - (b) because of an emergency; or
 - (c) for health or safety reasons; or
 - (d) if the lessor is a home owner—because the lessor has an obligation under a site agreement to reposition the moveable dwelling.

Examples of work to which subsection (2)(a) could apply—

maintenance, repairs, upgrading and restoration

- (3) The notice to relocate to another site may be given only if the other site is, as far as practicable, reasonably comparable to the site currently occupied by the tenant.
- (4) The period stated in the notice must be reasonable but, in any event, for a notice given under subsection (2)(a) or (d), must be not less than 1 month after the notice is given to the tenant.
- (5) The notice to relocate must—
- (a) be in writing; and
 - (b) identify the site to which the tenant is to relocate; and
 - (c) state the period within which the tenant is to relocate; and
 - (d) state the reasons for the relocation.²²

130A Restriction against enforcing relocation

The lessor or lessor's agent must not take any action to enforce the tenant's relocation under a notice to relocate unless—

- (a) the tenant agrees; or

²² See section 157 (Notice to leave for non-compliance (moveable dwelling relocation)) in relation to a failure of the tenant to comply with the notice to relocate.

- (b) a tribunal orders the tenant to relocate to the site mentioned in the notice.

Maximum penalty—20 penalty units.

131 Effect of relocation

If the tenant complies with the notice to relocate given to the tenant, the tenant's site for the agreement is the site to which the tenant relocates, and the agreement is taken to be amended accordingly.

132 Costs of relocation

- (1) The reasonable costs and expenses incurred by the tenant in complying with the notice to relocate are payable to the tenant by the lessor.
- (2) If application is made to a tribunal under this section by the tenant, the tribunal may make an order requiring the lessor to pay to the tenant the amount it considers the tenant is entitled to receive under subsection (1).

132A Application to tribunal

- (1) This section applies if—
 - (a) a notice to relocate is given to the tenant; and
 - (b) the tenant—
 - (i) has not complied with the notice; or
 - (ii) is proposing not to comply with the notice (whether or not the tenant has told the lessor).
- (2) Either party may apply to a tribunal for an order about the relocation.
- (3) In deciding the application, the tribunal may make either of the following orders—
 - (a) an order requiring the tenant to relocate, by a stated date, to the site mentioned in the relocation notice;
 - (b) an order setting aside the relocation notice.

Division 3 Park rules

133 Park rules

- (1) The owner of the moveable dwelling park may make rules about the use, enjoyment, control and management of the park.
- (2) However, rules may be made only about—
 - (a) the use and operation of communal facilities; and
 - (b) the making and abatement of noise; and
 - (c) the carrying on of sporting and other recreational activities; and
 - (d) speed limits for motor vehicles; and
 - (e) parking of motor vehicles; and
 - (f) the disposal of refuse; and
 - (g) the keeping of pets; and
 - (h) other things prescribed under the regulations.

134 Notice of proposed change of park rule

- (1) If the owner of a moveable dwelling park proposes to change a park rule, the owner must—
 - (a) fix a day (the *objection closing day*) by which residents of the park may object to the proposed change (the *proposal*); and
 - (b) give notice of the proposal to each resident and any person who becomes a resident before the objection closing day.
- (2) A notice must be given—
 - (a) for a resident—at least 1 month before the objection closing day; or
 - (b) for someone else—when the person becomes a resident.
- (3) The notice must—
 - (a) be in writing; and

- (b) inform the resident that the resident may object to the proposal before the objection closing day; and
- (c) inform the resident how the objection may be made.

135 Objection to proposal

- (1) A resident of the park may object to the proposal because it is unreasonable.
- (2) The objection must be made by written notice given to the park owner before the objection closing day.
- (3) The notice must give particulars of why the proposal is considered to be unreasonable.

136 Park liaison committee

- (1) This section applies only if objections to the proposal are made before the objection day by—
 - (a) at least 5 park residents from 5 different sites in the park; or
 - (b) if the park has less than 10 sites—a majority of the park residents.
- (2) As soon as practicable after the objection closing day, the persons who have objected (the *objectors*) and the park owner must set up a committee (the *park liaison committee*) to consider the objections.
- (3) The committee is to consist of the following members—
 - (a) a person chosen by the objectors;
 - (b) the park owner or the park owner's nominee;
 - (c) someone else agreed on by the other members.
- (4) The member mentioned in subsection (3)(a) may be an objector.
- (5) The committee may consider the objections only if the 3 members are present.
- (6) If the members mentioned in subsection (3)(a) and (b) fail, within 7 days after the objection closing day, to agree on the other person who is to be a member, the park owner must give

written notice of the failure to each of the objectors (*non-resolution notice*).

137 Consideration of objections by committee

- (1) If a park liaison committee is set up, it must consider all objections properly made about the proposal and—
 - (a) declare the proposal to be either reasonable or unreasonable; or
 - (b) if it considers the proposal is unreasonable—change the proposal in a way it considers appropriate to make it reasonable.
- (2) The committee must give written notice of its decision to—
 - (a) the objectors; and
 - (b) if the park owner is not a member of the committee—the park owner.

138 Application to tribunal about proposal

- (1) This section applies if—
 - (a) non-resolution notices are given to the objectors; or
 - (b) the park owner or an objector is dissatisfied with a decision of the park liaison committee.
- (2) The park owner or objector may apply to a tribunal for an order declaring the proposal to be reasonable or unreasonable.
- (3) The application must—
 - (a) be made within 7 days after receiving the non-resolution notice or the decision being made; and
 - (b) give particulars of why the proposal is considered to be reasonable or unreasonable.
- (4) A single application may be made by objectors if it is made by—
 - (a) at least 5 park residents from 5 different sites in the park; or

- (b) if the park has less than 10 sites—a majority of the park residents.
- (5) In subsection (2), a reference to the proposal about which an order may be sought includes a change of a park rule proposed by the park owner as changed by the park liaison committee.

139 Decision of tribunal about proposal

- (1) If an application is made to a tribunal about the reasonableness of the proposal to change a park rule, the tribunal may—
- (a) declare the proposal to be reasonable or unreasonable; or
 - (b) change the proposal in a way it considers appropriate to make it reasonable; or
 - (c) make any other order it considers appropriate.
- (2) In deciding the application, the issues to which the tribunal may have regard include the following—
- (a) the park’s location;
 - (b) the park’s internal layout;
 - (c) the amenities, improvements, facilities and other physical features of the park;
 - (d) the number of residents and their needs;
 - (e) the levels of rent and other charges paid by residents.
- (3) Subsection (2) does not limit the issues to which the tribunal may have regard.

140 When proposal takes effect

- (1) This section sets out the way of working out when a proposal to change a park rule takes effect.
- (2) This section applies (as *case 1*) if—
- (a) no objections are made to the proposal; or

Residential Tenancies Act 1994

- (b) the number of objections made to the proposal are not sufficient to require the setting up of a park liaison committee.
- (3) This section applies (as *case 2*) if—
 - (a) non-resolution notices about the proposal are given to the objectors; and
 - (b) no application is made to a tribunal within the required time.
- (4) This section applies (as *case 3*) if—
 - (a) a decision is made by a park liaison committee—
 - (i) declaring the proposal to be reasonable; or
 - (ii) changing the proposal in a way it considers appropriate to make the proposal reasonable; and
 - (b) no application is made to a tribunal within the required time.
- (5) This section applies (as *case 4*) if a decision is made by a tribunal—
 - (a) declaring the proposal to be reasonable; or
 - (b) changing the proposal in a way it considers appropriate to make the proposal reasonable.
- (6) If case 1 applies, the proposal takes effect—
 - (a) at the end of the objection closing day; or
 - (b) if a later day is stated by the park owner—on the later day.
- (7) If case 2 applies, the proposal takes effect—
 - (a) at the end of the last day on which an application may be made to a tribunal; or
 - (b) if a later day is stated by the park owner—on the later day.
- (8) If case 3 applies, the proposal takes effect on the day decided by the park liaison committee.
- (9) If case 4 applies, the proposal takes effect on the day decided by the tribunal.

141 When changes of park rules have no effect

- (1) A change of a park rule has no effect if—
 - (a) it is made otherwise than under this division; or
 - (b) a park liaison committee or tribunal, in considering a proposal about the change, decides that the proposal is unreasonable.
- (2) However, subsection (1)(b) does not apply to a decision of the park liaison committee if a later decision of a tribunal—
 - (a) decided the proposal was reasonable; or
 - (b) changes the proposal in a way it considered appropriate to make the proposal reasonable.

Division 4 Goods and services**142 Supply of goods and services**

- (1) The lessor or lessor's agent must not require the tenant to buy goods or services from the lessor, the lessor's agent or a person nominated by the lessor or agent (the *nominated supplier*).

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply to a requirement made by the lessor or lessor's agent about reticulated gas if, on application made to a tribunal by the lessor, the tribunal authorises the lessor, agent or nominated supplier to supply the gas to the tenant.

145 Order of tribunal about transfer or subletting

- (1) If the tenant believes the lessor has acted unreasonably in failing to agree to a transfer or subletting under section 144, the tenant may apply to a tribunal for an order under this section.
- (2) If, on an application made to a tribunal by the tenant, the lessor fails to satisfy the tribunal that the lessor acted reasonably in failing to agree to the transfer or subletting, the tribunal may make an order authorising the tenant to make the transfer or subletting without the lessor's agreement.
- (3) In deciding whether the lessor acted reasonably in failing to agree to the transfer or subletting, the tribunal may have regard to the following issues—
 - (a) the likelihood of the proposed transferee fulfilling the tenant's obligations under the agreement;
 - (b) the risk of damage to the premises or inclusions.

Example of risk for subsection (3)(b)—

A risk that may arise because of a hobby or business the proposed transferee intends carrying on at the premises.

- (4) Subsection (2) does not limit the issues to which the tribunal may have regard.

146 Lessor's expenses for transfer or subletting

The lessor or lessor's agent must not require the tenant to pay, or accept from the tenant, an amount for the lessor's agreement to a transfer or subletting by the tenant, other than an amount for the reasonable expenses incurred by the lessor in agreeing to the transfer or subletting.

Maximum penalty—20 penalty units.

147 Lessor's fee for sale of caravan

- (1) This section applies—
 - (a) only to an agreement for moveable dwelling premises consisting only of the site for a caravan; and

- (b) if the residential tenancy is a long tenancy (moveable dwelling).
- (2) The lessor may require the tenant to pay, or accept from the tenant, a fee (not more than an amount prescribed under the regulations²³) for the sale or attempted sale of a caravan on the premises only if—
 - (a) the lessor supplies a service in the sale or attempted sale; and
 - (b) when the service is supplied, there is a written agreement in force between the parties for the payment of the fee by the tenant to the lessor for the service.
- (3) The lessor or lessor's agent must not require the tenant to pay, or accept from the tenant, a fee for the sale or attempted sale of a caravan on the premises in contravention of subsection (2).

Maximum penalty for subsection (3)—20 penalty units.

- (4) Subsections (2) and (3) do not prevent the lessor or lessor's agent charging, in addition to the prescribed fee under subsection (2), an amount for GST payable for the supply of the service in the sale or attempted sale.

Division 2 Transfer by lessor

148 Transfer by lessor

- (1) The lessor must—
 - (a) if the lessor proposes to transfer the lessor's interest in the premises to another person (the *purchaser*)—give written notice of the tenancy to the purchaser; and
 - (b) if the lessor transfers the interest subject to the tenancy—give written notice of the transfer (the *attornment notice*) to the tenant.

²³ See the *Residential Tenancies Regulation 1995*, schedule 4 (Fees) for the amount prescribed.

- (2) The attornment notice operates as an attornment²⁴ as tenant to the purchaser by the tenant at the rent, and on the other terms of the agreement applying when the notice is given, but only if the notice—
 - (a) states the purchaser's name and address; and
 - (b) directs the tenant to make all future payments of rent to the purchaser.
- (3) However, if an amount for rent is unpaid when the attornment notice is given, the amount may be recovered by the former lessor as a debt owing to the former lessor by the tenant.
- (4) Subsection (1)(a) applies whether the transfer is proposed to be made with vacant possession or subject to the tenancy.

Division 3 Replacement of tenant

149 End of tenant's occupation

- (1) This section applies if—
 - (a) a person who is not the tenant under an agreement is occupying the premises; and
 - (b) the tenant dies or otherwise ceases to occupy the premises; and
 - (c) the lessor is not the State.
- (2) The person may apply to a tribunal for the following orders—
 - (a) an order to be recognised as the tenant under the agreement;
 - (b) an order to be joined as a party to a proceeding before the tribunal about the premises.
- (3) The application may be made—
 - (a) when making another application to, or in a proceeding before, the tribunal; or

²⁴ An attornment is an acknowledgment of the tenancy relationship between the tenant and new lessor.

- (b) independently of another application or proceeding.
- (4) In deciding the application, the tribunal may make the following orders—
 - (a) an order recognising the person as the tenant under the agreement;
 - (b) an order joining the person as a party to a proceeding before the tribunal.
- (5) If the tribunal makes an order under subsection (4)(a), it may make any other order it considers appropriate.

Examples of orders under subsection (5)—

An order about the application of the terms of the agreement, or other terms, to the person as tenant.

- (6) A person in whose favour an order is made under subsection (4)(a) is taken to be the tenant under the agreement on the terms the tribunal orders.
- (7) The tribunal may not make an order under this section without giving the lessor an opportunity to be heard on the application.

149A Death of a cotenant

- (1) This section applies if—
 - (a) there are cotenants under an agreement; and
 - (b) the cotenants are not stated under the agreement to be joint tenants; and
 - (c) 1 of the cotenants dies.
- (2) On the deceased's death—
 - (a) the deceased's interest in the tenancy ends; and
 - (b) the agreement continues in force with the parties to the agreement being the lessor and the other cotenant or cotenants.
- (3) Subsection (2) does not affect, as between the deceased and the other cotenant or cotenants, any right (including, in particular, a right relating to a rental bond) or liability of the deceased existing immediately before the deceased's death.

150 Injury to spouse

- (1) This section applies to—
 - (a) the spouse of the tenant occupying the premises with the tenant; and
 - (b) a cotenant whose spouse is the other, or another, cotenant.
- (2) The person may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement instead of the person's spouse because the person's spouse has committed an act of domestic violence against the person.
- (3) The tribunal may make the order if it is satisfied the person has established the ground of the application.
- (4) In deciding the application, the tribunal must have regard to the following issues (the *domestic violence issues*)—
 - (a) whether the person has applied for a protection order against the person's spouse;
 - (b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;
 - (c) if a domestic violence order has been made—whether a condition was imposed prohibiting the person's spouse from entering, or remaining, on the premises.
- (5) Subsection (4) does not limit the issues to which the tribunal may have regard.
- (6) If the tribunal makes the order, it may make any other order it considers appropriate.

Examples of orders tribunal may make—

- 1 An order about the application of the terms of the agreement, or other terms, to the person as tenant, or as a cotenant.
 - 2 An order about any rental bond paid by the person's spouse.
- (7) A person in whose favour an order is made under subsection (3) is taken to be the tenant, or a cotenant, under the agreement on the terms the tribunal orders.

- (8) The tribunal may not make an order under subsection (3) without giving the lessor an opportunity to be heard on the application.

150A Injury or damage affecting occupants

- (1) This section applies to a person (the *occupant*) who is an occupant of premises and who is not the tenant or a cotenant.
- (2) The occupant may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement instead of the tenant, or a cotenant, because the tenant or cotenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—
- (a) serious damage to the premises; or
 - (b) injury to—
 - (i) the occupant; or
 - (ii) someone else occupying, or allowed on, the premises.
- (3) The tribunal may make the order if it is satisfied the occupant has established the ground of the application.
- (4) If the tribunal makes the order, it may make any other order it considers appropriate.

Examples of orders tribunal may make—

- 1 An order about the application of the terms of the agreement, or other terms, to the occupant as tenant, or as a cotenant.
 - 2 An order about any rental bond paid for the agreement.
- (5) A person in whose favour an order is made under subsection (3) is taken to be the tenant, or a cotenant, under the agreement on the terms the tribunal orders.
- (6) The tribunal may not make an order under subsection (3) without giving the lessor an opportunity to be heard on the application.

Chapter 4 Termination of agreements

Part 1 General

151 Termination of agreements

- (1) A residential tenancy agreement terminates only in a way mentioned in this section.
- (2) A residential tenancy agreement terminates by written agreement of the lessor and tenant.
- (3) A residential tenancy agreement terminates if—
 - (a) the lessor gives a notice to leave²⁵ the premises to the tenant; and
 - (b) the tenant hands over vacant possession of the premises on or after the handover day.²⁶
- (4) A residential tenancy agreement terminates if the tenant—
 - (a) gives a notice of intention to leave²⁷ the premises to the lessor; and
 - (b) hands over vacant possession of the premises on or after the handover day.²⁸

25 See section 193 (Notice to leave) for requirements for the notice.

26 See sections 197 (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198 (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day.

27 See section 194 (Notice of intention to leave) for requirements for the notice.

28 See sections 199 (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200 (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day.

- (5) A residential tenancy agreement terminates if—
- (a) a tribunal makes an order terminating the agreement (whether or not a notice to leave has been given);²⁹ or
 - (b) the tenant abandons the premises.³⁰

152 Acceptance of rent does not operate as waiver of tenant's breach

- (1) If the lessor makes a demand for, takes a proceeding for the recovery of, or accepts, rent payable under the agreement, the lessor's action—
- (a) does not operate as a waiver of—
 - (i) a breach of the agreement by the tenant; or
 - (ii) a notice to leave given to the tenant by the lessor for an unremedied breach; and
 - (b) is not evidence of the creation of a new tenancy.
- (2) Despite subsection (1), if the lessor gives the tenant a notice to remedy breach under section 153 for a breach of the agreement relating to a failure to pay rent, acceptance by the lessor of the total amount of rent required under the notice to be paid to remedy the breach operates as a waiver of the breach.
- (3) Subsection (2) applies only if the amount mentioned in the subsection is tendered by the tenant to the lessor within the allowed remedy period.

152A Offer or payment of rent does not operate as waiver of lessor's breach

If the tenant pays or offers to pay to the lessor rent payable under the agreement, the payment or offer does not operate as a waiver of—

²⁹ See chapter 4 (Termination of agreements), part 6 (Orders of tribunal) for the making of termination orders by the tribunal.

³⁰ See chapter 4 (Termination of agreements), part 8 (Abandonment) for alternative procedures the lessor needs to follow in the case of abandonment of the premises.

- (a) a breach of the agreement by the lessor; or
- (b) a notice of intention to leave for an unremedied breach given to the lessor by the tenant.

Part 2 Action by lessor

Division 1 Notices to remedy breach

153 Notice to remedy tenant's breach

- (1) This section applies if the lessor believes on reasonable grounds that—
 - (a) the rent payable under the agreement has remained unpaid in breach of the agreement for at least 7 days; or
 - (b) the tenant has breached another term of the agreement and the breach has not been remedied.
- (2) The lessor may give a notice³¹ to the tenant requiring the tenant to remedy the breach within the allowed remedy period.³²
- (3) This section does not apply to an agreement for a short tenancy (moveable dwelling).

Division 2 Notices to leave premises

155 Notice to leave for unremedied breach

- (1) The lessor may give a notice to leave the premises³³ to the tenant because the tenant has failed to comply, within the

31 See section 192 (Notice to remedy breach) for requirements for the notice.

32 See section 196 (Allowed remedy period) and schedule 3 (Dictionary), definition *allowed remedy period*.

33 See section 193 (Notice to leave) for requirements for the notice.

allowed remedy period,³⁴ with a notice to remedy breach given to the tenant by the lessor.

- (3) A notice to leave under this section is called a notice to leave for an *unremedied breach*.

156 Notice to leave for tenant's non-compliance with tribunal order

- (1) The lessor may give a notice to leave the premises to the tenant because the tenant has failed to comply with an order of a tribunal.

- (2) A notice to leave under this section is called a notice to leave for *non-compliance (tribunal order)*.

157 Notice to leave for non-compliance (moveable dwelling relocation)

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.

- (2) The lessor may give a notice to leave the premises to the tenant because the tenant has failed to comply, within the required period, with a notice to relocate³⁵ given to the tenant by the lessor.

- (3) A notice to leave under this section is called a notice to leave for *non-compliance (moveable dwelling relocation)*.³⁶

158 Notice to leave if agreement frustrated

- (1) The lessor may give a notice to leave the premises³⁷ to the tenant because the premises—

34 See section 196 (Allowed remedy period) and schedule 3 (Dictionary), definition *allowed remedy period*.

35 See section 130 (Notice to relocate) for requirements for the notice to relocate.

36 See section 198(2)(c) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of non-compliance (moveable dwelling relocation).

37 See section 193 (Notice to leave) for requirements for the notice.

- (a) have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the agreement; or
 - (b) no longer may be used lawfully as a residence; or
 - (c) have been appropriated or acquired compulsorily by an authority.
- (2) A notice to leave under this section must be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) A notice to leave under subsection (1)(a) or (b) is called a notice to leave for *non-livability*.³⁸
- (4) A notice to leave under subsection (1)(c) is called a notice to leave for *compulsory acquisition*.³⁹

159 Notice to leave if agreement frustrated (moveable dwelling premises)

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) The lessor may give a notice to leave the premises to the tenant because the park has become an unfit place in which to live in a moveable dwelling.
- (3) A notice to leave may be given under this section only if a facility in the park generally available for use by occupants of moveable dwellings in the park has been destroyed, or become completely or partially unavailable for use, other than because of a breach of the agreement.
- (4) A notice to leave under this section must be given within 1 month after the park becoming an unfit place in which to live.

38 See sections 197(2)(c) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(d) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of non-livability.

39 See sections 197(2)(d) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(e) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of compulsory acquisition.

- (5) A notice to leave under this section is called a notice to leave for *non-livability*.⁴⁰

160 Notice to leave if premises being sold

- (1) The lessor under a periodic agreement may give a notice to leave the premises⁴¹ to the tenant because the lessor has entered into a contract to sell the premises with vacant possession.
- (2) A notice to leave under this section is called a notice to leave for *sale contract*.⁴²

161 Notice to leave if closure of moveable dwelling park involved

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) The lessor may give a notice to leave the premises to the tenant because—
- (a) the use of the premises where the park is situated (the *park premises*) is to be, or is proposed to be, changed to a use other than as a moveable dwelling park; or
 - (b) the park is to be closed.
- (3) If the authority under which a person is allowed to use the park premises as a moveable dwelling park ends, the lessor must give a notice to leave the premises to the tenant within 24 hours of the authority ending.

40 See section 198(2)(d) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of non-livability.

41 See section 193 (Notice to leave) for requirements for the notice.

42 See sections 197(2)(e) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(f) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of a sale contract.

- (4) A notice to leave under subsection (2) is called a notice to leave for *voluntary park closure*.⁴³
- (5) A notice to leave under subsection (3) is called a notice to leave for *compulsory park closure*.⁴⁴

162 Notice to leave if tenant's employment ends

- (1) If—
 - (a) the tenant occupies the premises under the tenant's terms of employment; and
 - (b) the tenant's employment ends;
 the lessor may give a notice to leave the premises⁴⁵ to the tenant.
- (2) A notice to leave under this section is called a notice to leave for *employment termination*.⁴⁶
- (3) This section applies subject to an industrial award or agreement or contract of employment.

163 Notice to leave if tenant's entitlement to supported accommodation ends

- (1) This section applies if—
 - (a) the tenant's right of occupancy of the premises arises out of approved supported accommodation; and
 - (b) the tenant ceases to be eligible—

43 See section 198(2)(g) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of a voluntary park closure.

44 See section 198(2)(h) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of a compulsory park closure.

45 See section 193 (Notice to leave) for requirements for the notice.

46 See sections 197(2)(f) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(i) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of employment termination.

- (i) to be provided with approved supported accommodation; or
 - (ii) to continue to occupy the particular premises.
- (2) The lessor may give a notice to leave the premises⁴⁷ to the tenant.
- (3) A notice to leave under this section is called a notice to leave for *ending of accommodation assistance*.⁴⁸

163A Notice to leave if tenant's entitlement under affordable housing scheme

- (1) This section applies if—
- (a) the tenant occupies the premises under an affordable housing scheme; and
 - (b) the tenant ceases to be eligible under the scheme—
 - (i) to receive assistance; or
 - (ii) to continue to occupy the particular premises.
- (2) The lessor may give a notice to leave the premises to the tenant.
- (3) A notice to leave under this section is called a notice to leave for *ending of housing assistance*.⁴⁹

165 Notice to leave without ground

- (1) The lessor may give a notice to leave the premises to the tenant without stating a ground for the notice.

47 See section 193 (Notice to leave) for requirements for the notice.

48 See sections 197(2)(g) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(j) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of ending of accommodation assistance.

49 See sections 197(2)(ga) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(k) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of ending of housing assistance.

- (1A) However, the lessor must not give a notice to leave under this section because—
- (a) the tenant has applied, or is proposing to apply, to a tribunal for an order under this Act; or
 - (b) the tenant—
 - (i) has complained to a government entity about an act or omission of the lessor adversely affecting the tenant; or
 - (ii) has taken some other action to enforce the tenant's rights; or
 - (c) an order of a tribunal is in force in relation to the lessor and tenant.
- (1B) Also, the lessor may not give a notice to leave under this section if the giving of the notice constitutes taking retaliatory action against the tenant.
- (2) A notice to leave under this section is called a notice to leave *without ground*.⁵⁰

165A Application to tribunal about notice to leave without ground

- (1) This section applies if—
 - (a) the tenant is given a notice to leave without ground; and
 - (b) the tenant reasonably believes the notice was given in contravention of section 165.
- (2) The tenant may apply to a tribunal for an order to set aside the notice.
- (3) The application must be made within 4 weeks after the notice was given.

⁵⁰ See sections 197(2)(h) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 198(2)(l) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given without ground for a periodic agreement.

- (4) On an application under this section, the tribunal may make the order sought if it is satisfied the notice was given in contravention of section 165.

Division 3 Applications for termination

166 Application for termination for failure to leave

- (1) The lessor may apply to a tribunal for a termination order because—
- (a) the lessor gave a notice to leave the premises to the tenant; and
 - (b) the tenant failed to hand over vacant possession of the premises to the lessor on the handover day.
- (2) An application under this section must be made within 2 weeks after the handover day.
- (4) An application made under this section is called an application made because of a *failure to leave*.

167 Application for termination for failure to leave as intended

- (1) The lessor may apply to a tribunal for a termination order⁵¹ because the tenant—
- (a) gave a notice of intention to leave the premises to the lessor; and
 - (b) did not withdraw the notice before the handover day; and
 - (c) failed to hand over vacant possession of the premises to the lessor on the handover day.
- (2) An application under this section must be made within 2 weeks after the handover day.

⁵¹ See sections 202(1) (Applications for termination orders) and 209 (Failure to leave as intended) for other provisions about the application.

- (3) An application under this section is called an application made because of a *failure to leave as intended*.

168 Application for termination for excessive hardship

- (1) The lessor may apply to a tribunal for a termination order⁵² because the lessor would suffer excessive hardship if the agreement were not terminated.
- (2) An application under this section is called an application made because of *excessive hardship*.

169 Application for termination for damage or injury

- (1) The lessor may apply to a tribunal for a termination order⁵³ because the tenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—
- (a) serious damage to the premises; or
 - (b) injury to—
 - (i) the lessor, the lessor's agent or someone else allowed on the premises; or
 - (ii) a person occupying, or allowed on, premises nearby.
- (2) However, the lessor may not make an application about injury to a person if the person is—
- (a) the spouse of the tenant occupying the premises with the tenant; or
 - (b) a cotenant whose spouse is the other, or another, cotenant.
- (3) An application under this section about damage to premises is called an application made because of *damage*.
- (4) An application under this section about injury to a person is called an application made because of *injury*.

52 See sections 202(1) (Applications for termination orders) and 210 (Excessive hardship) for other provisions about the application.

53 See sections 202(1) (Applications for termination orders) and 211 (Damage or injury) for other provisions about the application.

170 Application for termination for tenant's objectionable behaviour

- (1) The lessor may apply to a tribunal for a termination order⁵⁴ because the tenant—
 - (a) has harassed, intimidated or verbally abused—
 - (i) the lessor or lessor's agent; or
 - (ii) a person occupying, or allowed on, premises nearby; or
 - (b) is causing, or has caused, a serious nuisance to persons occupying premises nearby.
- (2) An application under this section is called an application made because of *objectionable behaviour*.

171 Application for termination for incompatibility

- (1) This section applies only to a residential tenancy that is a short tenancy (moveable dwelling).
- (2) The lessor may apply to a tribunal for a termination order⁵⁵ because the lessor and tenant are incompatible in a way that makes it desirable, in the interests of both parties, for the agreement to end.
- (3) An application under this section is called an application made because of *incompatibility*.

171A Application for termination for repeated breaches

- (1) This section applies if—
 - (a) the lessor gives 2 notices to remedy breach to the tenant for breaches of a particular provision in relation to the agreement; and
 - (b) each notice relates to a separate breach of the particular provision; and

54 See sections 202(1) (Applications for termination orders) and 212 (Objectionable behaviour) for other provisions about the application.

55 See sections 202(1) (Applications for termination orders) and 213 (Incompatibility) for other provisions about the application.

- (c) the tenant remedies each breach within the relevant allowed remedy period; and
 - (d) the tenant commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
 - (e) all breaches happen within the period prescribed under a regulation⁵⁶ for this section.
- (2) The lessor may apply to a tribunal for a termination order.⁵⁷
- (3) An application under this section is called an application made because of *repeated breaches*.
- (4) In this section—
- provision* means—
- (a) section 102, 106, 107 or 108;⁵⁸ or
 - (b) a provision of a section mentioned in paragraph (a); or
 - (c) a provision of an agreement providing for the payment of rent.

172 Application for interim order about damage or injury

- (1) This section applies if—
- (a) the lessor makes an application to a tribunal for a termination order because of damage or injury; and
 - (b) the lessor believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought.

⁵⁶ See the *Residential Tenancies Regulation 1995*, section 20 (Prescribed period for repeated breaches—Act, ss 171A and 186A).

⁵⁷ See sections 202(1) (Applications for termination orders) and 213A (Repeated breaches) for other provisions about the application.

⁵⁸ Section 102 (Tenant's use of premises), 106 (Tenant's obligations generally), 107 (Tenant's obligations for facilities in moveable dwelling parks) or 108 (Tenant's obligation for moveable dwelling site)

- (2) The lessor may apply to a tribunal for an order⁵⁹ to restrain the tenant from causing the further damage or injury.

Part 3 Action by tenant

Division 1 Notices to remedy breach

173 Notice to remedy lessor's breach

- (1) If the tenant believes on reasonable grounds that the lessor has breached a term of the agreement and the breach has not been remedied, the tenant may give a notice⁶⁰ to the lessor requiring the lessor to remedy the breach within the allowed remedy period.⁶¹
- (2) This section does not apply to an agreement for a short tenancy (moveable dwelling).

Division 2 Notices of intention to leave premises

175 Notice of intention to leave for unremedied breach

- (1) The tenant may give a notice of intention to leave the premises⁶² to the lessor because the lessor has failed to comply, within the allowed remedy period, with a notice to remedy breach given to the lessor by the tenant.

59 See section 214 (Interim order about damage or injury) for provisions about making the order.

60 See section 192 (Notice to remedy breach) for requirements for the notice.

61 See section 196 (Allowed remedy period) and schedule 3 (Dictionary), definition *allowed remedy period*.

62 See section 194 (Notice of intention to leave) for requirements for the notice.

- (2) A notice of intention to leave under this section is called a notice of intention to leave for an ***unremedied breach***.⁶³

176 Waiver of breach

If—

- (a) a notice of intention to leave is given to the lessor for an unremedied breach; and
- (b) the lessor remedies the breach before the handover day; the tenant may, instead of handing over vacant possession of the premises to the lessor on the handover day, waive the breach by written notice given to the lessor before the handover day.

177 Notice of intention to leave for lessor's non-compliance with tribunal order

- (1) The tenant may give a notice of intention to leave the premises⁶⁴ to the lessor because the lessor has failed to comply with an order of a tribunal.
- (2) A notice of intention to leave under this section is called a notice of intention to leave for ***non-compliance (tribunal order)***.⁶⁵

63 See sections 199(2)(a) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(a) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of an unremedied breach.

64 See section 194 (Notice of intention to leave) for requirements for the notice.

65 See sections 199(2)(b) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(b) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of non-compliance (tribunal order).

178 Notice of intention to leave if agreement frustrated

- (1) The tenant may give a notice of intention to leave the premises⁶⁶ to the lessor because the premises—
 - (a) have been destroyed, or made completely or partially unfit to live in, other than because of a breach of the agreement; or
 - (b) no longer may be used lawfully as a residence; or
 - (c) have been appropriated or acquired compulsorily by an authority.
- (2) A notice of intention to leave under this section must be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) A notice of intention to leave under subsection (1)(a) or (b) is called a notice of intention to leave for *non-livability*.⁶⁷
- (4) A notice of intention to leave under subsection (1)(c) is called a notice of intention to leave for *compulsory acquisition*.⁶⁸

179 Notice of intention to leave if agreement frustrated (moveable dwelling premises)

- (1) This section applies only to moveable dwelling premises in a moveable dwelling park.
- (2) The tenant may give a notice of intention to leave the premises⁶⁹ to the lessor because the park has become an unfit place in which to live in a moveable dwelling.

66 See section 194 (Notice of intention to leave) for requirements for the notice.

67 See sections 199(2)(c) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(c) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of non-livability.

68 See sections 199(2)(d) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(d) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of compulsory acquisition.

69 See section 194 (Notice of intention to leave) for requirements for the notice.

- (3) A notice of intention to leave may be given under this section only if a facility in the park generally available for use by occupants of moveable dwellings in the park has been destroyed, or become completely or partially unavailable for use, other than because of a breach of the agreement.
- (4) A notice of intention to leave under this section must be given within 1 month after the park becoming an unfit place in which to live.
- (5) A notice of intention to leave under this section is called a notice of intention to leave for *non-livability*.⁷⁰

181 Notice of intention to leave without ground

- (1) The tenant may give a notice of intention to leave the premises⁷¹ to the lessor without stating a ground for the notice.
- (2) A notice of intention to leave under this section is called a notice of intention to leave *without ground*.⁷²

Division 3 Applications for termination

182 Application for termination for excessive hardship

- (1) The tenant may apply to a tribunal for a termination order⁷³ because the tenant would suffer excessive hardship if the agreement were not terminated.

70 See section 200(2)(c) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given because of non-livability.

71 See section 194 (Notice of intention to leave) for requirements for the notice.

72 See sections 199(2)(e) (Handover day for notice of intention to leave for premises that are not moveable dwelling premises) and 200(2)(e) (Handover day for notice of intention to leave for moveable dwelling premises) for requirements about the handover day for a notice of intention to leave given without ground for a periodic agreement.

73 See sections 202(2) (Applications for termination orders) and 210 (Excessive hardship) for other provisions about the application.

- (2) An application under this section is called an application made because of *excessive hardship*.

183 Application for termination for damage or injury

- (1) The tenant may apply to a tribunal for a termination order⁷⁴ because the lessor has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—
- (a) serious damage to the tenant's goods; or
 - (b) injury to—
 - (i) the tenant; or
 - (ii) someone else occupying, or allowed on, the premises.
- (2) An application under this section about damage to goods is called an application made because of *damage*.
- (3) An application under this section about injury to a person is called an application made because of *injury*.

184 Application by cotenant for termination for damage or injury

- (1) A cotenant may apply to a tribunal for a termination order because the other cotenant, or another cotenant, has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—
- (a) serious damage to the premises; or
 - (b) injury to—
 - (i) the applicant; or
 - (ii) someone else occupying, or allowed on, the premises.
- (2) An application under this section about damage to premises is called an application made because of *damage*.

⁷⁴ See sections 202(2) (Applications for termination orders) and 211 (Damage or injury) for other provisions about the application.

- (3) An application under this section about injury to a person is called an application made because of *injury*.

185 Application for termination for lessor's objectionable behaviour

- (1) The tenant may apply to a tribunal for a termination order⁷⁵ because the lessor has harassed, intimidated or verbally abused—
- (a) the tenant; or
 - (b) another person occupying, or allowed on, the premises.
- (2) An application made under this section is called an application made because of *objectionable behaviour*.

186 Application for termination for incompatibility

- (1) This section applies only to a residential tenancy that is a short tenancy (moveable dwelling).
- (2) The tenant may apply to a tribunal for a termination order⁷⁶ because the tenant and lessor are incompatible in a way that makes it desirable, in the interests of both parties, for the agreement to end.
- (3) An application under this section is called an application made because of *incompatibility*.

186A Application for termination for repeated breaches

- (1) This section applies if—
- (a) the tenant gives 2 notices to remedy breach to the lessor for breaches of a particular provision in relation to the agreement;⁷⁷ and

75 See sections 202(2) (Applications for termination orders) and 212 (Objectionable behaviour) for other provisions about the application.

76 See sections 202(2) (Applications for termination orders) and 213 (Incompatibility) for other provisions about the application.

77 Sections 101 (Quiet enjoyment), 103 (Lessor's obligations generally), 104 (Lessor's obligations for facilities in moveable dwelling parks), 105 (Lessor's obligations for moveable dwelling site) and 114 (Unlawful entry of premises)

- (b) each notice relates to a separate breach of the particular provision; and
 - (c) the lessor remedies each breach within the relevant allowed remedy period; and
 - (d) the lessor commits a further breach of the particular provision after the breaches mentioned in paragraph (a); and
 - (e) all breaches happen within the period prescribed under a regulation⁷⁸ for this section.
- (2) The tenant may apply to a tribunal for a termination order.⁷⁹
- (3) An application under this section is called an application made because of *repeated breaches*.
- (4) In this section—
- provision* means—
- (a) section 101, 103, 104, 105 or 114; or
 - (b) a provision of a section mentioned in paragraph (a); or
 - (c) a provision of an agreement providing for the payment of rent.

187 Application for interim order about damage or injury

- (1) This section applies if—
- (a) the tenant makes an application to a tribunal for a termination order because of damage or injury; and
 - (b) the tenant believes on reasonable grounds the lessor is likely to cause further damage or injury for which a termination order could be sought.
- (2) The tenant may apply to a tribunal for an order to restrain the lessor from causing the further damage or injury.

⁷⁸ See the *Residential Tenancies Regulation 1995*, section 20 (Prescribed period for repeated breaches—Act, ss 171A and 186A).

⁷⁹ See sections 202(2) (Applications for termination orders) and 213A (Repeated breaches) for other provisions about the application.

Part 4 Action by other persons

Division 1 Mortgagees

187A Notice about proposed action of mortgagee

- (1) This section applies if—
 - (a) residential premises are subject to a mortgage; and
 - (b) after the premises become subject to the mortgage, a residential tenancy agreement is entered into for the premises; and
 - (c) the mortgagee under the mortgage does not consent to the tenancy; and
 - (d) the mortgagee, or another person appointed under the mortgage (the *appointed person*), has become entitled to obtain possession of the premises.

- (2) The mortgagee must not obtain possession of the premises unless, at least 4 weeks before obtaining possession, the mortgagee or the appointed person gives the tenant written notice informing the tenant that possession is to be obtained.

Maximum penalty—50 penalty units.

- (3) The appointed person must not obtain possession of the premises unless, at least 4 weeks before obtaining possession, the appointed person or mortgagee gives the tenant written notice informing the tenant that possession is to be obtained.

Maximum penalty—50 penalty units.

- (4) In this section—

obtain includes take.

187B Acceptance of rent does not operate as consent

- (1) This section applies if—
 - (a) residential premises are subject to a mortgage; and

- (b) after the premises becomes subject to the mortgage, a residential tenancy agreement is entered into for the premises; and
 - (c) the mortgagee under the mortgage does not consent to the tenancy.
- (2) If the mortgagee, or another person appointed under the mortgage, makes a demand for, takes a proceeding for the recovery of, or accepts, rent payable under the residential tenancy agreement, the mortgagee's or person's action does not operate as a consent to the tenancy.

Division 2 Other persons

188 Application by tenant's spouse for termination for damage or injury

The spouse of the tenant occupying the premises with the tenant may apply to a tribunal for a termination order because the tenant—

- (a) has intentionally or recklessly caused, or is likely to intentionally or recklessly cause, serious damage to the premises; or
- (b) has committed an act of domestic violence against the spouse.

189 Application by occupant for termination for damage or injury

An occupant of premises under an agreement who is not the tenant may apply to a tribunal for a termination order because the tenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause—

- (a) serious damage to the premises; or
- (b) injury to—
 - (i) the applicant; or
 - (ii) someone else occupying, or allowed on, the premises.

190 Application for interim order about damage or injury

- (1) This section applies if—
 - (a) the spouse of the tenant, or an occupant of the premises, makes an application to a tribunal for a termination order for damage or injury; and
 - (b) the applicant believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought.
- (2) The applicant may apply to a tribunal for an order to restrain the tenant from causing the further damage or injury.

191 References to applications

- (1) An application under this part about damage to premises is called an application made because of *damage*.
- (2) An application under this part about injury to a person is called an application made because of *injury*.

Part 5 Procedural requirements for action taken by lessor or tenant**192 Notice to remedy breach**

- (1) A notice to remedy breach must be in the approved form.
- (2) The approved form must provide for the notice—
 - (a) to be signed by or for the party giving the notice; and
 - (b) to include particulars of the breach; and
 - (c) to state the day by which the party to whom the notice is directed is required to remedy the breach.

193 Notice to leave

- (1) A notice to leave premises must⁸⁰—
 - (a) be in the approved form; and
 - (b) be signed by or for the lessor; and
 - (c) identify the premises; and
 - (d) require the tenant to hand over vacant possession of the premises to the lessor on the day stated in the notice; and
 - (e) state—
 - (i) the ground on which the notice is given; or
 - (ii) that the notice is given without ground; and
 - (f) unless the notice is given without ground—give particulars of the ground on which the notice is given.
- (2) The notice also must—
 - (a) state that information about the tenant's rights and obligations is contained in the agreement; and
 - (b) inform the tenant that—
 - (i) if the tenant does not comply with the notice on the handover day the lessor may apply to a tribunal for a termination order without giving the tenant any further notice; and
 - (ii) if the tribunal makes the order, it also must make an order for possession of the premises in favour of the lessor.
- (3) A notice to leave given for a fixed term agreement is not ineffective because the handover day is earlier than the day the term ends.
- (4) A notice to leave given for a periodic agreement is not ineffective merely because the handover day is not—
 - (a) the last day of a period of the tenancy; or

80 See also section 215(1) (Defects in notices).

- (b) another day when the tenancy would have ended if this Act had not been enacted.

194 Notice of intention to leave

- (1) A notice of intention to leave premises must⁸¹—
 - (a) be in the approved form; and
 - (b) be signed by or for the tenant; and
 - (c) identify the premises; and
 - (d) state the tenant intends handing over vacant possession of the premises to the lessor on the day stated in the notice; and
 - (e) state—
 - (i) the ground on which the notice is given; or
 - (ii) that the notice is given without ground; and
 - (f) unless the notice is given without ground—give particulars of the ground on which the notice is given.
- (2) A notice of intention to leave given for a fixed term agreement is not ineffective merely because the handover day is earlier than the day the term ends.
- (3) A notice of intention to leave given for a periodic agreement is not ineffective because the handover day is not—
 - (a) the last day of a period of the tenancy; or
 - (b) another day the tenancy would have ended if this Act had not been enacted.

196 Allowed remedy period

- (1) The allowed remedy period for a notice to remedy breach must not end earlier than 7 days after the notice is given.
- (2) However, if the notice is given about a breach of the term of the agreement for payment of rent and the agreement is an agreement for a long tenancy (moveable dwelling), the

81 See also section 215(1) (Defects in notices).

allowed remedy period for the notice must not end earlier than 5 days after the notice is given.

197 Handover day for notice to leave for premises that are not moveable dwelling premises

- (1) This section applies only to notices to leave given for premises that are not moveable dwelling premises.
- (2) The handover day for a notice to leave given by the lessor must not be earlier than—
 - (a) if the notice is given because of an unremedied breach and the breach is a failure to pay rent—7 days after the notice is given; or
 - (aa) if the notice is given because of an unremedied breach and the notice is not a notice to which paragraph (a) applies—14 days after the notice is given; or
 - (b) if the notice is given because of non-compliance (tribunal order)—7 days after the notice is given; or
 - (c) if the notice is given because of non-livability—the day the notice is given; or
 - (d) if the notice is given because of compulsory acquisition—2 months after the notice is given; or
 - (e) if the notice is given because of a sale contract—4 weeks after the notice is given; or
 - (f) if the notice is given because of employment termination—4 weeks after the notice is given; or
 - (g) if the notice is given because of ending of accommodation assistance—4 weeks after the notice is given; or
 - (ga) if the notice is given because of ending of housing assistance—2 months after the notice is given; or
 - (h) if the notice is given without ground for a periodic agreement—2 months after the notice is given; or
 - (i) if the notice is given without ground for a fixed term agreement—the later of—

- (i) 14 days after the notice is given; or
- (ii) the day the term of the agreement ends.

198 Handover day for notice to leave for moveable dwelling premises

- (1) This section applies only to notices to leave given for moveable dwelling premises.
- (2) If the tenancy is not a short tenancy (moveable dwelling), the handover day for a notice to leave given by the lessor must not be earlier than—
 - (a) if the notice is given because of an unremedied breach—2 days after the notice is given; or
 - (b) if the notice is given because of non-compliance (tribunal order)—7 days after the notice is given; or
 - (c) if the notice is given because of non-compliance (moveable dwelling relocation)—2 days after the notice is given; or
 - (d) if the notice is given because of non-livability—the day the notice is given; or
 - (e) if the notice is given because of compulsory acquisition—2 months after the notice is given; or
 - (f) if the notice is given because of a sale contract—4 weeks after the notice is given; or
 - (g) if the notice is given because of a voluntary park closure—2 months after the notice is given; or
 - (h) if the notice is given because of a compulsory park closure—the day the notice is given; or
 - (i) if the notice is given because of employment termination—4 weeks after the notice is given; or
 - (j) if the notice is given because of ending of accommodation assistance—4 weeks after the notice is given; or
 - (k) if the notice is given because of ending of housing assistance—2 months after the notice is given; or

- (l) if the notice is given without ground for a periodic agreement—2 months after the notice is given; or
- (m) if the notice is given without ground for a fixed term agreement—the later of—
 - (i) 14 days after the notice is given; or
 - (ii) the day the term of the agreement ends.
- (3) If the tenancy is a short tenancy (moveable dwelling), the handover day for a notice to leave given by the lessor must not be earlier than—
 - (a) if neither paragraph (b) nor paragraph (c) applies—2 days after the notice is given; or
 - (b) if the notice is given because of non-livability—the day the notice is given; or
 - (c) if the notice is given because of compulsory park closure—the day the notice is given.

199 Handover day for notice of intention to leave for premises that are not moveable dwelling premises

- (1) This section applies only to notices of intention to leave given for premises that are not moveable dwelling premises.
- (2) The handover day for a notice of intention to leave given by the tenant must not be earlier than—
 - (a) if the notice is given because of an unremedied breach—7 days after the notice is given; or
 - (b) if the notice is given because of non-compliance (tribunal order)—7 days after the notice is given; or
 - (c) if the notice is given because of non-livability—the day the notice is given; or
 - (d) if the notice is given because of compulsory acquisition—2 weeks after the notice is given; or
 - (e) if the notice is given without ground for a periodic agreement—2 weeks after the notice is given; or
 - (f) if the notice is given without ground for a fixed term agreement—the later of—

- (i) 14 days after the notice is given; or
- (ii) the day the term of the agreement ends.

200 Handover day for notice of intention to leave for moveable dwelling premises

- (1) This section applies only to notices of intention to leave given for moveable dwelling premises.
- (2) If the tenancy is not a short tenancy (moveable dwelling) the handover day for a notice of intention to leave must not be earlier than—
 - (a) if the notice is given because of an unremedied breach—2 days after the notice is given; or
 - (b) if the notice is given because of non-compliance (tribunal order)—7 days after the notice is given; or
 - (c) if the notice is given because of non-livability—the day the notice is given; or
 - (d) if the notice is given because of compulsory acquisition—2 weeks after the notice is given; or
 - (e) if the notice is given without ground for a periodic agreement—2 weeks after the notice is given; or
 - (f) if the notice is given without ground for a fixed term agreement—the later of—
 - (i) 14 days after the notice is given; or
 - (ii) the day the term of the agreement ends.
- (3) If the tenancy is a short tenancy (moveable dwelling), the handover day for a notice of intention to leave must not be earlier than—
 - (a) if paragraph (b) does not apply—1 day after the notice is given; or
 - (b) if the notice is given because of non-livability—the day the notice is given.

200A Withdrawing notice to leave for unremedied breach

- (1) The lessor may withdraw a notice to leave for an unremedied breach given by the lessor if the tenant remedies the breach.
- (2) The withdrawal—
 - (a) must be made before the handover day; and
 - (b) must be made by written notice given to the tenant; and
 - (c) may be made only with the tenant's written agreement.
- (3) On the withdrawal of a notice to leave under this section, the tenancy continues as if the notice to leave had not been given.

201 Withdrawing notice of intention to leave

- (1) The tenant may withdraw a notice of intention to leave the premises given by the tenant to the lessor.
- (2) However, the withdrawal—
 - (a) must be made before the handover day; and
 - (b) may be made only with the lessor's written agreement.

202 Applications for termination orders

- (1) An application may be made to a tribunal for a termination order by the lessor without giving a notice to leave the premises to the tenant if the application is made because of any of the following—
 - failure to leave as intended
 - excessive hardship
 - damage
 - injury
 - objectionable behaviour
 - incompatibility
 - repeated breaches.
- (2) An application may be made to a tribunal for a termination order by the tenant without giving a notice of intention to

leave the premises to the lessor if the application is made because of any of the following—

- excessive hardship
- injury
- damage
- objectionable behaviour
- incompatibility
- repeated breaches.

203 Applications to tribunal

A tribunal may consider an application made to it under part 2 or 3 only if it is satisfied the applicant is entitled to make the application.

Part 6 Orders of tribunal

204 Failure to leave for unremedied breach

- (1) This section applies if—
 - (a) an application is made to a tribunal for a termination order because of a failure to leave; and
 - (b) the notice to leave was given because of an unremedied breach.
- (2) The tribunal may make the order if it is satisfied—
 - (a) the lessor has established the ground of the application and notice to leave; and
 - (b) the tenant committed the breach of the agreement stated in the notice to remedy breach about which the notice to leave was given; and
 - (c) the breach justifies terminating the agreement.
- (3) In deciding if the breach justifies terminating the agreement, the tribunal may have regard to—

- (a) the seriousness of the breach; and
 - (b) any steps taken by the tenant to remedy the breach; and
 - (c) whether the breach was recurrent and, if it was recurrent, the frequency of the recurrences; and
 - (d) the detriment caused, or likely to be caused, to the lessor by the breach; and
 - (e) whether the lessor has acted reasonably about the breach; and
 - (f) any other issues it considers appropriate.
- (4) Subsection (3) does not limit the issues to which the tribunal may have regard.

205 Failure to leave for non-compliance (tribunal order)

- (1) This section applies if—
- (a) an application is made to a tribunal for a termination order because of a failure to leave; and
 - (b) the notice to leave was given because of non-compliance (tribunal order).
- (2) The tribunal may make the order if it is satisfied—
- (a) the lessor has established the ground of the application and notice to leave; and
 - (b) it is appropriate to make the order.

206 Failure to leave for non-compliance (moveable dwelling relocation)

- (1) This section applies if—
- (a) an application is made to a tribunal for a termination order because of a failure to leave; and
 - (b) the notice to leave was given because of non-compliance (moveable dwelling relocation).
- (2) The tribunal may make the order if it—

- (a) is satisfied the lessor has established the ground of the application, notice to leave and notice to relocate; and
- (b) considers it is appropriate to make the order.

207 Failure to leave for other grounds

- (1) This section applies if—
 - (a) an application is made to a tribunal for a termination order because of a failure to leave; and
 - (b) the notice to leave was given because any of the following—
 - non-livability
 - compulsory acquisition
 - sale contract
 - voluntary park closure
 - compulsory park closure
 - employment termination
 - ending of accommodation assistance.
- (2) The tribunal may make the order if it is satisfied the lessor has established the ground of the application and notice to leave.

208 Failure to leave without ground

- (1) This section applies if—
 - (a) an application is made to a tribunal for a termination order because of a failure to leave; and
 - (b) the notice to leave was given without ground.
- (2) The tribunal may make the order if it is satisfied it is appropriate to make the order.

209 Failure to leave as intended

If an application is made to a tribunal for a termination order because of a failure to leave as intended, the tribunal may

make the order if it is satisfied the lessor has established the ground of the application.

210 Excessive hardship

If an application is made to a tribunal for a termination order because of excessive hardship, the tribunal may make the order if it is satisfied the applicant has established the ground of the application.

211 Damage or injury

- (1) If an application is made to a tribunal for a termination order because of damage or injury, the tribunal may make the order if it is satisfied the applicant has established the ground of the application.
- (2) If the application is made because of injury by the spouse of the tenant or a cotenant whose spouse is the other, or another, cotenant, in deciding the application the tribunal must have regard to the following issues (the *domestic violence issues*)—
 - (a) whether the applicant has applied for a domestic violence order against the applicant's spouse;
 - (b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;
 - (c) if a domestic violence order is in force—whether a condition was imposed prohibiting the applicant's spouse from entering, or remaining in, the premises.
- (3) Subsection (2) does not limit the issues to which the tribunal may have regard.

212 Objectionable behaviour

- (1) If an application is made to a tribunal for a termination order because of objectionable behaviour, the tribunal may make the order if it is satisfied—

- (a) the applicant has established the ground of the application; and
 - (b) the behaviour justifies terminating the agreement.
- (2) In deciding if the behaviour justifies terminating the agreement, the tribunal may have regard to—
- (a) whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences; and
 - (b) for behaviour in the form of harassment, intimidation or verbal abuse—its seriousness.
- (3) Subsection (2) does not limit the issues to which the tribunal may have regard.

213 Incompatibility

If an application is made to a tribunal for a termination order because of incompatibility, the tribunal may make the order if it is satisfied the applicant has established the ground of the application.

213A Repeated breaches

- (1) If an application is made to a tribunal for a termination order because of repeated breaches, the tribunal may make the order if it is satisfied—
- (a) the applicant has established the ground of the application; and
 - (b) the person in relation to whom the order is sought committed each breach stated in the 2 notices to remedy breach on which the application is based.
- (2) In deciding the application, the tribunal must have regard to the following—
- (a) the seriousness of each breach associated with the application, having regard to the extent of any inconvenience or financial or other disadvantage suffered by the applicant;
 - (b) the period for which the tenancy has been in existence;
 - (c) the period in which the breaches were committed;

- (d) for a fixed term agreement—the remaining period of the tenancy;
- (e) anything else the tribunal considers relevant.

214 Interim order about damage or injury

If an application is made to a tribunal for an order to restrain a party from causing damage or injury, the tribunal—

- (a) may make the order if it is satisfied it is appropriate to make the order; and
- (b) for supporting the order, may make an order restraining the party from entering premises.

215 Defects in notices

- (1) If an application is made to a tribunal by a lessor for a termination order because of a failure to leave, the tribunal may make the order if it is satisfied it is appropriate to make the order in all the circumstances of the case, even though the notice to leave⁸² contains a defect.
- (2) If an application is made to a tribunal about a notice of intention to leave, the tribunal may make any order it is satisfied it is appropriate to make in all the circumstances of the case, even though the notice⁸³ contains a defect.

Part 7 Recovery of possession of premises

216 Issue of warrant of possession

- (1) If a tribunal makes a termination order on an application made other than by a tenant, it also must issue a warrant of possession.

82 See section 193 (Notice to leave) for requirements for the notice.

83 See section 194 (Notice of intention to leave) for requirements for the notice.

- (2) If the termination order is made on an application made because of excessive hardship, as well as issuing the warrant of possession, the tribunal may make any other order it considers appropriate including, for example, an order that the applicant pay compensation to the other party to the agreement for the other party's loss of the tenancy.

217 Warrant of possession

- (1) A warrant of possession must—
- (a) authorise a police officer, or a stated authorised person, to enter the premises and give possession of the premises to the person in whose favour the termination order was made; and
 - (b) authorise the person to whom the warrant is directed to exercise the powers under the warrant with necessary and reasonable help and force; and
 - (c) state the hours of the day when entry may be made; and
 - (d) state the day the warrant ends.
- (2) The registrar must give written notice of the issue of a warrant of possession to the former tenant as soon as practicable after the warrant is issued.
- (2A) If the registrar can not comply with subsection (2) after reasonable efforts (whether before or after the warrant is executed), the validity of the warrant is not affected merely because of the noncompliance.
- (3) A warrant of possession takes effect on the day stated in the warrant for it to take effect and ends—
- (a) if paragraph (b) does not apply—14 days after it takes effect; or
 - (b) if the tribunal is satisfied that, because of special circumstances, the warrant should continue until a later day stated in the warrant—on the later day.

Examples of special circumstances under subsection (3)(b)—

- 1 Natural disasters, including floods, affecting the area in which the premises are located.
- 2 The remoteness of the premises.

- (4) However, the day on which the warrant takes effect must not be later than 3 business days after it is issued.
- (5) If a warrant of possession (the *original warrant*) is lost or destroyed before it ends, the registrar may issue a copy of the warrant.
- (6) A copy of a warrant issued under subsection (5)—
 - (a) has effect as if it were the original warrant; and
 - (b) is taken to have been issued when the original warrant was issued; and
 - (c) ends when the original warrant ends.

218 Execution of warrant of possession

The person to whom a warrant of possession is directed may exercise the powers under the warrant in the way stated in the warrant.

219 Way of recovering possession of premises

- (1) This section applies to premises in the possession of a person—
 - (a) as the tenant under an agreement; or
 - (b) as the former tenant under an agreement holding over after termination of the agreement.
- (2) A person must not recover possession of the premises other than in a way authorised under this Act.

Maximum penalty—50 penalty units.

220 Obstruction of person executing warrant of possession

A person must not obstruct a person in the exercise of a power under a warrant of possession, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

Part 8 Abandonment

221 Termination of agreement by lessor if premises abandoned

- (1) If the lessor believes on reasonable grounds that the tenant has abandoned the premises, the lessor may give a notice (*abandonment termination notice*) to the tenant terminating the agreement.
- (2) The notice must be in the approved form.
- (3) The approved form must provide for the notice—
 - (a) to be signed by or for the lessor; and
 - (b) to identify the premises; and
 - (c) to state the lessor is terminating the agreement because the tenant has abandoned the premises.
- (4) If the tenant does not take action under section 221A about the notice within 7 days after receiving the notice, the tenant is taken to have abandoned the premises.
- (5) For subsection (1), reasonable grounds include the following—
 - (a) a failure of the tenant to pay rent under the agreement;
 - (b) the presence at the premises of uncollected mail, newspapers or other material;
 - (c) reports from neighbours of the tenant or from other persons indicating the tenant has abandoned the premises;
 - (d) the absence of household goods at the premises;
 - (e) the disconnection of services (including gas, electricity and telephone) to the premises;
 - (f) a failure of the tenant to respond to an entry notice.

221A Dispute about abandonment termination notice

- (1) If the tenant disputes an abandonment termination notice, the tenant may apply to a tribunal 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 tribunal 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 tribunal as compensation for loss or expense incurred by the tenant because of the termination of the agreement;
 - (iii) any other order it considers appropriate.

222 Order about abandonment

- (1) If the lessor believes on reasonable grounds that the tenant has abandoned the premises, the lessor may apply to a tribunal for an order under this section.
- (2) The application may be decided by a tribunal or registrar.
- (3) The lessor may make the application instead of giving an abandonment termination notice to the tenant.
- (4) If an application is made, a tribunal or registrar may make an order declaring that the premises were abandoned by the tenant on the day stated in the order.
- (5) If the tribunal or registrar makes an order under subsection (4), the tenant is taken to have abandoned the premises on the day stated in the order.⁸⁴

⁸⁴ Under section 228 (Review of abandonment order) a former tenant may apply to a tribunal for a review of a decision of a registrar or tribunal declaring the person abandoned premises on a stated day.

- (b) the amount it considers the lessor is entitled to receive for the occupation fee.

226 Compensation on abandonment termination notice

- (1) If an agreement is terminated by the giving of an abandonment termination notice to the tenant, the lessor may apply to a tribunal for an order for compensation.
- (2) If an application is made by the lessor, a tribunal may make an order requiring the tenant to pay to the lessor an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the lessor by the abandonment.

227 Compensation on termination by tribunal

If a tribunal or registrar makes an order declaring that premises were abandoned by the tenant under an agreement, the tribunal may make an order requiring the tenant to pay to the lessor an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the lessor by the abandonment.

228 Review of abandonment order

- (1) The former tenant under an agreement who is dissatisfied with a decision of a tribunal or registrar declaring that the person abandoned the premises on a stated day may apply to a tribunal 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 tribunal 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 tribunal may make is an order requiring the former lessor under the agreement to pay to the applicant an amount the tribunal considers appropriate as compensation for

any loss or expense incurred by the applicant by the termination of the agreement.

230 Duty to mitigate loss or expense

- (1) This section applies to the lessor if the lessor incurs loss or expense because of—
 - (a) the tenant's failure to hand over vacant possession of the premises after a termination order is made by a tribunal; or
 - (b) the tenant's abandonment of the premises; or
 - (c) another act or omission of the tenant.
- (2) This section applies to the tenant if the tenant—
 - (a) incurs loss or expense because of an order made by a tribunal or registrar declaring that the tenant abandoned the premises on a stated day; and
 - (b) contends that the premises were not abandoned or were only abandoned on a day after the day stated.
- (3) The lessor or tenant—
 - (a) must take all reasonable steps to mitigate the loss or expense; and
 - (b) is not entitled to receive compensation for any loss or expense that could have been avoided by taking the steps.

Part 10 Goods and documents left behind on premises

230A Goods left on premises

- (1) This section applies if—
 - (a) an agreement is terminated; and
 - (b) goods that are not personal documents or money are left on the premises.
- (2) The person who was the lessor (the *former lessor*) may sell the goods, or dispose of them in another way, if the former lessor believes on reasonable grounds that—
 - (a) the value of the goods is less than the amount prescribed under a regulation;⁸⁵ or
 - (b) storage of the goods—
 - (i) would be unhealthy or unsafe; or
 - (ii) would cause the market value of the goods to be completely or substantially depreciated; or
 - (c) the cost of removing, storing and selling the goods would be more than the proceeds of sale of the goods.
- (3) If subsection (2) does not apply, the former lessor must store the goods safely for the period prescribed under a regulation⁸⁶ (the *storage period*).
- (4) If, at the end of the storage period, the goods have not been reclaimed, the former lessor may—
 - (a) sell the goods by auction; or
 - (b) if, on an application made to a tribunal by the former lessor, the tribunal makes an order authorising the sale or disposal of the goods—sell or dispose of the goods under the order.

85 See the *Residential Tenancies Regulation 1995*, section 21 (Prescribed value for goods left on premises—Act, s 230A(2)(a)) for the prescribed amount.

86 See the *Residential Tenancies Regulation 1995*, section 22 (Storage period for goods left on premises—Act, s 230A(3)) for the prescribed storage period.

Residential Tenancies Act 1994

- (5) For subsection (4)(a), if procedures for selling goods by auction are prescribed under a regulation,⁸⁷ the former lessor must sell the goods under the procedures.
- (6) The former lessor or the former lessor's agent must not sell or dispose of the goods except as provided under subsections (2), (4) and (5), unless the former lessor or agent has a reasonable excuse.

Maximum penalty—40 penalty units.

- (7) If, before the goods are disposed of, the person entitled to the goods (the *owner*) claims possession of them by written notice given to the former lessor or the former lessor's agent, the former lessor or agent must let the owner reclaim possession of the goods on paying the reasonable removal and storage costs to the former lessor or agent.

Maximum penalty—40 penalty units.

- (8) If the former lessor sells the goods, the former lessor—
- (a) may keep out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods; and
 - (b) must pay any balance to the public trustee within 10 days after the sale.
- (9) The public trustee must pay the balance into the Unclaimed Moneys Fund (the *fund*) kept under the *Public Trustee Act 1978*.
- (10) If, on application made to a tribunal by the former lessor, the tribunal is satisfied an amount (the *owed amount*) is owed to the former lessor by the tenant under the agreement, the tribunal may make an order conferring on the lessor an entitlement to receive an amount in the fund (the *fund amount*) that is equal to the smaller of the following amounts—
- (a) the owed amount;
 - (b) the balance paid to the public trustee under subsection (8).

⁸⁷ See the *Residential Tenancies Regulation 1995*, section 23 (Prescribed procedures for selling goods by auction—Act, s 230A(5)) for the prescribed procedures.

- (11) The former lessor or the former lessor's agent does not incur any liability for removing, selling or disposing of the goods if the former lessor or agent acts under this section without negligence.
- (12) A person who acquires the goods (whether as purchaser or in another way) acquires a good title to the goods, and the interest of anyone else in the goods ends, unless the person acquiring the goods did not act honestly.

230B Documents left on premises

- (1) This section applies if—
 - (a) an agreement is terminated; and
 - (b) a document is left at the premises.
- (2) The person who was the lessor (the *former lessor*) or who is the former lessor's agent must, within the required period—
 - (a) if the former lessor or agent knows the former tenant is the owner of the document—give the document to the former tenant; or
 - (b) if the former lessor or agent knows the former tenant is not the owner of the document and knows who the owner of the document is—give the document to the owner; or
 - (c) if neither paragraph (a) nor paragraph (b) applies—give the document to the public trustee.

Maximum penalty—10 penalty units.

- (3) Despite subsection (2)(a) and (b), if the former lessor or the former lessor's agent does not know where the former tenant or owner is, the former lessor or agent must, within the required period, give the document to the public trustee.

Maximum penalty—10 penalty units.

- (4) Money given to the public trustee under subsection (3) must be dealt with under the *Public Trustee Act 1978* as unclaimed moneys.

- (5) A personal document given to the public trustee under subsection (3)—
- (a) must be retained by the public trustee for at least 6 months, unless reclaimed by the owner; and
 - (b) at the end of the 6 months, may be disposed of by the public trustee in any way the public trustee considers appropriate.
- (6) In this section—
- document** means a personal document or money.
- required period** means the period ending 7 days after the first of the following to happen—
- (a) the agreement is terminated;
 - (b) the person finds the document.

230C Application about goods left on premises

- (1) This section applies if an interested person is dissatisfied with the way a former lessor dealt with, or is dealing with, goods left on premises after a residential tenancy agreement for the premises was terminated.
- (2) The interested person may apply to a tribunal for an order under this section.
- (3) On an application under this section, the tribunal may—
- (a) make an order requiring the former lessor to pay to the interested person an amount it considers appropriate as compensation for any loss or expense incurred by the interested person because of the former lessor's action in dealing with the goods; or
 - (b) make any other order it considers appropriate.
- (4) In this section—
- interested person** means—
- (a) the former tenant under an agreement; or
 - (b) a person, other than the former tenant under an agreement, who is the owner of goods left on premises to which a residential tenancy agreement applied.

Chapter 5 Resolution of tenancy issues

Part 1 Conciliation of tenancy disputes

Division 1 Requirement for conciliation

231 Meaning of *urgent application*

- (1) An application to a tribunal is an *urgent application* if it is an application for a termination order made because of—
 - (a) a failure to leave; or
 - (b) a failure to leave as intended; or
 - (c) excessive hardship; or
 - (d) damage; or
 - (e) injury; or
 - (f) objectionable behaviour; or
 - (g) repeated breaches.
- (2) An application to a tribunal is an *urgent application* if it is an application for a termination order for moveable dwelling premises in a moveable dwelling park to which a short tenancy (moveable dwelling) applies.⁸⁸
- (3) An application to a tribunal is an *urgent application* if—
 - (a) it is an application made under section 132A; and
 - (b) the notice to relocate on which the application is based was given because of an emergency or for health or safety reasons.

⁸⁸ See sections 30 (Short tenancy statements) and 31 (Extending short tenancy statements) for provisions about short tenancies.

- (4) An application to a tribunal is an ***urgent application*** if—
- (a) it is an application for an order to restrain a person from causing damage or injury; and
 - (b) the applicant also has made, or makes, an application for a termination order on the ground of damage or injury.
- (5) An application to a tribunal is an ***urgent application*** if it is made under any of the following sections—
- section 108A (Orders of tribunal)
 - section 128 (Orders of tribunal about emergency repairs)
 - section 138 (Application to tribunal about proposal)
 - section 150 (Injury to spouse)
 - section 150A (Injury or damage affecting occupants)
 - section 165A (Application to tribunal about notice to leave without ground)
 - section 221A (Dispute about abandonment termination notice)
 - section 222 (Order about abandonment)
 - section 225 (Tenant remaining in possession)
 - section 226 (Compensation on abandonment termination notice)
 - section 228 (Review of abandonment order)
 - section 230A (Goods left on premises)
 - section 230C (Application about goods left on premises)
 - section 248 (Application of Act to agreements)
 - section 283 (Application to tribunal for order to exclude person from park).
- (6) An application to a tribunal is an ***urgent application*** if it is made under chapter 7A.⁸⁹

89 Chapter 7A (Tenancy databases)

232 Applications to tribunal

- (1) A lessor or tenant may apply to a tribunal under this Act only if—
 - (a) the conciliation process about the issue to which the application relates has ended without a conciliated resolution having been reached about the issue; or
 - (b) the conciliation process ended with a conciliated resolution having been reached but the applicant believes on reasonable grounds that the other party has breached the conciliation agreement.
- (2) Subsection (1) does not apply to an urgent application.

Division 1A Conciliation**232A Conciliation process**

- (1) A *conciliation process* is a process of conciliation under which the parties are helped and encouraged to achieve a resolution of their dispute.
- (2) In division 5,⁹⁰ a *conciliation process* includes all the steps involved in the process of conciliation, including, for example—
 - (a) telephone conferencing; and
 - (b) joint sessions; and
 - (c) private sessions; and
 - (d) another step prescribed under a regulation.

232B Some matters not suitable for conciliation

- (1) The authority may refuse to provide a conciliation service to parties to a dispute about an agreement if the authority considers the dispute is unsuitable for conciliation.

90 Division 5 (Confidentiality, privilege and immunity)

- (2) The authority must publish guidelines about matters to be taken into account when deciding whether a dispute is unsuitable for conciliation.

232C Conciliators

- (1) The chief executive officer may appoint conciliators for this Act and the accommodation Act.
- (2) The chief executive officer may appoint a person as a conciliator only if the chief executive officer is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.
- (3) Without limiting subsection (2), the chief executive officer may be satisfied a person has the necessary expertise or experience because the person has satisfactorily completed the training approved by the chief executive officer for this section.
- (4) The functions of a conciliator under this Act are—
 - (a) to encourage the settlement of a tenancy dispute by facilitating, and helping to conduct, negotiations between parties to the dispute; and
 - (b) to promote the open exchange of information relevant to the dispute by the parties; and
 - (c) to provide to the parties information about the operation of this Act relevant to a settlement of the dispute; and
 - (d) to help in the settlement of the dispute in any other appropriate way.

Examples of facilitating and helping conduct negotiations—

- 1 Facilitating telephone conferencing.
- 2 Interviewing the parties, together or separately.

Division 2 Starting the conciliation process

233 Making dispute resolution request

- (1) This section applies if an application about an issue may be made to a tribunal by the lessor or tenant only if a conciliated resolution is not reached about the issue.
- (2) The lessor or tenant may make a request (a *dispute resolution request*) to the authority asking it to try to resolve the issue in dispute (the *tenancy dispute*).
- (3) The dispute resolution request must be in the approved form.

234 Reference to making of tribunal application includes making of dispute resolution request

- (1) This section applies if—
 - (a) an application about an issue (the *dispute issue*) may be made to a tribunal by the lessor or tenant under a residential tenancy agreement; and
 - (b) under a provision of this Act, the question whether the application has been made is relevant to an issue.
- (2) A reference in the provision to the making of an application about the dispute issue includes a reference to the making of a dispute resolution request⁹¹ to the authority about the dispute issue.

235 Action to be taken on dispute resolution request

- (1) As soon as practicable after a dispute resolution request is made to the authority, the authority must start a conciliation process for the parties to the tenancy dispute.

91 Section 249 (Applications about breach of agreements) provides for the time in which the lessor or tenant may apply to the tribunal for an order about a breach of the agreement.

- (2) However, if the authority considers the tenancy dispute is not suitable for conciliation, it may give written notice to the parties that the dispute is not suitable for conciliation.⁹²

Division 3 Conduct of conciliation process

236 Conciliation fee

- (1) This section applies if a conciliation fee is prescribed under a regulation.
- (2) If a dispute resolution request is made, the conciliator may start the conciliation process only if the prescribed fee has been paid to the authority by the person who made the dispute resolution request.
- (3) However, the authority may waive the fee if it is satisfied in all the circumstances it would be unreasonable to impose a fee.

237 Limited right of representation

During the conciliation process, each party to the tenancy dispute—

- (a) must conduct the party's own case; and
- (b) may be represented by an approved representative only if—
- (i) the party is a corporation; or
- (ii) the conciliator is satisfied, and continues to be satisfied, a person should be allowed to represent the party.

239 Parties' participation in conciliation process not compellable

- (1) A party to the tenancy dispute can not be compelled to participate in the conciliation process.

92 See also section 232B (Some matters not suitable for conciliation).

- (2) A party may withdraw from the process at any time.
- (3) The conciliation process may be ended at any time by the conciliator.

240 Parties to conciliation process

- (1) A person who is not a party to the tenancy dispute may take part in the conciliation process if the authority or conciliator is satisfied the person has a sufficient interest in the resolution of the dispute.
- (2) However, the person does not become a party to the dispute.

241 Conciliation agreements

- (1) This section applies if the parties to the tenancy dispute reach an agreement on resolving the dispute.
- (2) The agreement must be put into writing and signed by or for the parties.
- (4) The agreement must not be inconsistent with this Act.⁹³

242 No record of conciliation process

- (1) A person must not make a record of anything said during the conciliation process.
Maximum penalty—20 penalty units.
- (2) However, the conciliator may make notes of the conciliation process the conciliator considers appropriate.
- (3) The conciliator may destroy the notes after the conciliation process ends.

⁹³ See also section 35(3) (Terms of agreements include duties under Act etc.) which provides that the terms of the conciliation agreement are taken to be included as terms of the residential tenancy agreement.

Division 4 Withdrawal of disputes

244 Withdrawal of disputes

- (1) A person may, by written notice given to the authority, withdraw a dispute resolution request made by the person.
- (2) The notice may be given before or after a conciliator starts the conciliation process for the tenancy dispute.

Division 5 Confidentiality, privilege and immunity

245 Conciliators to maintain secrecy

- (1) A conciliator involved in a conciliation process must not disclose information coming to the conciliator's knowledge during the conciliation process.

Maximum penalty—20 penalty units.

- (2) However, a conciliator may disclose information—
 - (a) with the agreement of all parties to the tenancy dispute; or
 - (b) for statistical purposes without revealing the identity of any person about whom the information is relevant; or
 - (c) for an inquiry or proceeding about an offence or other misconduct that happens during the conciliation process; or
 - (d) if the information is about injury or the threat of injury to any person; or
 - (e) under a requirement under this or another Act.
- (3) Also, if a person gives a document to a conciliator during the conciliation process and asks the conciliator to disclose the document to an authorised person, the conciliator may make the disclosure.

246 Ordinary protection and immunity allowed

- (1) A conciliator has, in performing the conciliator's functions, the same protection and immunity as a Supreme Court judge performing the functions of a judge.
- (2) A person who is a party, or the party's representative, appearing during the conciliation process for a tenancy dispute has the same protection and immunity the person would have if the dispute were being heard in the Supreme Court.
- (3) A document produced during, or used for, a conciliation process has the same protection during the process it would have if produced before the Supreme Court.

247 Admissions made in conciliation process

- (1) Evidence of anything said or an admission made during the conciliation process for a tenancy dispute is inadmissible—
 - (a) at the hearing before a tribunal of an application relating to an issue to which the conciliation process relates; or
 - (b) in another proceeding before a court or elsewhere.
- (2) In subsection (1)—

proceeding does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.

Part 2 General powers of tribunals

248 Application of Act to agreements

- (1) A person may apply to a tribunal for an order, and the tribunal may make an order, declaring that a stated agreement is, or is not, a residential tenancy agreement to which this Act applies.
- (2) The tribunal may allow the authority to intervene in, or support, an application under subsection (1).

249 Applications about breach of agreements

- (1) If a lessor or tenant claims there has been a breach of a term of an agreement, the lessor or tenant may apply to a tribunal for an order about the breach.
- (2) The application must be made within 6 months after the lessor or tenant becomes aware of the breach.
- (3) The application may be made—
 - (a) during the term, or after the termination, of the agreement; and
 - (b) whether or not an application for termination, or a termination order, has been made about the agreement; and
 - (c) whether or not a rental bond for the agreement is held by the authority when the application is made.

250 Orders about breach of agreements

- (1) If an application about a breach is made to a tribunal, the tribunal may make any 1 or more of the following orders—
 - (a) an order restraining any action in breach of the agreement;
 - (b) an order for the payment of money;
 - (c) an order requiring an action in performance of the agreement;
 - (d) an order that a party to the agreement perform the work, or take the steps, stated in the order to remedy a breach of the agreement;
 - (e) an order for compensation;
 - (f) an order requiring payment of all or part of the rent under the agreement to the tribunal until—
 - (i) the whole or part of the agreement has been performed; or
 - (ii) an application for compensation has been decided;
 - (g) an order requiring payment (from rent paid to the tribunal) towards—

Residential Tenancies Act 1994

- (i) the cost of remedying a breach of the agreement; or
- (ii) an amount for compensation.

Examples of matters for which compensation orders may be made—

- 1 For loss of rent.
 - 2 If the lessor acts unreasonably in failing to agree to the attaching of a fixture, or the making of a structural change, to the premises.
 - 3 For another breach of the agreement.
- (2) An order under subsection (1)(a) may be made even if it provides a remedy in the nature of an injunction or order for specific performance in circumstances where the remedy would not otherwise be available.
- (3) Without limiting subsection (1), in making an order for compensation in favour of a lessor, a tribunal must have regard to the following—
- (a) rent required to be paid but not paid for the period starting when the agreement is terminated because of the tenant's action and ending—
 - (i) when the period fixed as the term of the tenancy ends; or
 - (ii) if the premises are relet before the end of the period mentioned in subparagraph (i)—when the premises are relet;
 - (b) advertising expenses incurred by the lessor for reletting the premises;
 - (c) other expenses incurred by the lessor for work carried out by the lessor for reletting the premises;
 - (d) whether the lessor has met the lessor's duty under section 230 to mitigate loss or expense.

251 Application of Aboriginal tradition

- (1) This section applies if—
- (a) the lessor is—
 - (i) a community government under the *Local Government (Community Government Areas) Act 2004*; or

Residential Tenancies Act 1994

- (ii) a local government under the *Local Government (Aboriginal Lands) Act 1978*; or
 - (iii) an entity prescribed under the regulations; and
- (b) the tenant is an Aborigine.
- (2) In deciding an application for a termination order, a tribunal must have regard to the lessor's practice (the ***lessor's Aboriginal tradition practice***) in observing Aboriginal tradition in dealing with similar breaches of other residential tenancy agreements by other tenants of the lessor.
- (3) In considering Aboriginal tradition, the tribunal may hear evidence from, and the opinions of—
 - (a) persons recognised under Aboriginal tradition as respected persons; or
 - (b) other persons with special knowledge of, or expertise in, Aboriginal tradition.
- (4) The opinion of persons mentioned in subsection (3) are not inadmissible as evidence merely because they are hearsay.
- (5) The tribunal may decide not to make the termination order if it would be inconsistent with the lessor's Aboriginal tradition practice.

252 Application of Island custom

- (1) This section applies if—
 - (a) the lessor is—
 - (i) an Island Council under the *Community Services (Torres Strait) Act 1984*; or
 - (ii) an entity prescribed under the regulations; and
 - (b) the tenant is a Torres Strait Islander.
- (2) In deciding an application for a termination order, a tribunal must have regard to the lessor's practice (the ***lessor's Island custom practice***) in observing Island custom in dealing with similar breaches of other residential tenancy agreements by other tenants of the lessor.

- (3) In considering Island custom, the tribunal may hear evidence from, and the opinions of—
 - (a) persons recognised under Island custom as respected persons; or
 - (b) other persons with special knowledge of, or expertise in, Island custom.
- (4) The opinions of persons mentioned in subsection (3) are not inadmissible as evidence merely because they are hearsay.
- (5) The tribunal may decide not to make the termination order if it would be inconsistent with the lessor's Island custom practice.

253 Disputes about tenants' notices

- (1) If a lessor disputes the ground stated in a notice to remedy breach, or notice of intention to leave premises, given to the lessor by the tenant under an agreement, the lessor may apply to a tribunal for an order about the notice.
- (2) If the tribunal is satisfied the tenant was not entitled to give the notice on the ground stated, it may make an order under this section.
- (3) If the tribunal decides the application before the agreement is terminated, it may make any order it considers appropriate.
- (4) If the tribunal decides the application after the agreement is terminated because of the tenant's action, it may make an order requiring the tenant to pay to the lessor an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the lessor by the tenant leaving the premises.
- (5) This section does not apply to a notice of intention to leave without ground.

253A Disputes about lessors' notices

- (1) If a tenant disputes the ground stated in a notice to remedy breach or a notice to leave premises given to the tenant by the lessor under an agreement, the tenant may apply to a tribunal for an order about the notice.

- (2) If the tribunal is satisfied the lessor was not entitled to give the notice on the ground stated, it may make an order under this section.
- (3) If the tribunal decides the application before the agreement is terminated, it may make any order it considers appropriate.
- (4) If the tribunal decides the application after the agreement is terminated because of the lessor's action, it may make an order requiring the lessor to pay to the tenant an amount it considers appropriate as compensation for any loss or expense incurred by the tenant for having to leave the premises.
- (5) This section does not apply to a notice to leave without ground.

254 General disputes between lessors and tenants

- (1) If there is a dispute between the lessor and tenant about an agreement, either party may apply to a tribunal for an order, and the tribunal may make any order it considers appropriate, to resolve the dispute.
- (2) An application under subsection (1) may be made by a cotenant.

255 Disputes between cotenants about rental bonds

- (1) If there is a dispute between cotenants about a rental bond for an agreement, any cotenant may apply to a tribunal for an order, and the tribunal may make any order it considers appropriate, to resolve the dispute.
- (2) The tribunal may not make an order under this section without giving the lessor an opportunity to be heard on the application.

256 Different applications may be decided together

If different applications about an agreement are made to a tribunal by the parties or either party, the tribunal may consider and decide the applications at the same time.

257 Joining applications

A tribunal may allow an application of a subtenant to be joined with an application of the lessor or tenant.

Chapter 6 Enforcement

Part 1 Authorised persons

258 Authorised persons under this chapter

- (1) This chapter includes provision for the appointment of authorised persons, and gives authorised persons certain powers.
- (2) The purpose of these provisions is to ensure that the authority has available to it suitably qualified persons who can help the authority properly deal with issues about compliance with this Act or the accommodation Act.

259 Appointment

- (1) The authority may appoint any of the following persons as authorised persons—
 - (a) officers of the authority;
 - (b) officers or employees of a department;
 - (c) other persons prescribed under the regulations.
- (2) The authority may appoint a person as an authorised person only if—
 - (a) in the authority's opinion, the person has the necessary expertise or experience to be an authorised person; or
 - (b) the person has satisfactorily finished training approved by the authority.

260 Limitation of authorised person's powers

- (1) The powers of an authorised person may be limited—
 - (a) under a regulation; or
 - (b) under a condition of appointment; or
 - (c) by written notice of the authority given to the authorised person.
- (2) Notice under subsection (1)(c) may be given orally, but must be confirmed in writing as soon as practicable.

261 Authorised person's conditions of appointment

- (1) An authorised person holds office on the conditions stated in the instrument of appointment.
- (2) An authorised person—
 - (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
 - (b) may resign by signed notice of resignation given to the authority; and
 - (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the *main office*).
- (3) However, an authorised person may not resign from the office of authorised person (the *secondary office*) under subsection (2)(b) if a term of the authorised person's employment to the main office requires the authorised person to hold the secondary office.

262 Authorised person's identity card

- (1) The authority must give each authorised person an identity card.
- (2) The identity card must—
 - (a) contain a recent photograph of the authorised person; and

- (b) be signed by the authorised person; and
 - (c) include an expiry date; and
 - (d) identify the person as an authorised person under this Act and the accommodation Act.
- (3) A person who ceases to be an authorised person must return his or her identity card to the authority within 21 days after the person ceases to be an authorised person, unless the person has a reasonable excuse for not returning it.

Maximum penalty—80 penalty units.

- (4) This section does not prevent the giving of a single identity card to a person under this section and for other provisions, Acts or purposes.

263 Production or display of authorised person's identity card

- (1) An authorised person may exercise a power under this Act in relation to someone else (the *other person*) only if the authorised person—
- (a) first produces his or her identity card for the other person's inspection; or
 - (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.

Part 2 Powers of authorised persons for places

264 Entry to places

- (1) An authorised person may enter a place under this part if—
 - (a) its occupier agrees to the entry; or
 - (b) the entry is permitted by a warrant.
- (2) An authorised person, without the occupier's agreement or a warrant, may—
 - (a) enter a place when it is open to the public; or
 - (b) enter land to ask for the occupier's agreement to the authorised person entering the land or a building or structure on the land.
- (3) Unless an entry under this part is made under the authority of a warrant, the entry must be made at a reasonable time.

265 Warrants for entry

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and must state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application be given by statutory declaration.

- (4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of the commission of an offence against this Act or the accommodation Act; and

- (b) the evidence is at the place, or may be at the place within the next 7 days.
- (5) The warrant must state—
 - (a) the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person's powers under this Act; and
 - (b) the evidence for which the warrant is issued; and
 - (c) the hours of the day or night when entry may be made; and
 - (d) the day (within 14 days after the warrant's issue) when the warrant ends.
- (6) The magistrate must record the reasons for issuing the warrant.

266 Warrants—applications made other than in person

- (1) An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person's remote location.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing a warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person—
 - (a) the magistrate must—
 - (i) record on the warrant the reasons for issuing the warrant; and
 - (ii) tell the authorised person the date and time the warrant was signed; and

Residential Tenancies Act 1994

- (iii) tell the authorised person the warrant's terms; and
- (b) the authorised person must write on a form of warrant (the *warrant form*)—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate signed the warrant; and
 - (iii) the warrant's terms.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the magistrate.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if a warrant form was completed by the authorised person—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) Unless the contrary is proved, a court must presume a power exercised by an authorised person was not authorised by a warrant issued under this section if—
 - (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence.

267 Authorised person's general powers for places

- (1) An authorised person who enters a place under this part may—
 - (a) search any part of the place; or
 - (b) examine, inspect, test, photograph or film anything at the place; or
 - (c) copy a document at the place; or

Residential Tenancies Act 1994

- (ca) seize a document at the place if the authorised person reasonably believes the document is evidence of an offence against this Act or the accommodation Act and the seizure is necessary to prevent the document—
 - (i) being hidden, lost or destroyed; or
 - (ii) being used to commit, continue or repeat the offence; or
- (d) take into the place any persons, equipment and materials the authorised person reasonably requires for exercising a power in relation to the place; or
- (e) require a person at the place or the occupier of the place, to give the authorised person reasonable help for the exercise of the powers mentioned in paragraphs (a) to (d).

- (2) A person who is required by an authorised person under subsection (1)(e) to give the authorised person reasonable help for the exercise of a power must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

- (3) If the help is required to be given by—
 - (a) answering a question; or
 - (b) producing a document (other than an authority or other document required to be kept by the person under this Act or another Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

- (4) This section applies to an authorised person who enters a place to get the occupier's agreement only if the agreement is given or the entry is otherwise authorised.

Part 3 Other enforcement matters

267A Procedure after document seized

- (1) As soon as practicable after a document is seized by an authorised person under section 267, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) Until the document is returned, the authorised person must allow a person who would be entitled to the seized document if it were not in the authorised person's possession to copy it.
- (3) The authorised person must return the seized document to the person—
 - (a) at the end of 1 year; or
 - (b) if a proceeding for an offence involving it is started within 1 year—at the end of the proceeding and any appeal from the proceeding.
- (4) Despite subsection (3), the authorised person must return the seized document to the person if the authorised person—
 - (a) stops being satisfied its continued retention as evidence is necessary; and
 - (b) is satisfied its return is not likely to result in its use in repeating the offence.

267B Power to require information from certain persons

- (1) This section applies if an authorised person suspects, on reasonable grounds, that—
 - (a) an offence against this Act or the accommodation Act has been committed; and
 - (b) a person (the *nominated person*) may be able to give information about the offence.
- (2) The authorised person may, by written notice given to the nominated person, require the nominated person to give information about the offence to the authorised person at a reasonable time and place stated in the notice.

- (3) When making the requirement, the authorised person must warn the nominated person it is an offence to fail to give the information, unless the person has a reasonable excuse.
- (4) The nominated person must comply with the requirement, unless the person has a reasonable excuse.
Maximum penalty—10 penalty units.
- (5) It is a reasonable excuse for the nominated person to fail to give information if giving the information might tend to incriminate the person.
- (6) The nominated person does not commit an offence against this section if—
 - (a) the information sought by the authorised person is not in fact relevant to the offence; or
 - (b) an offence is not proved to have been committed.

268 False or misleading information

- (1) A person must not—
 - (a) state anything to an authorised person the person knows is false or misleading in a material particular; or
 - (b) omit from a statement made to an authorised person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—20 penalty units.

- (2) It is enough for a complaint for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.

269 False, misleading or incomplete documents

- (1) A person must not give an authorised person a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—20 penalty units.

- (2) However, the person does not commit an offence against subsection (1) if, when giving the document, the person—

- (a) informs the authorised person, to the best of the person's ability, how it is false, misleading or incomplete; and
 - (b) gives the correct information to the authorised person if the person has, or can reasonably obtain, the correct information.
- (3) It is enough for a complaint for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

270 Authorised person to give notice of damage

- (1) This section applies if—
- (a) an authorised person damages anything in the exercise of a power under part 2; or
 - (b) a person who is authorised by an authorised person to take action under this Act damages anything in taking the action.
- (2) The authorised person must promptly give written notice of the particulars of the damage to the person who appears to the authorised person to be the thing's owner.
- (3) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the authorised person's control, the authorised person may state this in the notice.
- (4) If, for any reason, it is not practicable to comply with subsection (2), the authorised person must—
- (a) leave the notice at the place where the damage happened; and
 - (b) ensure the notice is left in a reasonably secured way in a conspicuous position.
- (5) This section does not apply to damage the authorised person believes, on reasonable grounds, is trivial.

271 Compensation

- (1) A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a

power under part 2, including, for example, in complying with a requirement made of the person under the part.

- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act or the accommodation Act brought against the person making the claim for compensation.
- (3) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

272 Agreement to entry

- (1) This section applies if an authorised person seeks the agreement of an occupier of a place to an authorised person entering the place under part 2.
- (2) In seeking the agreement, the authorised person must inform the occupier—
 - (a) of the purpose of the entry; and
 - (b) that information obtained by the authorised person may be used in evidence in court; and
 - (c) that the occupier is not required to agree to the entry.
- (3) If the agreement is given, the authorised person may ask the occupier to sign an acknowledgment of the occupier's agreement.
- (4) The acknowledgment must—
 - (a) state the occupier was informed—
 - (i) of the purpose of the entry; and
 - (ii) that information obtained by the authorised person may be used in evidence in court; and

- (iii) that the occupier was not required to agree to the entry; and
 - (b) state the occupier agreed to the authorised person entering the place and exercising powers under this Act; and
 - (c) state the time and date the agreement was given.
- (5) If the occupier signs an acknowledgment of agreement, the authorised person must immediately give a copy to the occupier.

273 Evidence of agreement

- (1) This section applies to a proceeding if—
- (a) a question arises whether an occupier of a place agreed to the entry of the place by an authorised person under part 2; and
 - (b) an acknowledgment of the occupier's agreement is not produced in evidence.
- (2) In a proceeding to which this section applies, the court may presume the occupier did not agree to the entry, unless the contrary is proved.

274 Obstruction of authorised person

- (1) In this section—
- authorised person* includes a person who is authorised by an authorised person to take action under part 2.
- (2) A person must not obstruct an authorised person in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

275 Impersonation of authorised person

A person must not pretend to be an authorised person.

Maximum penalty—80 penalty units.

276 Executive officers must ensure corporation complies with Act

- (1) The executive officers of a corporation must ensure that the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with this Act.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Part 4 Evidence**277 Evidentiary provisions**

- (1) This section applies to a proceeding under this Act or the accommodation Act.
- (2) The appointment or power of an authorised person must be presumed unless a party, by reasonable notice, requires proof of—
 - (a) the appointment; or
 - (b) the power to do anything under this Act.

- (3) A signature purporting to be the signature of the chief executive officer, the chairperson of the authority or an authorised person is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by a person mentioned in subsection (3) and stating any of the following matters is evidence of the matter—
- (a) a stated document is—
 - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or
 - (ii) a notice, or a copy of a notice, given under this Act; or
 - (iii) a record, or a copy of a record, kept under this Act; or
 - (iv) a document, or a copy of a document, kept under this Act;
 - (b) on a stated day, a stated person was given a stated notice, order, requirement or direction under this Act;
 - (c) anything else prescribed under the regulations.

Chapter 7 Causing nuisance in moveable dwelling parks

278 Behaviour in moveable dwelling park causing serious nuisance

A person causes a serious nuisance in a moveable dwelling park if, while in the park, the person causes a serious nuisance to residents of, or anyone else in, the park.⁹⁴

⁹⁴ For the power to give directions to persons causing a serious nuisance and remove persons from a moveable dwelling park see the *Police Powers and Responsibilities Act 2000*, chapter 9 (Other powers), part 4 (Powers relating to nuisance in moveable dwelling parks).

Example of serious nuisance—

- 1 A person assaults a resident or someone else.
- 2 A person uses threatening or abusive language towards a resident or someone else.
- 3 A person behaves in a riotous, violent, disorderly, indecent, offensive or threatening way towards a resident or someone else.
- 4 A person causes substantial, unreasonable annoyance to a resident or someone else.
- 5 A person causes substantial, unreasonable disruption to the privacy of a resident or someone else.
- 6 A person wilfully damages property of a resident or someone else.

283 Application to tribunal for order to exclude person from park

- (1) The owner of a moveable dwelling park may apply to a tribunal for an order excluding a person from the park because of the person's behaviour in the park.
- (2) The application may be made in a proceeding for an offence for contravention of a final nuisance direction or at any other time.
- (3) If the application is not made in a proceeding for an offence mentioned in subsection (2), the applicant must give written notice of the application to the person at least 21 days before the application is heard.
- (4) The notice must state particulars of the claimed behaviour.

284 Order of tribunal excluding person from park

- (1) If an application is made to a tribunal for an order excluding a person from a moveable dwelling park because of the person's behaviour in the park, the tribunal may make an order prohibiting a person from entering, or being in, the park in a stated period (not longer than 1 year).
- (2) The tribunal may make the order only if it is satisfied—
 - (a) the person's behaviour justifies being excluded from the park; and
 - (b) it is appropriate to exclude the person from the park.

Residential Tenancies Act 1994

- (3) In deciding whether the person's behaviour justifies being excluded from the park, the tribunal may have regard to—
 - (a) the nature of the behaviour, including, in particular, whether the behaviour involved violence and, if violence is involved, the degree of the violence; and
 - (b) whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences; and
 - (c) the number of persons adversely affected by the behaviour; and
 - (d) whether persons adversely affected by the behaviour have acted in a reasonable way; and
 - (e) the time of day the behaviour was engaged in; and
 - (f) whether any nuisance directions have been given to the person about the person's behaviour in the park and, if directions have been given—
 - (i) the nature of the behaviour for which the directions were given; and
 - (ii) the number and type of directions given; and
 - (iii) the frequency of the directions.
- (4) In deciding whether it is appropriate to exclude the person from the park, the tribunal may have regard to—
 - (a) whether the person is residing in a moveable dwelling in the park; and
 - (b) if the person is residing in the park—
 - (i) whether the person's spouse resides with the person; and
 - (ii) whether any dependant of the person (including, in particular, any child of the person) resides with the person; and
 - (iii) whether the person has access to other accommodation; and
 - (c) the person's general health and welfare.
- (5) Subsections (3) and (4) do not limit the issues to which the tribunal may have regard.

- (6) A person must not contravene an order of a tribunal prohibiting the person from entering, or being in, a moveable dwelling park, unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (6)—20 penalty units.

Chapter 7A Tenancy databases

284A Definitions for ch 7A

In this chapter—

list, a person on a tenancy database, means—

- (a) enter personal information about the person into the database; or
- (b) give personal information about the person to someone else for entry into the database.

personal information means—

- (a) an individual's name; or
- (b) information or an opinion, whether true or not, about an identified individual.

tenancy database means a database (whether or not stored in a computer) containing personal information—

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

284B Non-application to internal databases

- (1) This chapter does not apply to a tenancy database kept by an entity for use only by that entity or its employees or agents.

- (2) In this section—
entity includes a department.

284C Restriction on listing

- (1) A person (the *listing person*) must not list another person on a tenancy database unless—
- (a) the other person was named as a tenant in a residential tenancy agreement; and
 - (b) the agreement has ended; and
 - (c) there is a reason prescribed under a regulation for listing the other person; and
 - (d) the listing person has—
 - (i) given written notice to the other person about the personal information it is proposed to enter, or give for entry, into the database (the *information to be entered*); or
 - (ii) taken other reasonable steps to disclose to the other person the information to be entered; and
 - (e) the listing person has given the other person a reasonable opportunity to review the information to be entered.
- (2) Subsection (1)(d) and (e) do not apply if the listing person can not locate the other person after making reasonable enquiries.
- (3) Subsection (1)(e) does not apply to personal information that, at the time of the listing, is publicly available.

Example of publicly available information—

Personal information obtained from publicly available court records.

284D Application to tribunal about breach

- (1) A person (the *tenant*) who claims there has been a breach of section 284C, relating to the listing of the tenant on a tenancy database, may apply to a tribunal about the breach.
- (2) The application may only be made within 6 months after the tenant becomes aware of the breach.

- (3) If the tribunal decides there has been a breach, it may—
 - (a) order a person to take stated steps to remedy the breach; or
 - (b) make another order it considers appropriate.

284E Application to tribunal about incorrect or unjust listing

- (1) A person (the *tenant*) who has been listed on a tenancy database may apply to a tribunal for an order under this section.
- (2) The tribunal may order a person to take stated steps to—
 - (a) have the tenant's name or other personal information about the tenant omitted from the database; or
 - (b) have stated changes made to the personal information about the tenant that is included in the database.
- (3) The tribunal may make the order only if it is satisfied—
 - (a) the database includes personal information about the tenant that is incorrect or misleading; or

Example for paragraph (a)—

X is listed on a tenancy database for a reason relating to a minor matter. The database does not give details of the matter but includes a notation implying that X may be responsible for a serious breach of the Act.

- (b) the inclusion of the tenant's name or other personal information about the tenant in the database is unjust in the circumstances, having regard to—
 - (i) the reason for the listing; and
 - (ii) the tenant's involvement in the acts or omissions giving rise to the reason for the listing; and
 - (iii) the adverse consequences suffered, or likely to be suffered, by the tenant because of the listing; and
 - (iv) any other relevant matter.

Examples for paragraph (b)—

- 1 Y is listed on a tenancy database for a reason relating to damage caused to premises by Y's spouse in the course of

an incident of domestic violence. Because of the listing, Y can not obtain appropriate and affordable accommodation.

- 2 Z is listed on a tenancy database for a reason relating to an amount of rent that remained unpaid for 2 months after it was payable. During that period, Z was in hospital recovering from a serious accident and unable to make arrangements for payment.

284F Application to tribunal about proposed listing

- (1) A person (the *tenant*) who is aware of a proposed listing of the tenant on a tenancy database may apply to a tribunal for an order under this section.
- (2) The tribunal may—
 - (a) order a person not to make the proposed listing; or
 - (b) order a person not to make the proposed listing except with stated changes or on stated conditions; or
 - (c) make another order it considers appropriate.
- (3) The tribunal may make the order only if it is satisfied that, if the proposed listing were made, the tribunal could make an order about the listing under section 284D or 284E.

284G Offence of contravening tribunal order

- (1) A person must comply with an order of a tribunal made under this chapter.

Maximum penalty—50 penalty units.

- (2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—5 penalty units.

284H Order for compensation

- (1) This section applies if a court convicts a person of an offence against section 284G.

- (2) The court may also make an order requiring the convicted person to pay to a stated person, within a stated period, an amount the court considers appropriate as compensation for loss or damage caused by the relevant listing.
- (3) The person who is entitled to payment under the order may enforce the order by filing with a court of competent jurisdiction—
 - (a) a copy of the order, certified as a true copy by the registrar of the convicting court; and
 - (b) an affidavit stating the amount remaining unpaid.
- (4) The order is then enforceable as if it were an order of the court in which the copy and affidavit are filed.

Chapter 8 Residential Tenancies Authority

Part 1 Establishment of authority

286 Establishment of authority

The Residential Tenancies Authority is established.

287 Legal status of authority

The authority—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

288 Authority represents the State

- (1) The authority represents the State.

- (2) Without limiting subsection (1), the authority has all the privileges and immunities of the State.

Part 2 **Functions and powers of authority**

289 Authority's functions

The authority's functions are—

- (a) to ensure the proper administration and enforcement of this Act and the accommodation Act; and
- (b) to receive, hold and pay rental bonds under this Act and the accommodation Act; and
- (c) to give advice to the Minister about—
 - (i) residential tenancy issues and residential services issues generally; and
 - (ii) the operation of this Act and the accommodation Act in particular; and
- (d) without limiting paragraph (c), to give advice to the Minister about—
 - (i) the application of this Act to agreements, premises or entities; and
 - (ii) the application of this Act or the accommodation Act to residential service agreements, rental premises under the accommodation Act or entities; and
- (e) to provide information, educational and advisory services about the operation of this Act and the accommodation Act; and
- (f) to collect and analyse information about residential tenancy issues and residential services issues; and
- (g) to provide a conciliation service to parties to disputes about agreements and residential service agreements; and

- (h) to intervene in, or support, proceedings about the application of this Act to agreements and proceedings about the application of the accommodation Act to residential service agreements; and
- (i) to perform other functions given to the authority under this Act or another Act; and
- (j) to perform functions incidental to its other functions.

290 Authority's powers

- (1) The authority has all the powers of an individual and may, for example—
 - (a) enter into contracts; and
 - (b) acquire, hold, deal with and dispose of property; and
 - (c) appoint agents and attorneys; and
 - (d) charge for, and fix conditions for the supply of, goods, services and information it supplies; and
 - (e) engage consultants; and
 - (f) do anything else necessary or convenient to be done in performing its functions.
- (2) Without limiting subsection (1), the authority has the powers given to it under this or another Act.
- (3) The authority may exercise its powers inside and outside Queensland, including outside Australia.

291 Reserve power of Minister to give directions in public interest

- (1) The Minister may give the authority a written direction if the Minister is satisfied it is necessary to give the direction in the public interest because of exceptional circumstances.
- (2) The authority must ensure the direction is complied with.
- (3) Before giving a direction, the Minister must consult with the authority.
- (4) The Minister must cause a copy of the direction to be gazetted within 21 days after it is given.

Part 3 The board

292 The board

The authority has a board of directors.

293 Role of the board

- (1) The board is responsible for the way the authority performs its functions and exercises its powers.
- (2) Without limiting subsection (1), it is the board's role to ensure the authority performs its functions in an appropriate, effective and efficient way.

294 Composition of board

- (1) The board consists of the chairperson and 6 other directors.
- (1A) The members must include representatives of industry and consumer organisations.
- (2) The Governor in Council appoints the chairperson and other directors.

295 Duration of appointment

- (1) The appointment of a director is for the term (not longer than 3 years) decided by the Governor in Council.
- (2) The office of a director becomes vacant if—
 - (a) the director resigns by signed notice of resignation given to the Minister; or
 - (b) the director is found guilty of an indictable offence or an offence against this Act; or
 - (c) the director becomes employed by, or becomes a contractor of, the authority; or
 - (d) the director's appointment is ended by the Governor in Council under subsection (3).
- (3) The Governor in Council may, at any time, end the appointment of a director for any reason or none.

296 Conditions of appointment

- (1) A director is appointed on a part-time basis.
- (2) A director is entitled to be paid the remuneration and allowances fixed by the Governor in Council.

Part 4 Proceedings of the board**297 Time and place of meetings**

- (1) The board may hold its meetings when and where it decides.
- (2) However, the board must meet at least once every 3 months.
- (3) The chairperson—
 - (a) may at any time call a meeting of the board; and
 - (b) must call a meeting if asked by at least 25% of the other directors.

298 Conduct of proceedings

- (1) The chairperson presides at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent, the director chosen by the directors present presides.
- (3) At a meeting of the board—
 - (a) a quorum is at least half the directors appointed; and
 - (b) a question is decided by a majority of the votes of the directors present and voting; and
 - (c) each director present has a vote on each question to be decided and, if the votes are equal, the director presiding has a casting vote.
- (4) The board may otherwise conduct its proceedings (including its meetings) as it considers appropriate.

- (5) The board may hold meetings, or permit directors to take part in meetings, by telephone, closed-circuit television or another form of communication.
- (6) A director who takes part in a meeting of the board under subsection (5) is taken to be present at the meeting.
- (7) A resolution is a valid resolution of the board, even though it is not passed at a meeting of the board, if—
 - (a) at least half the directors give written agreement to the resolution; and
 - (b) notice of the resolution is given under procedures approved by the board.

299 Disclosure of interests

- (1) A director must disclose to a meeting of the board a direct or indirect financial interest in an issue being considered or about to be considered by the board if—
 - (a) the director, or a person who, under the regulations,⁹⁵ is related to the director, has the interest; and
 - (b) the interest could conflict with the proper performance of the director's duties about the consideration of the issue.
- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise directs, the director must not be present when the board considers the issue, or take part in a decision of the board on the issue.
- (3) Another director who also has, or who is, under the regulations,⁹⁶ related to a person who also has, a direct or indirect financial interest in the issue must not—
 - (a) be present when the board is considering its decision under subsection (2); or
 - (b) take part in making the decision.

95 See the *Residential Tenancies Regulation 1995*, section 24 (When a person is *related* to a director—Act, s 299(1)(a)).

96 See the *Residential Tenancies Regulation 1995*, section 25 (When a director is *related* to a person—Act, s 299(3)).

- (4) If, because of this section, a director is not present at a meeting of the board for the deliberation of the board about an issue, but there would be a quorum if the director were present, the remaining directors present are a quorum for the board's deliberation or decision about the issue at the meeting.

300 Minutes

The board must keep minutes of its proceedings.

Part 5 Financial matters

301 Application of Financial Administration and Audit Act

The authority is a statutory body within the meaning of the *Financial Administration and Audit Act 1977*.

301A Authority is statutory body for Statutory Bodies Financial Arrangements Act 1982

- (1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the authority is a statutory body.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B⁹⁷ sets out the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

302 Administration budget

- (1) For each financial year, the authority must develop, adopt and submit to the Minister an administration budget within the time the Minister directs.

⁹⁷ *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

- (2) An administration budget has no effect until approved by the Minister.
- (3) During a financial year the authority may develop, adopt and submit to the Minister amendments to its administration budget.
- (4) An amendment has no effect until approved by the Minister.

Part 6 **Other things about the authority**

303 **Seal**

Judicial notice must be taken of the imprint of the authority's seal appearing on a document, and the document must be presumed to have been properly sealed unless the contrary is proved.

304 **Application of certain Acts**

The authority is—

- (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
- (b) an agency under the *Equal Opportunity in Public Employment Act 1992*.

305 **Delegation**

The authority may delegate its powers to a director or an officer of the authority.

Part 7 Staff of the authority

Division 1 Chief executive officer

306 Chief executive officer

- (1) The authority must have a chief executive officer (however called).
- (2) The chief executive officer is responsible for ensuring the authority is managed as required by the policies of the board.
- (3) The chief executive officer is appointed by the Governor in Council.
- (4) A director must not be appointed as chief executive officer.
- (5) The chief executive officer is to be appointed under this Act, and not under the *Public Service Act 1996*.
- (6) The chief executive officer holds office for the term (not longer than 5 years) decided by the Governor in Council.
- (7) The chief executive officer holds office on the conditions (including conditions for remuneration, allowances and remuneration when the appointment ends) fixed by the authority.

307 Chief executive officer not to engage in other paid employment

The chief executive officer must not, without the board's approval—

- (a) engage in paid employment outside the duties of the office of chief executive officer; or
- (b) actively take part in the activities of a business, or in the management of a corporation carrying on business.

308 Acting chief executive officer

The Governor in Council may appoint a person, who is eligible for appointment as chief executive officer, to act in the office of chief executive officer during—

- (a) any vacancy, or all vacancies, in the office; or
- (b) any period, or all periods, when the chief executive officer is absent from duty, or cannot, for another reason, perform the duties of the office.

308A Delegation

- (1) The chief executive officer may delegate the chief executive officer's powers under this Act to another appropriately qualified officer of the authority.
- (2) In this section—
appropriately qualified, for a power, means having qualifications, experience or standing appropriate to exercise the power.

Division 2 Staffing the authority

309 Authority staff

- (1) The authority may engage the employees it considers necessary to perform its functions.
- (2) The authority may decide its employees' conditions of employment.
- (3) However, subsection (2) has effect subject to any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement.
- (4) The employees are to be employed under this Act, and not under the *Public Service Act 1996*.
- (5) In this section—
conditions of employment includes conditions about duration of the employment and ending the employment.

310 Alternative staffing arrangements

The authority may arrange with the chief executive of a department or an authority of the State for the services of

officers or employees of the department or authority to be made available to the authority.

Division 3 Conflict of interest

311 Disclosure of interests

- (1) This section applies to an employee of the authority if—
 - (a) the employee, or a person who, under the regulations,⁹⁸ is related to the employee, has a direct or indirect financial interest in an issue being decided, or about to be decided by the authority (whether or not under a delegation from the authority); and
 - (b) the interest could conflict with the proper performance of the employee's duties about the decision.
- (2) As soon as practicable after the employee becomes aware of the facts causing this section to apply to the employee, the employee must disclose the nature of the interest to the authority.

Chapter 9 Legal proceedings

Part 1 Offences

312 False, misleading or incomplete documents

- (1) A person must not give the authority a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—20 penalty units.

⁹⁸ See the *Residential Tenancies Regulation 1995*, section 26 (When a person is *related* to an employee—Act, s 311(1)(a)).

- (2) However, the person does not commit an offence against subsection (1) if, when giving the document, the person—
 - (a) informs the authority, to the best of the person's ability, how it is false, misleading or incomplete; and
 - (b) gives the correct information to the authority if the person has, or can reasonably obtain, the correct information.
- (3) It is enough for a complaint for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

313 Attempts to commit offences

- (1) A person who attempts to commit an offence against this Act commits an offence.

Maximum penalty—half the maximum penalty for committing the attempted offence.

- (2) Section 4 of the Criminal Code⁹⁹ applies to the attempt.

314 Offences are summary offences

An offence against this Act is a summary offence.

314A Limitation on time for starting proceedings

A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* may start at any time but, if started more than 1 year after the commission of the offence, must start within 6 months after the offence comes to the complainant's knowledge.

⁹⁹ Criminal Code, section 4 (Attempts to commit offences)

Part 2 Evidentiary provisions

315 Responsibility for acts or omissions of representatives

- (1) If, in a proceeding for an offence against this Act, it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (2) An act or omission done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been done or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the acts or omissions.

316 Condition reports

- (1) In a proceeding before a tribunal, a copy of a condition report stating the condition of stated premises and its inclusions, is evidence of the condition of the premises and inclusions—
 - (a) if the report is signed by the tenant—when the report was signed; or
 - (b) if the report is not signed by the tenant—when the report was made.
- (2) However, if the report is signed by the tenant and marked to show the tenant's disagreement with the statement, the report is evidence of the condition of the premises and inclusions when the report was signed by the tenant only as far as its contents are unmarked.

317 Rental bonds

In a proceeding, a certificate purporting to be signed for the authority stating that at a stated time, or during a stated period,

the authority held, or did not hold, a rental bond for a stated agreement is evidence of the matter stated.

Chapter 10 Miscellaneous

318 Applications for more than prescribed amount

(1) In this section—

prescribed amount has the meaning given by the *Small Claims Tribunals Act 1973*.

(2) This section applies to an application if—

- (a) a provision of this Act provides that it may be made to a tribunal; and
- (b) the application seeks the payment of an amount (the *application amount*) greater than the prescribed amount.

(3) In a provision of this Act about the application—

- (a) a reference to a tribunal or registrar is taken to be a reference to a court having jurisdiction for the application amount; and
- (b) the provision applies with all necessary changes, and with any changes prescribed under the regulations, as if the tribunal or registrar were the court.

319 Protection from liability

(1) In this section—

official means—

- (a) the chief executive officer; and
- (b) an authorised person; and
- (c) an employee of the authority; and
- (d) a person acting under the direction of the chief executive officer or an authorised person.

- (2) An official does not incur civil liability for an act or omission done honestly and without negligence under this Act or the accommodation Act.
- (3) A liability that would, apart from this section, attach to an official attaches instead to the State.

320 Forms

The chief executive officer may approve forms for use under this Act.

321 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) impose fees; or
 - (b) create offences and prescribe penalties of not more than 20 penalty units for each offence.

322 Non-application of Act to long-term leases on Hamilton Island

- (1) From the commencement day, this Act does not apply to a long-term lease entered into in relation to premises on Hamilton Island even if the lease is for, or for purposes that include, residential purposes.
- (2) To remove any doubt, it is declared that subsection (1) does not apply to a sublease of a long-term lease mentioned in subsection (1) if the sublease is not a long-term lease.
- (3) This section applies to a long-term lease mentioned in subsection (1) even if the lease was entered into before the commencement day.
- (4) In this section—

commencement day means the day this section commences.

long-term lease means a lease or sublease for a term, including renewal options, of at least 100 years.

sublease includes a sub-sublease and sub-sub-sublease.

Chapter 11 Transitional, repeals and amendments

Part 1 Transitional provisions for Act No. 86 of 1994

Division 2 Transitional references

323 Application of division

This division applies to references in Acts or documents in existence at its commencement.

324 References to former Acts

A reference to the *Rental Bond Act 1989* or *Residential Tenancies Act 1975* is taken to be a reference to this Act.

325 References to former authority

A reference to the Rental Bond Authority is taken to be a reference to the authority.

Division 4 Other transitional provisions

Part 2 Transitional provisions for Residential Tenancies Amendment Act 1998

340 Definitions for pt 2

In this part—

amendment Act means the *Residential Tenancies Amendment Act 1998*.

commencement day means the day on which the provision in which the term is used commences.

341 Fixed term agreements in force at commencement

- (1) This section applies to a fixed term agreement in force immediately before the commencement day.
- (2) This Act continues to apply to the agreement as if the amendment Act had not commenced.
- (3) However, if after the period fixed as the term of the tenancy ends, the agreement continues to apply because of section 46(3)¹⁰⁰—
 - (a) subsection (2) stops having effect for the agreement; and
 - (b) this Act, as amended by the amendment Act, applies to the agreement.

342 Periodic agreements in force at commencement

- (1) This section applies to a periodic agreement in force immediately before the commencement day.
- (2) This Act continues to apply to the agreement as if the amendment Act had not commenced, but only until—

100 Section 46 (Continuation of fixed term agreements)

- (a) 6 months after the commencement day; or
 - (b) if, within the 6 month period, the agreement is amended—the day the amendment of the agreement takes effect.
- (3) This Act, as amended by the amendment Act, applies to the agreement when subsection (2) stops having effect for the agreement.
 - (4) However, if the lessor is the State, section 39¹⁰¹ does not apply to the agreement for 3 years after the commencement day.

343 Short tenancy (moveable dwelling) agreements in force at commencement

- (1) This section applies to an agreement for a short tenancy (moveable dwelling) in force immediately before the commencement day.
- (2) This Act continues to apply to the agreement as if the amendment Act had not commenced.

Part 3 Transitional provisions for Residential Tenancies and Other Legislation Amendment Act 2003

Division 1 Preliminary

344 Meaning of *amendment Act* for pt 3

In this part—

amendment Act means the *Residential Tenancies and Other Legislation Amendment Act 2003*.

101 Section 39 (Written agreements required)

Division 2 Miscellaneous

345 Application for payment of rental bond

- (1) This section applies to an application to the authority for payment of a rental bond if—
 - (a) the application was given to the authority before the commencement day; and
 - (b) immediately before the commencement day, the authority had not finally dealt with the application.
- (2) The authority must continue to deal with the application under chapter 2, part 3 as in force before the commencement day.
- (3) In this section—

commencement day means the day the amendment Act, section 13, commences.

346 Supply of locks and keys

- (1) This section applies to a residential tenancy agreement in force immediately before the commencement day.
- (2) From the commencement day—
 - (a) section 120, as in force immediately before the commencement day, continues to apply to the lessor in relation to the agreement; and
 - (b) section 120, as in force from the commencement day, does not apply to the lessor in relation to the agreement.
- (3) In this section—

commencement day means the day the amendment Act, section 20, commences.

347 Conciliators

- (1) A person who was a conciliator immediately before the commencement day is taken to have been appointed as a conciliator under section 232C.

- (2) Subsection (1) applies to the person from the commencement day until the person's appointment ends under this Act.
- (3) In this section—
commencement day means the day the amendment Act, section 24, commences.

Division 3 Tenancy databases

348 Application of certain tenancy database provisions

A reference in section 284A, 284B or 284G¹⁰² to chapter 7A includes this division.

349 Application to tribunal about listing made in certain circumstances

- (1) A person may apply to a tribunal if—
 - (a) the person was listed on a tenancy database before the commencement day; and
 - (b) the person claims that—
 - (i) the listing did not relate to a residential tenancy agreement in which the person was named as a tenant; or
 - (ii) the listing related to a residential tenancy agreement in which the person was named as a tenant and, at the time of the listing, the agreement had not ended; or
 - (iii) the listing was not made for a reason prescribed for section 284C.¹⁰³
- (2) The application may only be made within 12 months after the commencement day.

102 Section 284A (Definitions for ch 7A), 284B (Non-application to internal databases) or 284G (Offence of contravening tribunal order)

103 Section 284C (Restriction on listing)

- (3) If the tribunal is satisfied of a matter mentioned in subsection (1)(b)(i) to (iii), it may—
- (a) order a person to take stated steps to remove personal information about the applicant from the database; or
 - (b) make another order it considers appropriate.
- (4) In this section—

commencement day means the day the amendment Act, section 27, commences.

350 Application to tribunal about incorrect or unjust listing

- (1) A reference in section 284E¹⁰⁴ to a person who has been listed on a tenancy database includes a person who has been listed on a tenancy database before the commencement day.
- (2) In this section—

commencement day means the day the amendment Act, section 27, commences.

104 Section 284E (Application to tribunal about incorrect or unjust listing)

Schedule 3 Dictionary

section 3(1)

abandonment termination notice see section 221.

accommodation Act means the *Residential Services (Accommodation) Act 2002*.

affordable housing scheme means a scheme under which the Commonwealth, the State, a local government or a non-profit corporation provides accommodation assistance, other than—

- (a) as approved supported accommodation; or
- (b) under a subletting mentioned in section 25A.

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

agreement see section 11.

allowed remedy period means the period stated in a notice to remedy breach as the period within which a party to an agreement is required to remedy the breach of the agreement stated in the notice.

approved form see section 320.

approved representative, for a party to a tenancy dispute, means a person approved by the conciliator conducting the conciliation process for the dispute to represent the party in the dispute.

approved supported accommodation means accommodation provided under an agreement between the Commonwealth and the State under—

- (a) the program known as the 'Crisis Accommodation Program', or, if the program is continued under another name, the program as continued under the other name; or
- (b) the program known as the 'Supported Accommodation Assistance Program', or, if the program is continued under another name, the program as continued under the other name.

Schedule 3 (continued)

arrangement includes a promise, scheme, transaction (with or without consideration), understanding and undertaking (whether expressed or implied).

authorised person means a person who is appointed under this Act as an authorised person.

authority means the Residential Tenancies Authority.

base period see section 30.

board means the authority's board of directors.

caravan see section 3A.

chairperson means the chairperson of the board.

chief executive officer means the authority's chief executive officer.

compulsory acquisition, for a notice to leave, see section 158.

compulsory acquisition, for a notice of intention to leave, see section 178.

compulsory park closure, for a notice to leave, see section 161.

conciliation agreement means an agreement mentioned in section 241.

conciliator means a person appointed as a conciliator under section 232C.

condition report, for residential premises and inclusions, means a report describing the physical condition of the premises and inclusions.

contributor, for a rental bond, see section 58.

damage, for an application for a termination order, see sections 169, 183 and 184.

director means a director of the board, and includes the chairperson.

dispute resolution request see section 233.

domestic violence has the meaning given by the *Domestic and Family Violence Protection Act 1989*.

Schedule 3 (continued)

domestic violence issues see sections 150 and 211.

domestic violence order has the meaning given by the *Domestic and Family Violence Protection Act 1989*.

emergency repairs see section 123A.

employment termination, for a notice to leave, see section 162.

ending of accommodation assistance, for a notice to leave, see section 163.

ending of housing assistance, for a notice to leave, see section 163A.

enforcement warrant means an enforcement warrant under the *Supreme Court of Queensland Act 1991*.

entry notice see section 110.

excessive hardship, for an application for a termination order, see sections 168 and 182.

executive officer of a corporation means—

- (a) if the corporation is the Commonwealth or a State—a chief executive of a department or a person who is concerned with, or takes part in, the management of a department, whatever the person's position is called; or
- (b) if the corporation is a local government—
 - (i) the local government's chief executive officer; or
 - (ii) a person who is concerned with, or takes part in, the local government's management, whatever the person's position is called; or
- (c) if paragraphs (a) and (b) do not apply—a person who is—
 - (i) a member of the governing body of the corporation; or
 - (ii) concerned with, or takes part in, the corporation's management;

Schedule 3 (continued)

whatever the person's position is called and whether or not the person is a director of the corporation.

failure to leave, for an application for a termination order, see section 166.

failure to leave as intended, for an application for a termination order, see section 167.

final nuisance direction see the *Police Powers and Responsibilities Act 2000*.

fixed term agreement means a residential tenancy agreement for a residential tenancy for a fixed term.

general service charge, for premises that are not moveable dwelling premises in a moveable dwelling park, means a service charge that is not a water service charge.

goods include animals, plants, money, documents and anything else of value.

handover day, for premises, means the day stated in a notice to leave, or notice of intention to leave, as the day vacant possession of the premises is required to be, or will be, handed over to the lessor.

holding deposit, for premises, means an amount paid as consideration for an option to enter into an agreement for the premises.

home owner see the *Manufactured Homes (Residential Parks) Act 2003*, section 8.

inclusions, for premises, means everything supplied with the premises for the tenant's use (whether or not the things are supplied under an agreement).

incompatibility, for an application for a termination order, see sections 171 and 186.

individually metered, for premises, means there is, for the premises, a meter that—

- (a) has been installed or approved by a supply authority;
- and

Schedule 3 (continued)

(b) measures, for the premises only, the quantity of something supplied to, or used at, the premises under a service or facility made available by the authority.

initial nuisance direction see the *Police Powers and Responsibilities Act 2000*.

injury, for an application for a termination order, see sections 169, 183 and 184.

key of a lock means a device or information normally used to operate the lock.

key deposit see section 84A.

lessor see section 4.

list, a person on a tenancy database, for chapter 7A, see section 284A.

lock means a device for securing a door, gate, window or another part of premises.

long tenancy (moveable dwelling) see section 34.

manufactured home see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

maximum rental bond, for an agreement, is an amount equal to the rent payable under the agreement for the period of—

- (a) for movable dwelling premises—
 - (i) if the tenancy is a long tenancy (moveable dwelling) and electricity supplied to the premises is supplied in the lessor's name and individually metered—3 weeks; or
 - (ii) otherwise—2 weeks; or
- (b) for other premises—4 weeks.

mortgagee, for a mortgage, includes any person from time to time deriving title to the mortgage under a previous mortgagee.

moveable dwelling means a caravan or manufactured home.

Schedule 3 (continued)

moveable dwelling park means a place where moveable dwellings are situated for occupation on payment of consideration.

moveable dwelling premises means premises consisting of—

- (a) for a moveable dwelling that is a caravan—the dwelling or its site, or both the dwelling and site; or
- (b) for a moveable dwelling that is a manufactured home in, or intended to be situated in, a moveable dwelling park—the dwelling or its site, or both the dwelling and site.

nominated repairer see section 124.

non-compliance (moveable dwelling relocation), for a notice to leave, see section 157.

non-compliance (tribunal order), for a notice to leave, see section 156.

non-compliance (tribunal order), for a notice of intention to leave, see section 177.

non-livability, for a notice to leave, see sections 158 and 159.

non-livability, for a notice of intention to leave, see sections 178 and 179.

nonprofit corporation means a corporation formed for a purpose other than the purpose of making a profit.

non-resolution notice, for park rules for a moveable dwelling park, see section 136.

notice of intention to leave means a notice given by the tenant to the lessor indicating the tenant's intention to hand over vacant possession of the premises to the lessor on the handover day.

notice to leave means a notice given by the lessor to the tenant requiring the tenant to hand over vacant possession of the premises to the lessor on the handover day.

notice to relocate see section 130.

Schedule 3 (continued)

notice to remedy breach means a notice given by a party to an agreement to the other party requiring the other party to remedy a breach of the agreement stated in the notice.

nuisance direction means an initial or final nuisance direction.

objectionable behaviour, for an application for a termination order, see sections 170 and 185.

objection closing day, for park rules for a moveable dwelling park, see section 134.

objector, for park rules for a moveable dwelling park, see section 136.

obstruct includes hinder, resist and attempt to obstruct.

officer of the authority means any of the following—

- (a) the chief executive officer;
- (b) an authority employee, whether or not there is a written contract of employment between the authority and the employee;
- (c) an individual who performs services for the authority—
 - (i) under a contract (other than a contract of employment) between the individual and the authority; or
 - (ii) under an arrangement between the authority and a person (other than the individual).

option period, for an option created by the payment of a holding deposit, means—

- (a) the period stated in the receipt for the payment as the period in which the option may be exercised; or
- (b) if a period is not stated—the period ending 48 hours after the receipt is given.

park liaison committee, for a moveable dwelling park, see section 136.

Schedule 3 (continued)

park rules means rules made by the owner of a moveable dwelling park about the use, enjoyment, control and management of the park.

periodic agreement means an agreement that is not a fixed term agreement.

personal document of a person means a document it would be reasonable to expect the person would want to keep.

Examples—

- 1 A passport.
- 2 A birth or marriage certificate.
- 3 A photograph.

personal information, for chapter 7A, see section 284A.

premises see sections 5 and 13.

proposal, for park rules for a moveable dwelling park, see section 134.

protection order means an order under the *Domestic and Family Violence Protection Act 1989*, section 20(1).

public place means a place that the public is entitled to use, is open to the public, or used by the public, whether or not on payment of money.

registrar has the meaning given by the *Small Claims Tribunals Act 1973*.

registry has the meaning given by the *Small Claims Tribunals Act 1973*.

relative of a person—

- (a) means the person's spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, cousin, niece, nephew, parent-in-law, daughter-in-law, son-in-law, sister-in-law or brother-in-law; and
- (b) for an Aboriginal person—includes a person who, under Aboriginal tradition, is regarded as a relative of the Aboriginal person; and

Schedule 3 (continued)

- (c) for a Torres Strait Islander person—includes a person who, under Island custom, is regarded as a relative of the Torres Strait Islander person.

rent payment record see section 50.

rental bond see section 57.

rental bond account see section 79.

rental bond interest account see section 81.

rental bond notice means a notice about a rental bond given to the authority under section 59.

rental bond supplier see section 72.

rental purchase plan agreement means an agreement entered into between the State and someone else (the **buyer**) about residential premises—

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

representative of a person means—

- (a) if the person is a corporation—an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual—an employee or agent of the individual.

resident means a person—

Schedule 3 (continued)

- (a) who, in the course of a residential service, occupies 1 or more rooms as the person's only or main residence; and
- (b) who is not—
 - (i) the service provider; or
 - (ii) a relative of the service provider; or
 - (iii) a person employed in the service by the service provider.

resident of a moveable dwelling park means a person occupying moveable dwelling premises in the park as the tenant under an agreement.

residential premises see section 6.

residential service see the *Residential Services (Accommodation) Act 2002*, schedule.

residential service agreement means an agreement under which a service provider provides accommodation to a resident in the course of a residential service.

residential tenancy see section 7.

residential tenancy agreement see section 8.

retirement village has the meaning given by the *Retirement Villages Act 1999*.

rules of entry see section 112.

sale contract, for a notice to leave, see section 160.

service charge see section 90.

service provider means—

- (a) for a residential service registered under the *Residential Services (Accreditation) Act 2002*—the person registered under that Act as the service provider for the service; or
- (b) for another residential service—the person conducting the service.

share, of a rental bond, see section 58A(2).

Schedule 3 (continued)

short tenancy (extension) statement see section 31.

short tenancy (moveable dwelling) see section 33.

short tenancy statement see section 30.

site of a moveable dwelling means the site where the moveable dwelling is, or is intended to be, situated.

site agreement see the *Manufactured Homes (Residential Parks) Act 2003*, section 14.

special terms, of a residential tenancy agreement, means terms of the agreement that are not—

- (a) standard terms; or
- (b) terms included in the agreement under section 35(1).

standard terms, of a residential tenancy agreement, see section 38.

state of mind of a person includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

structural change to premises means any renovation, alteration or addition to the premises.

tenancy database, for chapter 7A, see section 284A.

tenancy dispute see section 233.

tenant see sections 9 and 12.

termination day means the day stated in a notice of termination of an agreement as the day on which vacant possession of the residential premises is to be, or will be, delivered up to the lessor.

termination order means an order of a tribunal terminating a residential tenancy agreement.

tribunal means a small claims tribunal under the *Small Claims Tribunals Act 1973*.

Schedule 3 (continued)

unremedied breach, for a notice to leave, see section 155.

unremedied breach, for a notice of intention to leave, see section 175.

urgent application see section 231.

voluntary park closure, for a notice to leave, see section 161.

water service charge, for premises, means a service charge for water supplied to the premises.

without ground, for a notice to leave, see section 165.

without ground, for a notice of intention to leave, see section 181.

Endnotes

1 Index to endnotes

	Page
2 Date to which amendments incorporated	222
3 Key	223
4 Table of reprints	223
5 Tables in earlier reprints	224
6 List of legislation	224
7 List of annotations	227
8 List of forms notified or published in the gazette	244

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2005. Future amendments of the Residential Tenancies Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Reprint date
1	none	3 April 1995	3 April 1995
2	to 1995 Act No. 58	29 November 1995	2 February 1996
2A	to 1996 Act No. 54	1 December 1996	7 March 1997
2B	to 1997 Act No. 28	1 June 1997	2 June 1997
2C	to 1997 Act No. 28	13 July 1997	11 August 1997
3	to 1997 Act No. 28	13 July 1997	3 October 1997
3A	to 1997 Act No. 81	5 December 1997	5 January 1998
3B	to 1998 Act No. 29	18 May 1998	19 May 1998
4	to 1998 Act No. 29	1 December 1998	1 December 1998
4A	to 1999 Act No. 5	1 December 1998	23 April 1999
4B	to 2000 Act No. 20	1 July 2000	1 September 2000
4C	to 2000 Act No. 46	25 October 2000	8 November 2000
5	to 2000 Act No. 46	25 October 2000	2 March 2001
5A	to 2001 Act No. 45	15 July 2001	13 August 2001
5B	to 2001 Act No. 69	1 January 2002	11 January 2002

(Column discontinued)

Reprint No.	Amendments included	Effective	Notes
5C	to 2002 Act No. 19	23 August 2002	
5D	to 2002 Act No. 74	10 March 2003	
5E	to 2002 Act No. 74	1 April 2003	
5F	to 2003 Act No. 24	27 June 2003	
5G	to 2003 Act No. 36	1 August 2003	R5G withdrawn, see R6
6	to 2003 Act No. 36	1 August 2003	
6A	to 2003 Act No. 52	1 January 2004	
6B	to 2003 Act No. 74	1 March 2004	
6C	to 2004 Act No. 10	31 May 2004	
6D	to 2004 Act No. 37	1 January 2005	R6D withdrawn, see R7
7	to 2004 Act No. 37	1 January 2005	

5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	2, 3

6 List of legislation

Residential Tenancies Act 1994 No. 86

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 3 April 1995 (1995 SL No. 35)

amending legislation—

Statute Law (Minor Amendments) Act (No. 2) 1995 No. 51 ss 1, 3–4 sch

date of assent 22 November 1995

commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2

date of assent 28 November 1995

commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 2

date of assent 28 November 1995

s 4 sch 2 commenced on 29 November 1995 (see s 2(1) sch 2)

remaining provisions commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Residential Tenancies Amendment Act 1997 No. 15

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 10 August 1996 (see s 2)

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Statute Law (Miscellaneous Provisions) Act 1997 No. 81 ss 1–3, sch

date of assent 5 December 1997

commenced on date of assent

Residential Tenancies Amendment Act 1998 No. 29 pts 1–2

date of assent 18 May 1998

ss 1–2, 4 (to the extent it ins new s 3B into the Residential Tenancies Act 1994), 13, 99, 110, 112–129, 135–136, 138, 140, 143(1) (to the extent it om from the Residential Tenancies Act 1994, sch 3, defs “approved representative”, “mediation conference”, “mediation notice” and “mediator”), 143(2) (to the extent it ins into the Residential Tenancies Act 1994, sch 3, new defs “approved representative”, “conciliation agreement” and “conciliator”) commenced on date of assent (see s 2(1))

s 35 commenced 18 May 1999 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced 1 December 1998 (see s 2(3))

Residential Tenancies Amendment Act 1999 No. 5

date of assent 18 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1998 (see s 2)

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch

date of assent 25 October 2000

commenced on date of assent

Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc publ Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc publ Cwlth of Australia gaz 13 July 2001, No. S285)

Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

Domestic Violence Legislation Amendment Act 2002 No. 6 ss 1–2, 53 sch 2

date of assent 13 March 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 10 March 2003 (2003 SL No. 17)

Residential Services (Accommodation) Act 2002 No. 19 pts 1, 14 div 3

date of assent 17 May 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 23 August 2002 (2002 SL No. 203)

Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch

date of assent 13 December 2002

ss 1–2 commenced on date of assent

s 90 commenced 31 March 2003 (2003 SL No. 51)

remaining provisions commenced 1 April 2003 (2003 SL No. 51)

South Bank Corporation and Other Acts Amendment Act 2003 No. 24 ss 1, 2(2), pt 4

date of assent 16 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 27 June 2003 (2003 SL No. 124)

Residential Tenancies and Other Legislation Amendment Act 2003 No. 36 pts 1–2, s 3 sch

date assent 2 June 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 2003 (2003 SL No. 157)

Housing Act 2003 No. 52 ss 1–2, 153 sch 2

date of assent 15 September 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2004 (2003 SL No. 332)

Manufactured Homes (Residential Parks) Act 2003 No. 74 ss 1–2, 155 sch 1

date of assent 22 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2004 (2003 SL No. 336)

Residential Services and Other Legislation Amendment Act 2004 No. 10 ss 1, 8 sch
 date of assent 31 May 2004
 commenced on date of assent

Local Government (Community Government Areas) Act 2004 No. 37 ss 1–2, 86 sch 1
 date of assent 27 October 2004
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 January 2005 (2004 SL No. 266)

7 List of annotations

Commencement

s 2 om R2 (see RA s 37)

Caravan

s 3A ins 1998 No. 29 s 4

Conciliator

s 3B ins 1998 No. 29 s 4
 om 2003 No. 36 s 4

Premises

s 5 amd 2003 No. 74 s 155 sch 1

Residential tenancy agreement

s 8 amd 1998 No. 29 s 5

Act applies only to certain residential tenancy agreements etc.

s 10 amd 2003 No. 74 s 155 sch 1

Provision stating that lessor or lessor's agent must do something

s 14A ins 2003 No. 36 s 5

Lessor's agent

s 14B ins 2003 No. 36 s 5

Act binds all persons

s 15 amd 1998 No. 29 s 6

State as lessor

s 16 amd 2003 No. 24 s 48; 2003 No. 52 s 153 sch 2

Application of Property Law Act to agreements

s 17 amd 1998 No. 29 s 7

Minors

s 19 sub 1998 No. 29 s 8

Contracts of sale and mortgages

s 20A ins 1995 No. 51 s 4 sch

Premises used for holidays

s 21 amd 1998 No. 29 s 9

Residential service agreements, boarders and lodgers

s 22 sub 2002 No. 19 s 147

Rental purchase plan agreements

s 23A ins 1995 No. 51 s 4 sch

Agreements under Manufactured Homes (Residential Parks) Act 2003

prov hdg amd 2003 No. 74 s 155 sch 1

s 25 amd 2003 No. 74 s 155 sch 1

Headleases for employee housing

s 25A ins 1998 No. 29 s 10

Headleases for affordable housing agreements

s 25B ins 1998 No. 29 s 10

Headleases for approved supported accommodation

prov hdg sub 2003 No. 36 s 6(1)

s 27 amd 2003 No. 36 s 6(2)–(4)

Short tenancy statements

s 30 amd 1998 No. 29 s 11

Extending short tenancy statements

s 31 amd 1998 No. 29 s 12

CHAPTER 2—RESIDENTIAL TENANCY AGREEMENTS**Terms of agreements include duties under Act etc.**

s 35 amd 1998 No. 29 s 13

Inconsistency

prov hdg sub 1998 No. 29 s 14(1)

s 37 amd 1998 No. 29 s 14(2)

Standard terms

s 38 sub 1998 No. 29 s 15

Lessor to give proposed agreement to tenant

s 38A ins 1998 No. 29 s 15

amd 2003 No. 36 s 3 sch

Written agreements required

s 39 amd 1998 No. 29 s 16; 2003 No. 36 s 3 sch

Giving and signing written agreement

s 40 sub 1998 No. 29 s 17; 2003 No. 36 s 7

Orders of tribunal about giving and signing written agreement

s 41 sub 1998 No. 29 s 17

Condition report at start of tenancy

prov hdg sub 1998 No. 29 s 18(1)

s 42 amd 1995 No. 51 s 4 sch; 1998 No. 29 s 18(2)–(5); 2003 No. 36 s 3 sch

Condition report at end of tenancy

s 42A ins 1998 No. 29 s 19

amd 2003 No. 36 s 3 sch

Information statement

s 43 amd 1998 No. 29 s 20; 2003 No. 36 ss 8, 3 sch

Park rules

s 44 amd 2003 No. 36 s 3 sch

By-laws

s 45 amd 1995 No. 51 s 4 sch; 1997 No. 28 s 295 sch 3; 2003 No. 36 s 3 sch

Continuation of fixed term agreements

s 46 amd 1995 No. 51 s 4 sch

Rent in advance

s 49 amd 1998 No. 29 s 21; 2003 No. 36 s 3 sch

Receipts and other records

s 50 amd 1998 No. 29 s 22; 2003 No. 36 s 3 sch

Keeping of records

s 51 amd 2003 No. 36 s 3 sch

Rent increases

s 53 amd 1998 No. 29 s 23; 2003 No. 36 s 9; 2003 No. 52 s 153 sch 2

Tenant's application to tribunal about rent increase

s 53A ins 1998 No. 29 s 24

Rent decreases

s 54 amd 1998 No. 29 s 25

Seizure of tenant's goods for rent etc.

s 55 amd 1998 No. 29 s 26; 2002 No. 19 s 148

PART 3—RENTAL BONDS**Meaning of "rental bond"**

s 57 amd 1998 No. 29 s 27

Contributor for a rental bond

s 58 sub 1998 No. 29 s 28; 2003 No. 36 s 10

Share of a rental bond

s 58A ins 2003 No. 36 s 10

Duty to pay rental bond

s 59 amd 1995 No. 51 s 4 sch

Duty to pay rental bond instalments

s 59A ins 1995 No. 51 s 4 sch

Acknowledging receipt of rental bond

s 60A ins 1998 No. 29 s 29

Division 2—Payments by authority**Subdivision 1—Preliminary**

sdiv hdg ins 2003 No. 36 s 11

Application for payment

s 65 amd 2003 No. 36 s 12

Subdivision 2—Payment of bond if only 1 contributor**sdiv hdg** ins 2003 No. 36 s 13**Application of sdiv 2****s 66** sub 1998 No. 29 s 30; 2003 No. 36 s 13**Payment to cotenants on lessor's direction****s 66A** ins 1998 No. 29 s 30
om 2003 No. 36 s 13**Joint application by lessor and contributor****s 67** sub 2003 No. 36 s 13**Application by lessor****s 68** sub 2003 No. 36 s 13**Payment on cotenant's direction****s 68A** ins 1998 No. 29 s 31
om 2003 No. 36 s 13**Application by contributor****prov hdg** sub 1998 No. 29 s 32(1)
s 69 amd 1998 No. 29 s 32(2)
sub 2003 No. 36 s 13**Subdivision 3—Payment of bond if more than 1 contributor****sdiv hdg** ins 2003 No. 36 s 13**Application of sdiv 3****s 69A** ins 2003 No. 36 s 13**Joint application by lessor and every contributor****s 69B** ins 2003 No. 36 s 13**Joint application by lessor and some contributors****s 69C** ins 2003 No. 36 s 13**Application by lessor****s 69D** ins 2003 No. 36 s 13**Application by every contributor****s 69E** ins 2003 No. 36 s 13**Application by some contributors****s 69F** ins 2003 No. 36 s 13**Subdivision 4—Other matters about payment****sdiv hdg** ins 2003 No. 36 s 13**Payment for which notice must be given****s 69G** ins 2003 No. 36 s 13**Payment to cotenants****s 71** om 1998 No. 29 s 33**Payment to rental bond supplier****s 72** amd 2003 No. 36 s 14

Limitation affecting payment

s 73 amd 2003 No. 36 s 15

Withdrawal of application

s 74 sub 2003 No. 36 s 16

Receipt

s 76 amd 2003 No. 36 s 3 sch

Payments above maximum amounts 77 amd 1995 No. 51 s 4 sch; 1998 No. 29 s 34
sub 1999 No. 5 s 4**Order for payment if guilty of offence**

s 78 amd 2002 No. 19 s 149

Division 4—Accounts and investments**Rental bond account**

s 80 amd 1996 No. 54 s 9 sch; 2002 No. 19 s 150; 2003 No. 36 s 17

Unclaimed amounts in rental bond account

s 80A ins 2003 No. 36 s 18

Rental bond interest account

s 81 amd 1996 No. 54 s 9 sch; 2002 No. 19 s 151

Other payments from rental bond interest account

s 82 amd 1998 No. 29 s 35; 2002 No. 19 s 152

Increase in rental bond

s 83 amd 1998 No. 29 s 36

PART 4—KEY AND HOLDING DEPOSITS

pt hdg sub 1998 No. 29 s 37

Division 1—Key deposits

div hdg ins 1998 No. 29 s 37

Payment of key deposits

s 84A ins 1998 No. 29 s 37

Receipts for key deposits

s 84B ins 1998 No. 29 s 37

Refunding key deposit

s 84C ins 1998 No. 29 s 37

Division 2—Holding deposits

div hdg ins 1998 No. 29 s 37

Rights and obligations about holding deposits

s 87 amd 2003 No. 36 s 3 sch

PART 5—OUTGOINGS OF LESSOR**Division 1—Outgoings other than service charges**

div hdg ins 1998 No. 29 s 38

Division 2—Service charges**div hdg** ins 1998 No. 29 s 39**Meaning of “service charge”****s 90** amd 1998 No. 29 s 40**General service charges for premises other than moveable dwelling premises****prov hdg** sub 1998 No. 29 s 41(1)**s 91** amd 1998 No. 29 s 41(2)**Water service charge for premises other than moveable dwelling premises****s 91A** ins 1998 No. 29 s 42

amd 1999 No. 5 s 5

Orders of tribunal**s 94** amd 1998 No. 29 s 43**Incentive amounts prohibited****s 95A** ins 1998 No. 29 s 44

amd 2003 No. 36 s 3 sch

Certain terms about penalties and other payments void**prov hdg** sub 1998 No. 29 s 45(1)**s 96** amd 1998 No. 29 s 45(2); 2003 No. 36 s 3 sch**CHAPTER 3—RIGHTS AND OBLIGATIONS OF LESSORS AND TENANTS****Lessor’s obligations generally****s 103** amd 1995 No. 51 s 4 sch; 1998 No. 29 s 46**Lessor’s obligations for facilities in moveable dwelling parks****s 104** amd 1998 No. 29 s 47; 2003 No. 74 s 155 sch 1**Lessor’s obligations for moveable dwelling site****s 105** amd 1998 No. 29 s 48**Tenant’s obligations generally****s 106** amd 1998 No. 29 s 49; 2003 No. 36 s 19**Orders of tribunal****s 108A** ins 1998 No. 29 s 50**Notice of entry****s 110** amd 1998 No. 29 s 51; 2003 No. 74 s 155 sch 1**General qualifications about entry****s 111** amd 1998 No. 29 s 52**Lessor’s or agent’s name and other details****s 116** amd 1998 No. 29 s 53; 2003 No. 36 s 3 sch**Supply of locks and keys****s 120** sub 2003 No. 36 s 20**Changing locks****s 121** amd 1998 No. 29 s 54**Agreement about changing locks****s 122** amd 1998 No. 29 s 55

Orders of tribunal

s 123 amd 1998 No. 29 s 56

Meaning of “emergency repairs”

s 123A ins 1998 No. 29 s 57

Meaning of “routine repairs”

s 123B ins 1998 No. 29 s 57

PART 6—ADDITIONAL PROVISIONS FOR MOVEABLE DWELLING PREMISES

pt hdg sub 1998 No. 29 s 58

Notice to relocate

s 130 amd 1998 No. 29 s 59; 2003 No. 74 s 155 sch 1

Restriction against enforcing relocation

s 130A ins 1998 No. 29 s 60; 2003 No. 36 s 3 sch

Application to tribunal

s 132A ins 1998 No. 29 s 61

Park liaison committee

s 136 amd 2003 No. 36 s 21

Supply of goods and services

s 142 amd 2003 No. 36 s 3 sch

Lessor’s expenses for transfer or subletting

s 146 amd 2003 No. 36 s 3 sch

Lessor’s fee for sale of caravan

s 147 amd 2000 No. 20 s 29 sch 3; 2003 No. 36 s 3 sch

Transfer by lessor

s 148 amd 1998 No. 29 s 62

End of tenant’s occupation

s 149 amd 1998 No. 29 s 63

Death of a cotenant

s 149A ins 1998 No. 29 s 64

Injury to spouse

s 150 amd 1998 No. 29 s 65

Injury or damage affecting occupants

s 150A ins 1998 No. 29 s 66

CHAPTER 4—TERMINATION OF AGREEMENTS**Termination of agreements**

s 151 amd 1995 No. 51 s 4 sch

Acceptance of rent does not operate as waiver of tenant’s breach

prov hdg amd 1998 No. 29 s 67(1)

s 152 amd 1998 No. 29 s 67(2)

Offer or payment of rent does not operate as waiver of lessor's breach

s 152A ins 1998 No. 29 s 68

Notice to remedy tenant's breach

s 153 amd 1998 No. 29 s 69

Tenant may dispute notice to remedy breach

s 154 om 1998 No. 29 s 70

Notice to leave for unremedied breach

s 155 amd 1998 No. 29 s 71

Notice to leave if tenant's employment ends

s 162 amd 1998 No. 29 s 72

Notice to leave if tenant's entitlement to supported accommodation ends

s 163 amd 1998 No. 29 s 73

Notice to leave if tenant's entitlement under affordable housing scheme

s 163A ins 1998 No. 29 s 74

Tenant may dispute notice to leave

s 164 om 1998 No. 29 s 75

Notice to leave without ground

s 165 amd 1998 No. 29 s 76

Application to tribunal about notice to leave without ground

s 165A ins 1998 No. 29 s 77

Application for termination for failure to leave

s 166 amd 1998 No. 29 s 78

Application for termination for repeated breaches

s 171A ins 1998 No. 29 s 79

Notice to remedy lessor's breach

s 173 amd 1998 No. 29 s 80

Lessor may dispute notice to remedy breach

s 174 om 1998 No. 29 s 81

Lessor may dispute notice of intention to leave

s 180 om 1998 No. 29 s 82

Application for termination for repeated breaches

s 186A ins 1998 No. 29 s 83

PART 4—ACTION BY OTHER PERSONS**Division 1—Mortgagees**

div hdg ins 1998 No. 29 s 84

Notice about proposed action of mortgagee

s 187A ins 1998 No. 29 s 84

Acceptance of rent does not operate as consent

s 187B ins 1998 No. 29 s 84

Division 2—Other persons**div hdg** ins 1998 No. 29 s 84**Notice to remedy breach****s 192** amd 1998 No. 29 s 85**Notice to leave****s 193** amd 1998 No. 29 s 86**Dispute notice****s 195** om 1998 No. 29 s 87**Allowed remedy period****s 196** amd 1998 No. 29 s 88**Handover day for notice to leave for premises that are not moveable dwelling premises****prov hdg** amd 1998 No. 29 s 89(1)**s 197** amd 1998 No. 29 s 89(2)–(7)**Handover day for notice to leave for moveable dwelling premises****s 198** sub 1998 No. 29 s 90**Handover day for notice of intention to leave for premises that are not moveable dwelling premises****prov hdg** amd 1998 No. 29 s 91(1)**s 199** amd 1998 No. 29 s 91(2)–(5)**Handover day for notice of intention to leave for moveable dwelling premises****s 200** sub 1998 No. 29 s 92**Withdrawing notice to leave for unremedied breach****s 200A** ins 1998 No. 29 s 93**Applications for termination orders****s 202** amd 1998 No. 29 s 94**Failure to leave for unremedied breach****s 204** amd 1998 No. 29 s 95**Incompatibility****s 213** amd 1998 No. 29 s 96**Repeated breaches****s 213A** ins 1998 No. 29 s 97**Interim order about damage or injury****s 214** amd 1998 No. 29 s 98**Warrant of possession****s 217** amd 1998 No. 29 s 99**Way of recovering possession of premises****s 219** amd 2003 No. 36 s 22**Termination of agreement by lessor if premises abandoned****s 221** amd 1998 No. 29 s 100

Dispute about abandonment termination notice

s 221A ins 1998 No. 29 s 101

Order about abandonment

s 222 amd 1998 No. 29 s 102

Abandoned goodss 223 amd 1995 No. 57 s 4 sch 2
om 1998 No. 29 s 103**Abandoned documents**

s 224 om 1998 No. 29 s 104

Compensation on abandonment termination notice

s 226 amd 1998 No. 29 s 105

Compensation on termination by tribunal

prov hdg amd 1998 No. 29 s 106(1)

s 227 amd 1998 No. 29 s 106(2)

Review of abandonment order

s 228 amd 1998 No. 29 s 107

Abandoned goods

s 229 om 1998 No. 29 s 108

PART 10—GOODS AND DOCUMENTS LEFT BEHIND ON PREMISES

pt hdg ins 1998 No. 29 s 109

Goods left on premisess 230A ins 1998 No. 29 s 109
amd 2003 No. 36 s 3 sch**Documents left on premises**s 230B ins 1998 No. 29 s 109
amd 2003 No. 36 s 3 sch**Application about goods left on premises**

s 230C ins 1998 No. 29 s 109

CHAPTER 5—RESOLUTION OF TENANCY ISSUES**PART 1—CONCILIATION OF TENANCY DISPUTES**

pt hdg sub 1998 No. 29 s 110

Division 1—Requirement for conciliation

div hdg sub 1998 No. 29 s 110

Meaning of “urgent application”s 231 sub 1998 No. 29 s 111
amd 1999 No. 5 s 6; 2003 No. 36 s 23**Applications to tribunal**

s 232 amd 1998 No. 29 s 112

Division 1A—Conciliation

div hdg ins 1998 No. 29 s 113

Conciliation process

s 232A ins 1998 No. 29 s 113

Some matters not suitable for conciliation

s 232B ins 1998 No. 29 s 113

Conciliators

prov hdg sub 2003 No. 36 s 24(1)

s 232C ins 1998 No. 29 s 113

amd 2003 No. 36 s 24(2)–(4)

Division 2—Starting the conciliation process

div hdg amd 1998 No. 29 s 114

Making dispute resolution request

s 233 sub 1998 No. 29 s 115

amd 1999 No. 5 s 7

Reference to making of tribunal application includes making of dispute resolution request

prov hdg amd 1998 No. 29 s 116(1)

s 234 amd 1998 No. 29 s 116(2)

Action to be taken on dispute resolution request

s 235 sub 1998 No. 29 s 117

Division 3—Conduct of conciliation process

div hdg amd 1998 No. 29 s 118

Conciliation fee

s 236 sub 1998 No. 29 s 119

Limited right of representation

s 237 amd 1998 No. 29 s 120

Conference to be held in private

s 238 om 1998 No. 29 s 121

Parties' participation in conciliation process not compellable

s 239 sub 1998 No. 29 s 122

Parties to conciliation process

prov hdg amd 1998 No. 29 s 123(1)

s 240 amd 1998 No. 29 s 123(2)

Conciliation agreements

prov hdg amd 1998 No. 29 s 124(1)

s 241 amd 1998 No. 29 s 124(2)

No record of conciliation process

s 242 sub 1998 No. 29 s 125

Division 4—Withdrawal of disputes

div hdg sub 1998 No. 29 s 126

Register

s 243 om 1998 No. 29 s 126

Withdrawal of disputes

s 244 sub 1998 No. 29 s 126

Conciliators to maintain secrecy

s 245 sub 1998 No. 29 s 127
amd 2003 No. 36 s 25

Ordinary protection and immunity allowed

s 246 amd 1998 No. 29 s 128; 2003 No. 36 s 26

Admissions made in conciliation process

s 247 sub 1998 No. 29 s 129

Applications about breach of agreements

s 249 amd 1998 No. 29 s 130

Orders about breach of agreements

s 250 amd 1998 No. 29 s 131

Application of Aboriginal tradition

s 251 amd 2004 No. 37 s 86 sch 1

Disputes about tenants' notices

s 253 amd 1998 No. 29 s 132

Disputes about lessors' notices

s 253A ins 1998 No. 29 s 133

Disputes between cotenants about rental bonds

s 255 amd 1998 No. 29 s 134

Authorised persons under this chapter

s 258 amd 2002 No. 19 s 153

Authorised person's identity card

s 262 amd 2002 No. 19 s 154

Warrants for entry

s 265 amd 2002 No. 19 s 155

Authorised person's general powers for places

s 267 amd 1998 No. 29 s 135; 2002 No. 19 s 156

Procedure after document seized

s 267A ins 1998 No. 29 s 136

Power to require information from certain persons

s 267B ins 1998 No. 29 s 136
amd 2002 No. 19 s 157

Compensation

s 271 amd 2002 No. 19 s 158

Evidentiary provisions

s 277 amd 2002 No. 19 s 159

Behaviour in moveable dwelling park causing serious nuisance

s 278 amd 1998 No. 29 s 137; 2000 No. 5 s 461 sch 3

Power to enter moveable dwellings

s 279 om 2000 No. 5 s 461 sch 3

Initial direction about serious nuisance

s 280 om 2000 No. 5 s 461 sch 3

Direction to leave parks 281 amd 1997 No. 81 s 3 sch
om 2000 No. 5 s 461 sch 3**Power to require name and address**

s 282 om 2000 No. 5 s 461 sch 3

CHAPTER 7A—TENANCY DATABASES

ch 7A (ss 284A–284H) ins 2003 No. 36 s 27

Power of arrest

s 285 om 2000 No. 5 s 461 sch 3

Authority represents the State

s 288 amd 2001 No. 45 s 29 sch 3

Authority's functions

s 289 amd 1998 No. 29 s 138; 2002 No. 19 s 160

Composition of board

s 294 amd 1998 No. 29 s 139

Authority is statutory body for Statutory Bodies Financial Arrangements Act 1982

s 301A ins 1996 No. 54 s 9 sch

Application of certain Acts

s 304 amd 2001 No. 69 s 378 sch 1

Chief executive officer

s 306 amd 1996 No. 37 s 147 sch 2

Delegation

s 308A ins 2003 No. 36 s 28

Authority staff

s 309 amd 1996 No. 37 s 147 sch 2

Limitation on time for starting proceedings

s 314A ins 1998 No. 29 s 140

Protection from liability

s 319 amd 2002 No. 19 s 161

Forms

s 320 amd 1998 No. 29 s 141

CHAPTER 10A—APPLICATION OF ACT TO AFFECTED (HOLIDAY LETTING) AGREEMENTSch hdg ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Chapter's purpose

s 321A ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Act's application to affected (holiday letting) agreements

s 321B ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Information statement

s 321C ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Additional provisions about rental bonds

s 321D ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Duty to pay rental bonds

s 321E ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Payments above maximum amount

s 321F ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Additional definitions

s 321G ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

References to rental bonds received for affected (holiday letting) agreements

s 321H ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Provisions in sch 1

s 321I ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Validation and saving provisions

s 321J ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Expiry

s 321K ins 1997 No. 15 s 4
exp 31 December 1997 (see s 321K)

Non-application of Act to long-term leases on Hamilton Island

s 322 prev s 322 exp 3 April 1996 (see s 322(2))
pres s 322 ins 2003 No. 36 s 29

CHAPTER 11—TRANSITIONAL, REPEALS AND AMENDMENTS**PART 1—TRANSITIONAL PROVISIONS FOR ACT No. 86 OF 1994**

pt hdg amd 1998 No. 29 s 142(1)

Division 1—Interpretation

div hdg exp 3 April 1996 (see s 322(2))

Division 3—Transitional provisions about rental bond matters**div hdg** exp 3 April 1996 (see s 338)**Vesting of assets and liabilities****s 326** exp 3 October 1995 (see s 326(4))
(1) AIA s 20A applies (see s 326(3))**Pending proceedings****s 327** exp 3 October 1995 (see s 327(3))
(1) AIA s 20A applies (see s 327(2))**Duty to assist transfer of property****s 328** exp 3 April 1996 (see s 338)**Documents****s 329** exp 3 October 1995 (see s 329(4))
(1), (2) AIA s 20A applies (see s 329(3))**Existing employees****s 330** exp 3 October 1995 (see s 330(4))
(1), (2) AIA s 20A applies (see s 330(3))**Appointments under former Act****s 331** exp 3 October 1995 (see s 331(3))**Existing rental bond amounts****s 332** exp 3 October 1995 (see s 332(3))
(1) AIA s 20A applies (see s 332(2))**Existing applications****s 333** exp 3 October 1995 (see s 333(4))
(1), (2) AIA s 20A applies (see s 333(3))**Retention of receipt given under former Act****s 334** exp 3 April 1996 (see s 338)**Condition of premises reports****s 335** exp 3 April 1996 (see s 338)
(1), (2) AIA s 20A applies (see s 335(3))**Rental bond account under the former Act****s 336** exp 3 October 1995 (see s 336(3))**Rental bond interest account under the former Act****s 337** exp 3 October 1995 (see s 337(3))**Expiry of this division****s 338** exp 3 April 1996**Agreements in force at commencement****s 339** exp 3 April 2000 (see s 339(5))**PART 2—TRANSITIONAL PROVISIONS FOR RESIDENTIAL TENANCIES
AMENDMENT ACT 1998****pt hdg** prev pt 2 hdg om R1 (see RA s 40)
pres pt 2 hdg ins 1998 No. 29 s 142(2)

Definitions for pt 2

s 340 prev s 340 exp 3 April 1996 (see s 340(2))
pres s 340 ins 1998 No. 29 s 142(2)

Fixed term agreements in force at commencement

s 341 prev s 341 exp 3 April 1996 (see s 341(3))
pres s 341 ins 1998 No. 29 s 142(2)

Periodic agreements in force at commencement

s 342 prev s 342 om R1 (see RA s 40)
pres s 342 ins 1998 No. 29 s 142(2)

Short tenancy (moveable dwelling) agreements in force at commencement

s 343 prev s 343 om R1 (see RA s 40)
pres s 343 ins 1998 No. 29 s 142(2)

**PART 3—TRANSITIONAL PROVISIONS FOR RESIDENTIAL TENANCIES
AND OTHER LEGISLATION AMENDMENT ACT 2003**

pt hdg prev pt 3 hdg ins 1999 No. 5 s 8
exp 1 December 1999 (see s 348)
pres pt 3 hdg ins 2003 No. 36 s 30

Division 1—Preliminary

div hdg ins 2003 No. 36 s 30

Meaning of “amendment Act” for pt 3

s 344 prev s 344 ins 1999 No. 5 s 8
exp 1 December 1999 (see s 348)
pres s 344 ins 2003 No. 36 s 30

Division 2—Miscellaneous

div hdg ins 2003 No. 36 s 30

Application for payment of rental bond

s 345 prev s 345 ins 1999 No. 5 s 8
exp 1 December 1999 (see s 348)
pres s 345 ins 2003 No. 36 s 30

Supply of locks and keys

s 346 prev s 346 ins 1999 No. 5 s 8
exp 1 December 1999 (see s 348)
pres s 346 ins 2003 No. 36 s 30

Conciliators

s 347 prev s 347 ins 1999 No. 5 s 8
exp 1 December 1999 (see s 348)
pres s 347 ins 2003 No. 36 s 30

Division 3—Tenancy databases

div hdg ins 2003 No. 36 s 30

Application of certain tenancy database provisions

s 348 prev s 348 ins 1999 No. 5 s 8
exp 1 December 1999 (see s 348)
pres s 348 ins 2003 No. 36 s 30

Application to tribunal about listing made in certain circumstances
s 349 ins 2003 No. 36 s 30

Application to tribunal about incorrect or unjust listing
s 350 ins 2003 No. 36 s 30

SCHEDULE 1—APPLICATION OF ACT TO AFFECTED (HOLIDAY LETTING) AGREEMENTS

prev sch 1 om R1 (see RA s 40)
 pres sch 1 ins 1997 No. 15 s 5
 exp 31 December 1997 (see s 321K)

SCHEDULE 2—ACTS AMENDED
 om R1 (see RA s 40)

SCHEDULE 3—DICTIONARY

def “**accommodation Act**” ins 2002 No. 19 s 162
 def “**affordable housing scheme**” ins 1998 No. 29 s 143(2)
 def “**allowed period**” om 2003 No. 36 s 31(1)
 def “**approved form**” ins 1995 No. 51 s 4 sch
 sub 1998 No. 29 s 143
 def “**approved representative**” sub 1998 No. 29 s 143
 def “**approved supported accommodation**” sub 1998 No. 29 s 143
 def “**award**” om 1998 No. 29 s 143(1)
 def “**caravan**” sub 1998 No. 29 s 143
 def “**conciliation agreement**” ins 1998 No. 29 s 143(2)
 def “**conciliator**” ins 1998 No. 29 s 143(2)
 sub 2003 No. 36 s 31(1)–(2)
 def “**contributor**” ins 2003 No. 36 s 31(2)
 def “**dispute notice**” om 1998 No. 29 s 143(1)
 def “**dispute resolution request**” ins 1998 No. 29 s 143(2)
 def “**domestic violence**” amd 2002 No. 6 s 53 sch 2
 def “**domestic violence order**” amd 2002 No. 6 s 53 sch 2
 def “**emergency repairs**” sub 1998 No. 29 s 143
 def “**ending of housing assistance**” ins 1998 No. 29 s 143(2)
 def “**enforcement warrant**” ins 2002 No. 19 s 162
 def “**essential terms**” om 1998 No. 29 s 143(1)
 def “**final nuisance direction**” amd 2000 No. 5 s 461 sch 3
 def “**full term**” om 1998 No. 29 s 143(1)
 def “**general service charge**” ins 1998 No. 29 s 143(2)
 def “**home owner**” ins 2003 No. 74 s 155 sch 1
 def “**industrial agreement**” om 1998 No. 29 s 143(1)
 def “**initial nuisance direction**” amd 2000 No. 5 s 461 sch 3
 def “**key deposit**” ins 1998 No. 29 s 143(2)
 def “**key money**” om 1998 No. 29 s 143(1)
 def “**list**” ins 2003 No. 36 s 31(2)
 def “**manufactured home**” ins 2003 No. 74 s 155 sch 1
 def “**maximum rental bond**” amd 1999 No. 5 s 9
 def “**mediation conference**” om 1998 No. 29 s 143(1)
 def “**mediation notice**” om 1998 No. 29 s 143(1)
 def “**mediator**” amd 1997 No. 81 s 3 sch
 om 1998 No. 29 s 143(1)

- def “**mobile home**” om 2003 No. 74 s 155 sch 1
 def “**mobile home agreement**” om 2003 No. 74 s 155 sch 1
 def “**mobile home occupier**” om 2003 No. 74 s 155 sch 1
 def “**mortgagee**” ins 1998 No. 29 s 143(2)
 def “**moveable dwelling**” amd 2003 No. 74 s 155 sch 1
 def “**moveable dwelling premises**” amd 2003 No. 74 s 155 sch 1
 def “**non-essential terms**” om 1998 No. 29 s 143(1)
 def “**nonprofit corporation**” ins 1998 No. 29 s 143(2)
 def “**personal information**” ins 2003 No. 36 s 31(2)
 def “**protection order**” amd 2002 No. 6 s 53 sch 2
 def “**relative**” ins 2002 No. 19 s 162
 def “**rental bond contributor**” ins 1998 No. 29 s 143(2)
 om 2003 No. 36 s 31(1)
 def “**rental bond notice**” ins 1998 No. 29 s 143(2)
 def “**rental purchase plan agreement**” ins 1995 No. 51 s 4 sch
 def “**replacement cotenant**” ins 1998 No. 29 s 143(2)
 om 2003 No. 36 s 31(1)
 def “**resident**” (first mention) ins 2002 No. 19 s 162
 def “**residential service**” ins 2002 No. 19 s 162
 sub 2004 No. 10 s 8 sch
 def “**residential service agreement**” ins 2002 No. 19 s 162
 def “**retirement village**” amd 2003 No. 36 s 31(3)
 def “**routine repairs**” om 1998 No. 29 s 143(1)
 def “**service provider**” ins 2002 No. 19 s 162
 def “**share**” ins 2003 No. 36 s 31(2)
 def “**short form**” om 1998 No. 29 s 143(1)
 def “**site agreement**” ins 2003 No. 74 s 155 sch 1
 def “**special terms**” ins 1998 No. 29 s 143(2)
 def “**spouse**” ins 1998 No. 29 s 143(2)
 sub 2002 No. 6 s 53 sch 2
 om 2002 No. 74 s 90 sch
 def “**spouse**” (second mention) om 2000 No. 46 s 3 sch
 def “**standard terms**” ins 1998 No. 29 s 143(2)
 def “**tenancy database**” ins 2003 No. 36 s 31(2)
 def “**water service charge**” ins 1998 No. 29 s 143(2)

8 List of forms notified or published in the gazette

Form 1 Version 1—Condition Report

pubd gaz 24 March 1995 p 1286

Form 1a December 1998—Entry Condition Report—General Tenancies

pubd gaz 20 November 1998 p 1063

Form 1b December 1998—Entry Condition Report—Moveable Dwelling/Site

pubd gaz 20 November 1998 p 1063

Form 2 December 1998—Bond Lodgement

pubd gaz 20 November 1998 p 1063

Form 3 December 1998—Transfer of Bond

pubd gaz 20 November 1998 p 1063

Form 4 December 1998—Refund of Rental Bond

pubd gaz 20 November 1998 p 1063

Form 5 December 1998—Change of Lessor or Lessor's Agent

pubd gaz 20 November 1998 p 1063

Form 6 December 1998—Change of Shared Bond Arrangement

pubd gaz 20 November 1998 p 1063

Form 7 December 1998—Part-Payment of Rental Bond

pubd gaz 20 November 1998 p 1063

Form 8 December 1998—Lessor's Agent Signature Record

pubd gaz 20 November 1998 p 1063

Form 9 December 1998—Entry Notice

pubd gaz 20 November 1998 p 1063

Form 9c December 1998—Entry Notice

pubd gaz 27 November 1998 p 1163

Form 10 December 1998—Notice of Lessor's Intention to Sell Premises

pubd gaz 20 November 1998 p 1063

Form 11 December 1998—Notice to Remedy Breach

pubd gaz 20 November 1998 p 1063

Form 11a Version 1—Notice to Remedy Breach (Rent Arrears) *QDHLGP use only

pubd gaz 24 March 1995 p 1286

Form 11b Version 1—Notice to Remedy Breach (Other than Rent Arrears)***QDHLGP use only**

pubd gaz 24 March 1995 p 1286

Form 11c(1) December 1998—Notice to Remedy Breach—Rent Arrears

pubd gaz 27 November 1998 p 1163

Form 11c(2) December 1998—Notice to Remedy Breach—Other than Rent Arrears

pubd gaz 27 November 1998 p 1163

Form 12 December 1998—Notice to Leave

pubd gaz 20 November 1998 p 1063

Form 12a Version 1—Notice to Leave (Rent Arrears) *QDHLGP use only

pubd gaz 24 March 1995 p 1286

Form 12b Version 1—Notice to Leave (Other than Rent Arrears) *QDHLGP use only

pubd gaz 24 March 1995 p 1286

Form 12c(1) December 1998—Notice to Leave—Rent Arrears

pubd gaz 27 November 1998 p 1163

- Form 12c(2) December 1998—Notice to Leave—Other than Rent Arrears**
pubd gaz 27 November 1998 p 1163
- Form 12c(3) December 1998—Notice to Leave—Without Grounds**
pubd gaz 27 November 1998 p 1163
- Form 13 December 1998—Notice of Intention to Leave**
pubd gaz 20 November 1998 p 1063
- Form 14 Version 1—Dispute Notice**
pubd gaz 24 March 1995 p 1286
- Form 14a December 1998—Exit Condition Report—General Tenancies**
pubd gaz 27 November 1998 p 1163
- Form 14b December 1998—Exit Condition Report—Moveable Dwelling/Site**
pubd gaz 27 November 1998 p 1163
- Form 15 December 1998—Abandonment Termination Notice**
pubd gaz 20 November 1998 p 1063
- Form 16 December 1998—Dispute Resolution Request**
pubd gaz 20 November 1998 p 1063
- Form 17a December 1998—Information Statement Renting in Queensland Your rights and responsibilities as a tenant in general tenancies**
pubd gaz 20 November 1998 p 1063
- Form 17b December 1998—Information Statement Renting in Queensland Your rights and responsibilities as a tenant in moveable dwelling tenancies**
pubd gaz 20 November 1998 p 1063
- Form 18a December 1998—General Tenancy Agreement**
pubd gaz 20 November 1998 p 1063
- Form 18b December 1998—Moveable Dwelling Tenancy Agreement**
pubd gaz 20 November 1998 p 1063
- Form 18c December 1998—State Tenancy Agreement**
pubd gaz 20 November 1998 p 1063