



Queensland

# **Residential Tenancies and Rooming Accommodation Act 2008**

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Queensland

# Residential Tenancies and Rooming Accommodation Act 2008

## Contents

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		Page
<b>Chapter 1</b>	<b>Preliminary</b>	
<b>Part 1</b>	<b>Introduction</b>	
1	Short title .....	31
2	Commencement .....	31
3	Act binds all persons .....	31
4	Rights and remedies of persons .....	32
<b>Part 2</b>	<b>Objects of Act</b>	
5	Objects of Act .....	32
<b>Part 3</b>	<b>Interpretation</b>	
<b>Division 1</b>	<b>Location of definitions</b>	
6	Definitions and dictionary .....	33
<b>Division 2</b>	<b>Meaning of key terms for residential tenancies</b>	
7	Caravan .....	33
8	Lessor .....	34
9	Premises .....	34
10	Residential premises .....	35
11	Residential tenancy .....	35
12	Residential tenancy agreement .....	35
13	Tenant .....	35
<b>Division 3</b>	<b>Meaning of key terms for rooming accommodation</b>	
14	Resident .....	36
15	Rooming accommodation .....	36
16	Rooming accommodation agreement .....	37
17	Provider .....	37
<b>Division 4</b>	<b>Prescribed minimum housing standards</b>	
17A	Prescribed minimum housing standards .....	38

Contents

---

<b>Part 4</b>	<b>Application and operation of Act</b>	
<b>Division 1</b>	<b>Matters relating to residential tenancies and rooming accommodation</b>	
18	Opting in as residential tenancy agreement . . . . .	39
19	References to agreements . . . . .	40
20	Reference to lessors and tenants . . . . .	40
21	Reference to providers and residents . . . . .	40
22	References to premises . . . . .	40
23	References to tenancies . . . . .	40
24	Provision stating that lessor or lessor's agent or provider or provider's agent must do something . . . . .	41
25	Lessor's or provider's agent . . . . .	41
26	State as lessor . . . . .	41
27	Application of Property Law Act to agreements . . . . .	43
28	Minor has capacity to enter into agreements . . . . .	43
<b>Division 2</b>	<b>Residential tenancy agreements to which this Act applies and does not apply</b>	
29	Act applies to certain residential tenancy agreements etc. . . . .	43
30	Contracts of sale and mortgages . . . . .	44
31	Premises used for holidays . . . . .	44
32	Boarders and lodgers . . . . .	44
33	Educational institutions . . . . .	45
34	Hospitals, nursing homes and retirement villages . . . . .	46
35	Rental purchase plan agreements . . . . .	46
36	Temporary refuge accommodation . . . . .	46
37	Agreements under Manufactured Homes (Residential Parks) Act 2003 46	
38	Headleases for employee housing . . . . .	47
39	Headleases for affordable housing agreements . . . . .	47
40	Hotels and motels . . . . .	47
41	Headleases for approved supported accommodation . . . . .	47
<b>Division 3</b>	<b>Rooming accommodation agreements to which this Act applies and does not apply</b>	
43	Act applies to certain rooming accommodation agreements etc. . . . .	48
44	Rooming accommodation agreements to which Act does not apply . . . . .	49
44A	Boarders and lodgers . . . . .	50
<b>Division 4</b>	<b>Moveable dwelling premises</b>	

45	Application of div 4 . . . . .	51
46	Purpose of division . . . . .	51
47	Short tenancy statements . . . . .	51
48	Extending short tenancy statements . . . . .	52
49	Setting aside short tenancy (extension) statements . . . . .	52
50	Short tenancies . . . . .	52
51	Long tenancies . . . . .	52
<b>Chapter 2</b>	<b>Residential tenancy agreements and rooming accommodation agreements</b>	
<b>Part 1</b>	<b>Agreements</b>	
<b>Division 1</b>	<b>Residential tenancy agreements</b>	
<b>Subdivision 1</b>	<b>General provisions</b>	
52	Terms of agreements include duties under Act etc. . . . .	53
53	Contracting out prohibited . . . . .	54
54	Inconsistency . . . . .	54
55	Standard terms . . . . .	54
56	Special terms . . . . .	54
57	Offer of residential tenancy must be for rent at a fixed amount . .	55
57A	Offer of residential tenancy must disclose particular information	55
57B	Application for residential tenancy . . . . .	56
57C	Request for information for application . . . . .	57
57D	Verification of identity for application . . . . .	58
57AA	Offer of residential tenancy—limitation on rent in advance . . . .	59
58	Lessor must give particular information to prospective tenant . .	59
59	Restriction on amounts that may be taken from prospective tenant	60
60	Orders of tribunal relating to noncompliance with s 58 or 59 . . .	60
61	Written agreements required . . . . .	60
62	Giving, signing and keeping written agreement . . . . .	61
63	Period lessor or lessor's agent must keep agreement . . . . .	62
64	Orders of tribunal about giving and signing written agreement . .	62
<b>Subdivision 2</b>	<b>Associated documents</b>	
65	Condition report at start of tenancy . . . . .	63
66	Condition report at end of tenancy . . . . .	64
67	Information statement . . . . .	65
68	Park rules . . . . .	66
69	Body corporate by-laws . . . . .	67

Contents

---

<b>Subdivision 3</b>	<b>Fixed term agreements</b>	
70	Continuation of fixed term agreements . . . . .	67
71	Tenant may apply to tribunal about significant change in subsequent agreement . . . . .	68
<b>Division 2</b>	<b>Rooming accommodation agreements</b>	
<b>Subdivision 1</b>	<b>General provisions</b>	
72	Terms of agreement include obligations under Act etc. . . . .	71
73	Standard terms . . . . .	71
74	Special terms . . . . .	71
75	Contracting out prohibited . . . . .	72
76	Inconsistency . . . . .	72
76AA	Offer of rooming accommodation must be for rent at a fixed amount	72
76AB	Offer of rooming accommodation—limitation on rent in advance	73
76A	Offer of rooming accommodation must disclose particular information	73
76B	Provider must give particular information to prospective resident	74
76C	Application for rooming accommodation . . . . .	74
76D	Request for information for application . . . . .	75
76E	Verification of identity for application . . . . .	76
77	Written agreement required . . . . .	77
78	Resident's copy of agreement . . . . .	78
79	Period provider or provider's agent must keep agreement . . . . .	78
<b>Subdivision 2</b>	<b>Associated documents</b>	
80	Application of sdiv 2 . . . . .	79
81	Condition report at start of rooming accommodation . . . . .	79
<b>Subdivision 3</b>	<b>Fixed term agreements</b>	
82	Continuation of fixed term agreement . . . . .	80
<b>Part 2</b>	<b>Rent</b>	
<b>Division 1</b>	<b>Residential tenancy agreements</b>	
82A	Meaning of exempt lessor . . . . .	81
83	How rent is to be paid . . . . .	82
84	Changes to way rent to be paid by agreement . . . . .	82
84A	Changes to way rent to be paid—no agreement . . . . .	83
84B	Tenant must be advised about associated costs and benefits . . . . .	83
85	Where rent to be paid . . . . .	84
86	Payment of rent by electronic transaction . . . . .	84

87	Rent in advance .....	85
88	Receipts and other records .....	85
89	Keeping of records .....	86
90	False, misleading or incomplete rent records .....	87
91	Rent increases .....	87
92	Tenant's application to tribunal about rent increase .....	89
93	Minimum period before rent can be increased .....	90
93A	Evidence of last rent increase .....	92
93B	Tribunal order about rent increase .....	92
94	Rent decreases .....	93
95	Seizure of tenant's goods for rent etc. ....	94
96	Rent payment must not be applied for any other purpose .....	94
97	Apportionment .....	95
<b>Division 2</b>	<b>Rooming accommodation agreements</b>	
97A	Meaning of exempt provider .....	95
98	How rent is to be paid .....	96
99	Changes to way rent to be paid by agreement .....	96
99A	Changes to way rent to be paid—no agreement .....	97
99B	Resident must be advised about associated costs and benefits .	97
100	Where rent is to be paid .....	98
101	Rent in advance .....	98
102	Receipts and other records .....	98
103	Keeping of records .....	100
104	False, misleading or incomplete rent records .....	100
105	Rent increases .....	101
105A	Resident's application to tribunal about rent increase .....	102
105B	Minimum period before rent can be increased .....	104
105C	Evidence of last rent increase .....	105
105D	Rent increase in relation to service provided under agreement .	106
105E	Tribunal order about rent increase .....	106
106	Rent decreases for matters including loss of amenity or service	107
107	Rent decreases because of resident's absence .....	107
107A	Rent decreases .....	108
108	Seizure of resident's goods for rent etc. ....	109
109	Apportionment .....	109
<b>Part 3</b>	<b>Rental bonds</b>	

Contents

---

<b>Division 1</b>	<b>Application of part</b>	
110	Application of part . . . . .	110
<b>Division 2</b>	<b>Payments to authority</b>	
111	Meaning of rental bond . . . . .	110
112	Meaning of maximum rental bond . . . . .	111
113	Who is a contributor for a rental bond . . . . .	112
114	Bond loan contributor . . . . .	113
115	Share of a rental bond . . . . .	113
116	Duty to pay rental bond . . . . .	114
117	Duty to pay rental bond instalments under residential tenancy agreement . . . . .	114
118	Duty to pay rental bond instalments under rooming accommodation agreement . . . . .	115
119	Duty to pay rental bond if financial protection given . . . . .	116
120	Acknowledging receipt of rental bond . . . . .	117
121	No entitlement to interest . . . . .	117
122	Continuance of rental bond . . . . .	117
<b>Division 3</b>	<b>Payments by authority</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
123	Purpose of division . . . . .	118
124	Making payment . . . . .	118
125	Application for payment . . . . .	118
<b>Subdivision 2</b>	<b>Payment of bond if only 1 contributor</b>	
126	Application of sdiv 2 . . . . .	118
127	Joint application by contributor and lessor or provider . . . . .	119
128	Application only by lessor or provider . . . . .	119
129	Application only by contributor . . . . .	119
<b>Subdivision 3</b>	<b>Payment of bond if more than 1 contributor</b>	
130	Application of sdiv 3 . . . . .	120
131	Joint application by every contributor and the lessor or provider . . . . .	120
132	Joint application by some contributors and the lessor or provider . . . . .	120
133	Application only by lessor or provider . . . . .	121
134	Application made only by all contributors . . . . .	121
135	Application only by some contributors . . . . .	122
<b>Subdivision 3A</b>	<b>Payment of bond if applicant affected by domestic violence</b>	
135A	Application of subdivision . . . . .	122



135B	Joint application by contributor and lessor or provider . . . . .	123
135C	Application only by lessor or provider . . . . .	123
135D	Application only by contributor . . . . .	124
<b>Subdivision 4</b>	<b>General process for payment of rental bond if interested persons for the payment</b>	
136	Notice of application for payment of rental bond . . . . .	124
136A	Response by interested person to application for payment of rental bond 124	
136AA	Evidence of claim on rental bond to be given to tenant or resident	125
136B	Application to tribunal if conciliation process ends without conciliated resolution . . . . .	126
136C	Extension of time to apply to tribunal . . . . .	127
136D	Tribunal order about payment of rental bond . . . . .	127
136E	Payment of rental bond after dispute resolution process . . . . .	128
137	Payment under tribunal order . . . . .	129
138	Payment to rental bond supplier . . . . .	129
139	Limitation affecting early payment . . . . .	130
140	Withdrawal of application . . . . .	131
141	Payment under person's direction . . . . .	132
<b>Subdivision 5</b>	<b>Payment by authority in stated circumstances if bond loan contributor</b>	
142	Application of sdiv 5 . . . . .	132
143	Chief executive taken to be interested person . . . . .	133
144	Sdivs 3, 3A and 4 apply subject to this subdivision . . . . .	133
<b>Division 4</b>	<b>Enforcement provisions</b>	
145	Receipt . . . . .	133
146	Payments above maximum amount . . . . .	134
147	Order for payment if guilty of offence . . . . .	135
148	Order for return of bond if bond wrongfully taken . . . . .	135
<b>Division 5</b>	<b>Rental bond account</b>	
150	Rental bond account . . . . .	136
151	Unclaimed amounts in rental bond account . . . . .	136
153	Guaranteed payment of rental bonds . . . . .	138
<b>Division 6</b>	<b>Miscellaneous</b>	
154	Increase in rental bond . . . . .	138
155	Rental bond resulting from rent decrease . . . . .	139
155A	Transfer of rental bond . . . . .	139

Contents

---

<b>Part 4</b>	<b>Key and holding deposits for residential tenancies</b>	
<b>Division 1</b>	<b>Key deposits</b>	
156	Payment of key deposits .....	140
157	Receipts for key deposits .....	140
158	Refunding key deposit .....	141
<b>Division 2</b>	<b>Holding deposits</b>	
159	Payment of holding deposits .....	141
160	Receipts for holding deposits .....	142
161	Rights and obligations about holding deposits .....	143
162	Orders of tribunal .....	144
<b>Part 5</b>	<b>Outgoings of lessor or provider</b>	
<b>Division 1</b>	<b>Residential tenancy agreements</b>	
<b>Subdivision 1</b>	<b>Outgoings other than service charges</b>	
163	Outgoings other than service charges .....	144
<b>Subdivision 2</b>	<b>Service charges</b>	
164	Meaning of service charge .....	144
165	General service charges for premises other than moveable dwelling premises .....	145
166	Water service charges for premises other than moveable dwelling premises .....	146
166A	Water service charges for premises other than moveable dwelling premises—charge for partial billing period .....	148
167	Service charges for moveable dwelling premises individually metered	149
168	Service charges absorbed in rent for moveable dwelling premises	150
169	Orders of tribunal .....	151
<b>Division 2</b>	<b>Rooming accommodation agreements</b>	
170	Charge for utility service .....	152
<b>Part 6</b>	<b>Penalties and premiums for residential tenancy agreements and rooming accommodation agreements</b>	
<b>Division 1</b>	<b>Residential tenancy agreements</b>	
171	Supply of goods and services .....	153
172	Incentive amounts prohibited .....	154
173	Certain terms about penalties and other payments void .....	154
174	Terms about rent reductions etc. ....	155
175	Premiums for letting moveable dwelling premises .....	156
<b>Division 2</b>	<b>Rooming accommodation agreements</b>	

176	Supply of goods and services .....	156
177	Incentive amounts prohibited .....	157
178	Certain terms about penalties and other payments void .....	157
179	Terms about rent reductions etc. ....	158
<b>Part 7</b>	<b>Tenancy guarantees</b>	
180	Tenancy guarantees .....	159
<b>Chapter 3</b>	<b>Rights and obligations of parties for residential tenancies</b>	
<b>Part 1</b>	<b>Occupation and use of the premises</b>	
181	Legal impediments to occupation as residence .....	160
182	Vacant possession .....	160
183	Quiet enjoyment .....	160
184	Tenant's use of premises .....	161
<b>Part 1A</b>	<b>Pets</b>	
<b>Division 1</b>	<b>Preliminary</b>	
184A	Definitions for part .....	161
<b>Division 2</b>	<b>Keeping pets and other animals at premises</b>	
184B	Keeping pets and other animals at premises .....	162
184C	Tenant responsible for pets and other animals .....	162
<b>Division 3</b>	<b>Approvals, refusals and conditions for keeping pets at premises</b>	
184D	Request for approval to keep pet at premises .....	163
184E	Grounds for refusing pets being kept at premises .....	164
184F	Conditions for approval to keep pet at premises .....	164
184G	Continuation of authorisation to keep pet or working dog at premises 165	
<b>Part 2</b>	<b>General standard of the premises</b>	
185	Lessor's obligations generally .....	166
186	Lessor's obligations for facilities in moveable dwelling parks ...	168
187	Lessor's obligations for moveable dwelling site .....	169
188	Tenant's obligations generally .....	169
189	Tenant's obligations for facilities in moveable dwelling parks ...	170
190	Tenant's obligation for moveable dwelling site .....	170
191	Orders of tribunal .....	171
<b>Part 3</b>	<b>Lessor's right of entry</b>	
192	Grounds for entry .....	171
193	Notice of entry .....	173
194	Entry by lessor or lessor's agent with another person .....	174

Contents

---

195	When lessor or lessor's agent may enter .....	174
195A	When lessor or lessor's agent may enter—notice to leave or notice of intention to leave given .....	175
196	Period for entry must be stated for entry by lessor and lessor's agent without another person .....	175
197	Entry to show premises to a prospective tenant .....	176
198	Entry to show premises to a prospective buyer .....	177
199	Entry by secondary agents generally .....	177
200	Rules of entry .....	178
201	Entry by lessor or lessor's agent under order of tribunal .....	178
202	Unlawful entry of premises .....	179
203	Lessor or lessor's agent must not use photo or image showing tenant's possessions in advertisement .....	179
204	Lessor or lessor's agent must not conduct open house or on-site auction without tenant's consent .....	179
<b>Part 4</b>	<b>Personal details of the parties and agents</b>	
205	Tenant's name and other details .....	180
206	Lessor's or agent's name and other details .....	180
<b>Part 5</b>	<b>The dwelling</b>	
<b>Division 1</b>	<b>Fixtures and structural changes</b>	
<b>Subdivision 1</b>	<b>Fixtures and structural changes generally</b>	
206A	Application of subdivision .....	181
207	Process for approval to attach fixtures or make structural changes—body corporate approval .....	182
208	Process for approval to attach fixtures and make structural changes—lessor approval .....	183
209	Agreement about fixtures and structural changes .....	184
209A	Attaching fixture or making structural change without lessor's agreement	184
<b>Subdivision 2</b>	<b>Fixtures and structural changes for safety, security or accessibility</b>	
209B	Attaching fixtures or making structural changes for safety, security or accessibility .....	185
<b>Subdivision 3</b>	<b>Tribunal orders about fixtures and structural changes</b>	
209C	Tribunal order about attaching fixtures or making structural changes	185
<b>Division 2</b>	<b>Locks and keys</b>	
210	Supply of locks and keys .....	187
211	Changing locks .....	188
212	Agreement about changing locks .....	189

213	Orders of tribunal . . . . .	189
<b>Division 3</b>	<b>Damage and repairs</b>	
214	Meaning of emergency repairs . . . . .	190
215	Meaning of routine repairs . . . . .	190
216	Nominated repairer for emergency repairs . . . . .	191
217	Notice of damage . . . . .	191
218	Tenant may arrange for emergency repairs to be made or may apply to the tribunal for an order about the repairs . . . . .	192
219	Costs of emergency repairs arranged by tenant . . . . .	193
219A	Lessor's agent may arrange for emergency repairs to be made . . . . .	193
220	Orders of tribunal about reimbursement or payment for emergency repairs . . . . .	194
221	Application for repair order . . . . .	195
221A	Granting repair order . . . . .	196
221B	Extension of time to comply with repair order . . . . .	197
221C	Offence to contravene repair order . . . . .	198
<b>Part 6</b>	<b>Additional provisions for moveable dwelling premises</b>	
<b>Division 1</b>	<b>Application of part</b>	
222	Application of pt 6 . . . . .	198
<b>Division 2</b>	<b>Relocation</b>	
223	Notice to relocate . . . . .	199
224	Restriction against enforcing relocation . . . . .	200
225	Effect of relocation . . . . .	200
226	Costs of relocation . . . . .	200
227	Application to tribunal . . . . .	200
<b>Division 3</b>	<b>Park rules</b>	
228	Park rules . . . . .	201
229	Notice of proposed change of park rule . . . . .	201
230	Objection to proposal . . . . .	202
231	Park liaison committee . . . . .	202
232	Consideration of objections by committee . . . . .	203
233	Application to tribunal about proposal . . . . .	204
234	Decision of tribunal about proposal . . . . .	204
235	When proposal takes effect . . . . .	205
236	When changes of park rules have no effect . . . . .	206
<b>Part 7</b>	<b>Change of lessor or tenant</b>	

Contents

---

<b>Division 1</b>	<b>Transfer or subletting by tenant</b>	
237	Tenant's action subject to lessor's unqualified discretion . . . . .	207
238	Tenant's action subject to lessor's qualified discretion . . . . .	207
239	Order of tribunal about transfer or subletting . . . . .	208
240	Lessor's expenses for transfer or subletting . . . . .	208
241	Lessor's fee for sale of caravan . . . . .	208
<b>Division 2</b>	<b>Transfer by lessor</b>	
242	Transfer by lessor . . . . .	209
<b>Division 3</b>	<b>Replacement of tenant</b>	
243	End of tenant's occupation . . . . .	210
244	Death of a cotenant . . . . .	211
245	Injury to domestic associate . . . . .	212
246	Injury or damage affecting occupants . . . . .	213
<b>Part 8</b>	<b>Retaliation</b>	
246A	Retaliatory action taken against tenant . . . . .	214
<b>Chapter 4</b>	<b>Rights and obligations of parties for rooming accommodation</b>	
<b>Part 1</b>	<b>Rights and obligations generally</b>	
<b>Division 1</b>	<b>Provider's obligations</b>	
247	Provider's obligations generally . . . . .	216
248	Provider's or agent's name and other details . . . . .	218
249	Quiet enjoyment . . . . .	219
<b>Division 2</b>	<b>Locks and keys</b>	
250	Supply of locks and keys . . . . .	219
251	Changing locks . . . . .	219
252	Application to tribunal about lock or key . . . . .	220
<b>Division 3</b>	<b>Resident's obligations</b>	
253	Resident's obligations generally . . . . .	221
<b>Division 4</b>	<b>Fixtures and structural changes</b>	
<b>Subdivision 1</b>	<b>Fixtures and structural changes generally</b>	
253A	Application of subdivision . . . . .	222
254	Process for approval to attach fixtures or make structural changes—body corporate approval . . . . .	223
255	Process for approval to attach fixtures and make structural changes—provider approval . . . . .	224
255A	Agreement about fixtures and structural changes . . . . .	225
256	Attaching fixture or making structural change without provider's agreement . . . . .	225

<b>Subdivision 2</b>	<b>Fixtures and structural changes for safety, security or accessibility</b>	
256AA	Attaching fixtures or making structural changes for safety, security or accessibility . . . . .	226
<b>Subdivision 3</b>	<b>Tribunal orders about fixtures and structural changes</b>	
256AB	Tribunal order about attaching fixtures or making structural changes . . . . .	226
<b>Part 1A</b>	<b>Pets</b>	
<b>Division 1</b>	<b>Preliminary</b>	
256A	Definitions for part . . . . .	228
<b>Division 2</b>	<b>Keeping pets and other animals in resident's rooms</b>	
256B	Keeping pets and other animals in resident's rooms . . . . .	229
256C	Resident responsible for pets and other animals . . . . .	229
<b>Division 3</b>	<b>Approvals, refusals and conditions for keeping pets in residents' rooms</b>	
256D	Request for approval to keep pet in resident's room . . . . .	230
256E	Grounds for refusing pets being kept in resident's room . . . . .	231
256F	Conditions for approval to keep pet in resident's room . . . . .	231
256G	Continuation of authorisation to keep pet or working dog in resident's room . . . . .	232
<b>Part 2</b>	<b>Entry to residents' rooms</b>	
257	Entry with resident's agreement . . . . .	233
258	Entry to carry out inspection . . . . .	233
259	Entry after giving notice . . . . .	234
259A	When provider or provider's agent may enter—notice to leave or notice of intention to leave given . . . . .	235
260	Entry without notice . . . . .	235
261	General qualifications about entry . . . . .	236
262	Entry by provider's agent or other person . . . . .	236
263	Rules of entry . . . . .	237
264	Entry by provider or provider's agent under order of tribunal . . . . .	237
265	Unlawful entry of resident's room . . . . .	238
<b>Part 3</b>	<b>House rules</b>	
<b>Division 1</b>	<b>General</b>	
266	House rules . . . . .	238
267	Prescribed rules . . . . .	238
268	Rules made by the provider . . . . .	239
<b>Division 2</b>	<b>Rule changes</b>	

Contents

---

269	Meaning of rule change . . . . .	240
270	Notice of proposed rule change . . . . .	240
271	Withdrawal of proposed rule change . . . . .	241
272	Objection to proposed rule change . . . . .	241
273	Application to tribunal about proposed rule change . . . . .	242
274	Application to tribunal by resident about existing rule . . . . .	243
<b>Division 3</b>	<b>Publication of house rules</b>	
275	Proposed resident to be given a copy of house rules . . . . .	243
276	Display of house rules . . . . .	244
<b>Part 4</b>	<b>Retaliation</b>	
276A	Retaliatory action taken against resident . . . . .	244
<b>Chapter 5</b>	<b>Ending of agreements</b>	
<b>Part 1</b>	<b>Ending of residential tenancy agreements</b>	
<b>Division 1</b>	<b>General</b>	
277	Ending of residential tenancy agreements . . . . .	246
278	Acceptance of rent does not operate as waiver of tenant's breach	247
279	Offer or payment of rent does not operate as waiver of lessor's breach	248
<b>Division 2</b>	<b>Action by lessor</b>	
<b>Subdivision 1</b>	<b>Notices to remedy breach given by lessor</b>	
280	Notice to remedy tenant's breach . . . . .	248
<b>Subdivision 2</b>	<b>Notices to leave premises given by lessor</b>	
281	Notice to leave for unremedied breach . . . . .	249
282	Notice to leave for tenant's noncompliance with tribunal order . .	249
283	Notice to leave for noncompliance (moveable dwelling relocation)	249
284	Notice to leave if agreement frustrated . . . . .	250
285	Notice to leave if agreement frustrated (moveable dwelling premises)	250
286	Notice to leave if premises being sold . . . . .	251
287	Notice to leave if closure of moveable dwelling park involved . .	251
288	Notice to leave if tenant's employment ends or entitlement to occupy under employment ends . . . . .	252
289	Notice to leave if tenant's entitlement to supported accommodation ends	252
290	Notice to leave if tenant's entitlement under affordable housing scheme ends . . . . .	253
290A	Notice to leave because of serious breach at public or community housing . . . . .	253



290B	Notice to leave for State government program . . . . .	254
290C	Notice to leave for planned demolition or redevelopment . . . . .	254
290D	Notice to leave for significant repair or renovations . . . . .	255
290E	Notice to leave for change of use . . . . .	255
290F	Notice to leave if entitlement to student accommodation ends . .	256
290G	Notice to leave for owner occupation . . . . .	256
291	Notice to leave for end of fixed term agreement . . . . .	257
292	Notice to leave for end of agreed short tenancy period . . . . .	257
<b>Subdivision 3</b>	<b>Applications for termination by lessor</b>	
293	Application for termination for failure to leave . . . . .	258
294	Application for termination for failure to leave as intended . . . . .	258
295	Application for termination for excessive hardship . . . . .	259
296	Application for termination for damage or injury . . . . .	259
296A	Application for termination for damage or injury in public or community housing . . . . .	260
297	Application for termination for tenant's objectionable behaviour .	261
297A	Application for termination for objectionable behaviour in public or community housing . . . . .	262
297B	Application for termination because of serious breach . . . . .	262
298	Application for termination for incompatibility . . . . .	263
299	Application by lessor for termination for repeated breaches by tenant 264	
300	Application for interim order about damage or injury . . . . .	265
<b>Division 3</b>	<b>Action by tenant</b>	
<b>Subdivision 1</b>	<b>Notices to remedy breach given by tenant</b>	
301	Notice to remedy lessor's breach . . . . .	265
<b>Subdivision 2</b>	<b>Notices of intention to leave premises given by tenant</b>	
302	Notice of intention to leave for unremedied breach . . . . .	266
303	Waiver of breach . . . . .	266
304	Notice of intention to leave for lessor's noncompliance with tribunal order 266	
305	Notice of intention to leave if agreement frustrated . . . . .	267
306	Notice of intention to leave if agreement frustrated (moveable dwelling premises) . . . . .	267
307	Notice of intention to leave if premises being sold . . . . .	268
307A	Notice of intention to leave because of condition of premises . .	268
307B	Notice of intention to leave because of death of cotenant . . . . .	269

Contents

---

307C	Notice of intention to leave if entitlement to student accommodation ends	
	269	
307D	Notice of intention to leave because of failure to comply with repair order	
	270	
307E	Notice of intention to leave for end of agreed short tenancy period	271
308	Notice of intention to leave without ground	271
<b>Subdivision 2A</b>	<b>Domestic violence</b>	
308A	Victim's right to leave	271
308B	Notice ending tenancy interest	272
308C	Lessor's response to notice ending tenancy interest	272
308D	Effect of notice ending tenancy interest if sole tenant	273
308E	Effect of notice ending tenancy interest if more than 1 tenant	273
308F	Top ups of rental bond	274
308G	Particular costs not recoverable	275
308H	Application to tribunal about notice ending tenancy interest	276
308I	Confidentiality	276
<b>Subdivision 3</b>	<b>Applications for termination by tenant</b>	
309	Application for termination for failure of lessor to remedy breach	277
310	Application for termination for excessive hardship	278
311	Application for termination for damage or injury	278
312	Application by cotenant for termination for damage or injury	279
312A	Application for termination because of misrepresentation	279
313	Application for termination for lessor's objectionable behaviour	280
314	Application for termination for incompatibility	280
315	Application by tenant for termination for repeated breaches by lessor	280
316	Application for interim order about damage or injury	281
<b>Division 4</b>	<b>Action by other persons</b>	
<b>Subdivision 1</b>	<b>Mortgagees</b>	
317	Notice about proposed action of mortgagee	282
318	Acceptance of rent does not operate as consent	283
319	Tenant not liable for loss if tenant vacates or is removed from premises after receiving notice from mortgagee	283
320	Tenant not liable for loss if rent paid to mortgagee	284
<b>Subdivision 2</b>	<b>Other persons</b>	
321	Application by tenant's domestic associate for termination for damage or injury	284

322	Application by occupant for termination for damage or injury . . .	285
323	Application for interim order about damage or injury . . . . .	285
324	References to applications . . . . .	286
<b>Division 4A</b>	<b>Death of sole tenant</b>	
324A	Death of sole tenant . . . . .	286
<b>Division 5</b>	<b>Procedural requirements for action taken by lessor or tenant</b>	
325	Notice to remedy breach . . . . .	287
326	Notice to leave . . . . .	287
327	Notice of intention to leave . . . . .	289
328	Allowed remedy period . . . . .	290
333	Withdrawing notice to leave for unremedied breach . . . . .	290
334	Withdrawing notice of intention to leave . . . . .	291
335	Applications for termination orders . . . . .	291
336	Applications to tribunal . . . . .	292
<b>Division 6</b>	<b>Orders of tribunal</b>	
337	Failure to leave for unremedied breach . . . . .	292
338	Failure to leave for noncompliance (tribunal order) . . . . .	293
339	Failure to leave for noncompliance (moveable dwelling relocation)	293
340	Failure to leave for other grounds . . . . .	293
342	Failure to leave as intended . . . . .	294
343	Excessive hardship . . . . .	295
344	Damage or injury . . . . .	295
345	Objectionable behaviour other than in public or community housing	296
345A	Objectionable behaviour in public or community housing . . . . .	296
346	Incompatibility . . . . .	298
347	Repeated breaches . . . . .	298
347A	Serious breach . . . . .	299
347B	Misrepresentation . . . . .	300
348	Interim order about damage or injury . . . . .	300
349	Defects in notices . . . . .	301
349A	How tribunal must deal with public or community housing tenant	301
<b>Division 7</b>	<b>Recovery of possession of premises</b>	
350	Issue of warrant of possession . . . . .	302
351	Warrant of possession . . . . .	302
352	Execution of warrant of possession . . . . .	304
353	Limited ways of recovering possession of premises from tenants	304

Contents

---

354	Obstruction of person executing warrant of possession . . . . .	304
<b>Division 8</b>	<b>Abandonment</b>	
355	Termination of agreement by lessor if premises abandoned . . .	304
356	Dispute about abandonment termination notice . . . . .	305
357	Order about abandonment . . . . .	306
<b>Division 9</b>	<b>Compensation</b>	
357A	Reletting costs . . . . .	307
358	Tenant remaining in possession . . . . .	309
359	Compensation on abandonment termination notice . . . . .	309
360	Compensation on termination by tribunal . . . . .	309
361	Review of abandonment order . . . . .	310
362	Duty to mitigate loss or expense . . . . .	310
<b>Division 10</b>	<b>Goods and documents left behind on premises</b>	
363	Goods left on premises . . . . .	311
364	Documents left on premises . . . . .	313
365	Application about goods left on premises . . . . .	314
<b>Division 11</b>	<b>Offences</b>	
365A	False or misleading information in notice to leave . . . . .	315
365B	Lessor must not let premises for 6 months after ending tenancy for premises being sold . . . . .	316
365C	Lessor must not let premises for 6 months after ending tenancy for change of use . . . . .	316
365D	Lessor must not let premises for 6 months after ending tenancy for owner occupation . . . . .	317
<b>Part 2</b>	<b>Ending of rooming accommodation agreements</b>	
<b>Division 1</b>	<b>General</b>	
366	Ending of rooming accommodation agreements . . . . .	318
367	Purporting to terminate agreement in unauthorised way . . . . .	319
<b>Division 2</b>	<b>Action by provider</b>	
<b>Subdivision 1</b>	<b>Notices to remedy breach given by provider</b>	
368	Notice to remedy resident's breach . . . . .	319
<b>Subdivision 2</b>	<b>Notices to leave given by provider</b>	
369	Notice to leave because of failure to remedy breach . . . . .	320
370	Notice to leave immediately because of serious breach . . . . .	321
371	Notice to leave if premises destroyed etc. . . . .	322
371A	Notice to leave if rental premises being sold . . . . .	323
371B	Notice to leave for planned demolition or redevelopment . . . . .	324

371C	Notice to leave because of significant repair or renovations . . . .	324
371D	Notice to leave for change of use . . . . .	325
371E	Notice to leave if entitlement to student accommodation ends . .	326
372	Notice to leave for end of fixed term agreement . . . . .	327
374	Notice to leave if resident's employment ends or entitlement to occupy under employment ends . . . . .	327
375	Power to remove resident . . . . .	328
<b>Subdivision 3</b>	<b>Applications for termination by provider</b>	
376	Application by provider for termination for repeated breaches by resident 329	
377	Application by provider to terminate fixed term agreement because of excessive hardship . . . . .	330
<b>Division 3</b>	<b>Action by resident</b>	
<b>Subdivision 1</b>	<b>Notices to remedy breach given by resident</b>	
378	Notice to remedy provider's breach . . . . .	331
<b>Subdivision 2</b>	<b>Notices terminating agreement given by resident</b>	
379	Notice terminating fixed term agreement because of failure to remedy breach . . . . .	331
380	Notice terminating agreement if premises destroyed etc. . . . .	332
380A	Notice terminating agreement because of condition of rental premises 333	
380B	Notice terminating agreement because of death of coresident . .	334
380C	Notice terminating agreement if entitlement to student accommodation ends . . . . .	334
381	Notice terminating agreement by resident without ground . . . . .	335
<b>Subdivision 2A</b>	<b>Domestic violence</b>	
381A	Victim's right to leave . . . . .	335
381B	Notice ending residency interest . . . . .	335
381C	Provider's response to notice ending residency interest . . . . .	336
381D	Effect of notice ending residency interest if sole resident . . . . .	336
381E	Effect of notice ending residency interest if more than 1 resident	337
381F	Top ups of rental bond . . . . .	338
381G	Particular costs not recoverable . . . . .	339
381H	Application to tribunal about notice ending residency interest . .	340
381I	Confidentiality . . . . .	340
<b>Subdivision 3</b>	<b>Applications for termination by resident</b>	
381J	Application by resident for termination because of misrepresentation 341	

Contents

---

382	Application by resident for termination for repeated breaches by provider	
342		
383	Application by resident to terminate fixed term agreement because of excessive hardship . . . . .	343
<b>Division 4</b>	<b>Action by mortgagees</b>	
384	Notice about proposed action of mortgagee . . . . .	343
385	Acceptance of rent does not operate as consent . . . . .	344
386	Resident not liable for loss if resident vacates or is removed from premises after receiving notice under s 384 . . . . .	345
387	Resident not liable for loss if rent paid to mortgagee . . . . .	345
<b>Division 4A</b>	<b>Death of sole resident</b>	
387A	Death of sole resident . . . . .	345
<b>Division 5</b>	<b>Procedural requirements and orders of tribunal</b>	
388	Applications for termination orders . . . . .	346
389	Orders relating to repeated breaches . . . . .	346
389A	Orders relating to misrepresentation . . . . .	347
<b>Division 6</b>	<b>Goods or money left behind in premises</b>	
390	Application of div 6 . . . . .	348
391	Unauthorised dealing with lost property . . . . .	348
392	Personal document or money . . . . .	348
393	Item other than personal document or money . . . . .	349
394	Personal document given to public trustee . . . . .	350
395	Money given to public trustee . . . . .	351
396	Application to tribunal about lost property . . . . .	351
<b>Division 7</b>	<b>Compensation</b>	
396A	Reletting costs . . . . .	352
<b>Division 8</b>	<b>Offences</b>	
396AA	False or misleading information in notice requiring resident to leave rental premises . . . . .	353
396B	Provider must not let rental premises for 6 months after ending rooming accommodation for premises being sold . . . . .	354
396C	Provider must not let rental premises for 6 months after ending rooming accommodation for change of use . . . . .	355
<b>Chapter 6</b>	<b>Dispute resolution</b>	
<b>Part 1</b>	<b>Conciliation process for residential tenancy disputes and rooming accommodation disputes</b>	
<b>Division 1</b>	<b>Preliminary</b>	
397	Application of pt 1 . . . . .	356

<b>Division 2</b>	<b>Conciliation</b>	
398	Conciliation process . . . . .	356
399	Some matters not suitable for conciliation . . . . .	357
400	Appointment of conciliators . . . . .	357
401	Functions of conciliators . . . . .	357
<b>Division 3</b>	<b>Starting the conciliation process</b>	
402	Making dispute resolution request . . . . .	358
403	Action to be taken on dispute resolution request . . . . .	358
<b>Division 4</b>	<b>Conduct of conciliation process</b>	
404	Conciliation fee . . . . .	359
405	Limited right of representation . . . . .	359
406	Parties' participation in conciliation process not compellable . . .	359
407	Parties to conciliation process . . . . .	360
408	Conciliation agreements . . . . .	360
409	No record of conciliation process . . . . .	360
<b>Division 5</b>	<b>Withdrawal of disputes</b>	
410	Withdrawal of disputes . . . . .	360
<b>Division 6</b>	<b>Confidentiality, privilege and immunity</b>	
411	Conciliators to maintain secrecy . . . . .	361
412	Ordinary protection and immunity allowed . . . . .	361
413	Admissions made in conciliation process . . . . .	362
<b>Part 2</b>	<b>Application to tribunals</b>	
<b>Division 1</b>	<b>Application of part</b>	
414	Application of pt 2 . . . . .	362
<b>Division 2</b>	<b>Preliminary</b>	
414A	Applications to the tribunal . . . . .	363
415	Meaning of urgent application . . . . .	363
416	Dispute resolution request required before applying to tribunal .	365
417	Reference to making of tribunal application includes making of dispute resolution request . . . . .	366
<b>Division 3</b>	<b>General powers of tribunals</b>	
418	Application of Act to agreements . . . . .	367
419	Applications about breach of agreements . . . . .	367
420	Orders about breach of agreements . . . . .	368
421	Matters to which tribunal must have regard for orders for compensation	369

Contents

---

422	Application of Aboriginal tradition .....	369
423	Application of Island custom .....	370
424	Disputes about tenants' notices .....	371
425	Dispute about residents' notices .....	371
426	Disputes about lessors' notices .....	372
427	Dispute about providers' notices .....	373
428	Dispute about entry to resident's room or removal of resident ..	373
429	General disputes between lessors and tenants or providers and residents .....	374
430	Disputes between cotenants or coresidents about rental bonds ..	374
431	Different applications may be decided together .....	374
432	Joining applications .....	375
433	Relevant matters for deciding whether a person is a boarder or lodger 375	
433A	Particular applications to be heard in private .....	375
<b>Chapter 7</b>	<b>Enforcement</b>	
<b>Part 1</b>	<b>Authorised persons</b>	
434	Authorised persons under this chapter .....	376
435	Appointment .....	376
436	Limitation of authorised person's powers .....	377
437	Authorised person's conditions of appointment .....	377
438	Authorised person's identity card .....	378
439	Production or display of authorised person's identity card .....	378
<b>Part 2</b>	<b>Powers of authorised persons for places</b>	
440	Entry to places .....	379
441	Warrants for entry .....	379
442	Warrants—applications made other than in person .....	380
443	Authorised person's general powers for places .....	382
<b>Part 3</b>	<b>Other enforcement matters</b>	
444	Procedure after document seized .....	383
445	Power to require information from certain persons .....	384
446	False or misleading information .....	384
447	False or misleading documents .....	385
448	Authorised person to give notice of damage .....	385
449	Compensation .....	386
450	Agreement to entry .....	387



451	Evidence of agreement . . . . .	387
452	Obstruction of authorised person . . . . .	388
453	Impersonation of authorised person . . . . .	388
<b>Chapter 8</b>	<b>Causing nuisance in moveable dwelling parks</b>	
454	Behaviour in moveable dwelling park causing serious nuisance	388
455	Application to tribunal for order to exclude person from park . . .	389
456	Order of tribunal excluding person from park . . . . .	389
<b>Chapter 9</b>	<b>Information about tenants</b>	
<b>Part 1</b>	<b>Preliminary</b>	
457	Definition for chapter . . . . .	391
457A	References to lessors and tenants in ch 9 . . . . .	392
457B	Extra-territorial application of particular provisions of ch 9 . . . .	392
<b>Part 2</b>	<b>Protection of personal information</b>	
457C	Definition for part . . . . .	392
457D	Requirements about collecting personal information . . . . .	393
457E	Requirements about collected information . . . . .	393
<b>Part 3</b>	<b>Tenancy databases</b>	
457F	Definitions for part . . . . .	394
458	Non-application to internal databases . . . . .	395
458A	Notice of usual use of database . . . . .	396
458B	Notice of listing if database used . . . . .	397
459	Restriction on listing . . . . .	398
459A	Ensuring quality of listing—lessors and lessors agents . . . . .	399
459B	Ensuring quality of listing—database operators . . . . .	400
459C	Providing copy of personal information listed . . . . .	401
459D	Keeping personal information listed . . . . .	401
460	Application to tribunal about breach . . . . .	402
461	Application to tribunal about personal information listed . . . . .	402
462	Application to tribunal about proposed listing . . . . .	403
463	Offence of contravening tribunal order . . . . .	404
464	Order for compensation . . . . .	404
<b>Chapter 10</b>	<b>Residential Tenancies Authority</b>	
<b>Part 1</b>	<b>Establishment of authority</b>	
465	Establishment of authority . . . . .	405
466	Legal status of authority . . . . .	405
467	Authority represents the State . . . . .	405

Contents

---

<b>Part 2</b>	<b>Functions and powers of authority</b>	
468	Authority's functions .....	405
469	Authority's powers .....	406
470	Reserve power of Minister to give directions in public interest ..	407
<b>Part 3</b>	<b>The board</b>	
471	The board .....	407
472	Role of the board .....	407
473	Composition of board .....	408
474	Duration of appointment .....	408
475	Conditions of appointment .....	408
<b>Part 4</b>	<b>Proceedings of the board</b>	
476	Time and place of meetings .....	409
477	Conduct of proceedings .....	409
478	Disclosure of interests .....	410
479	Minutes .....	410
<b>Part 5</b>	<b>Financial matters</b>	
480	Application of Financial Accountability Act 2009 .....	411
481	Authority is statutory body for Statutory Bodies Financial Arrangements Act 1982 .....	411
482	Administration budget .....	411
482A	Banking arrangements for rental bond account .....	411
<b>Part 6</b>	<b>Other things about the authority</b>	
483	Authority may enter into work performance arrangements .....	412
484	Seal .....	413
485	Application of certain Acts .....	413
486	Delegation .....	413
<b>Part 7</b>	<b>Chief executive officer</b>	
487	Chief executive officer .....	413
488	Chief executive officer not to engage in other paid employment .	414
489	Acting chief executive officer .....	414
490	Delegation by chief executive officer .....	414
<b>Chapter 11</b>	<b>Residential Tenancies Employing Office</b>	
<b>Part 1</b>	<b>Establishment and functions of employing office</b>	
491	Establishment of employing office .....	415
492	Employing office represents the State .....	415
493	Functions of employing office .....	415

<b>Part 2</b>	<b>Executive officer</b>	
494	Appointment of executive officer . . . . .	416
495	Executive officer acting for employing office . . . . .	416
496	Delegation by executive officer . . . . .	416
<b>Part 3</b>	<b>Staff of employing office</b>	
497	Employing office may employ staff . . . . .	417
498	Employing office may enter into work performance arrangements . . . . .	417
<b>Part 4</b>	<b>Other provisions</b>	
499	Employing office is statutory body . . . . .	418
500	Application of Crime and Corruption Act 2001 . . . . .	419
<b>Chapter 12</b>	<b>Legal proceedings</b>	
<b>Part 1</b>	<b>Application</b>	
501	Application of ch 12 . . . . .	419
<b>Part 2</b>	<b>Evidence</b>	
502	Appointments and authority . . . . .	419
503	Signatures . . . . .	420
504	Other evidentiary aids . . . . .	420
505	Statement of complainant's knowledge . . . . .	420
506	Condition reports for residential tenancy . . . . .	420
507	Condition report for rooming accommodation . . . . .	421
508	Rental bonds . . . . .	421
509	Indications a resident has abandoned a room . . . . .	422
<b>Part 3</b>	<b>Proceedings</b>	
510	Summary offences . . . . .	422
511	Attempts to commit offences . . . . .	423
512	Responsibility for act or omission of representative . . . . .	423
<b>Part 4</b>	<b>Offence about giving false or misleading document to authority</b>	
514	False or misleading documents . . . . .	424
<b>Chapter 13</b>	<b>Miscellaneous</b>	
515	Authority may provide addresses to tribunal . . . . .	424
516	Applications for more than prescribed amount . . . . .	425
517	Protection from liability . . . . .	425
518	Disclosure of interests . . . . .	426
519	Approved forms . . . . .	426
519A	Code of conduct . . . . .	427
520	Regulation-making power . . . . .	427

Contents

---

521	Non-application of Act to long-term leases on Hamilton Island . .	427
522	Non-application of Act to long-term leases for Hayman Island . .	428
523	Non-application of Act to long-term leases for Pacific Mirage . . .	428
524	Non-application of Act to long-term leases within prescribed land	429
525	Giving notice to resident with impaired or limited capacity . . . . .	430
526	Reporting a matter relating to the Residential Services (Accreditation) Act . . . . .	431
527	Confidentiality . . . . .	432
<b>Chapter 13A</b>	<b>Matters relating to particular leases by the State and community housing providers</b>	
527A	Definitions for ch 13A . . . . .	433
527B	What is a community housing provider . . . . .	434
527C	Existing State tenancy agreements and community housing provider tenancy agreements . . . . .	435
527D	Acceptable behaviour agreements for tenants . . . . .	436
527E	Application for termination relating to acceptable behaviour agreement 438	
527F	State may charge bonds and service charges under existing State tenancy agreements . . . . .	438
<b>Chapter 14</b>	<b>Repeal, savings and transitional provisions</b>	
<b>Part 1</b>	<b>Repeal provisions</b>	
528	Repeal of Residential Tenancies Act 1994 . . . . .	439
529	Repeal of Residential Services (Accommodation) Act 2002 . . . .	440
<b>Part 2</b>	<b>Savings and transitional provisions for Act No. 73 of 2008</b>	
<b>Division 1</b>	<b>Interpretation</b>	
530	Definitions for pt 2 . . . . .	440
<b>Division 2</b>	<b>Transitional references</b>	
531	Application of div 2 . . . . .	441
532	References to Residential Tenancies Act 1994 . . . . .	441
533	References to Residential Services (Accommodation) Act 2002	441
<b>Division 3</b>	<b>The authority</b>	
534	Authority continues under this Act . . . . .	441
535	Continuation of appointment of chief executive officer . . . . .	442
536	Existing employees of authority . . . . .	442
<b>Division 4</b>	<b>The authority's board</b>	
537	The board . . . . .	442
<b>Division 5</b>	<b>Employing office</b>	

---

538	Employing office continues under this Act . . . . .	443
539	Continuation of appointment of executive officer . . . . .	443
540	Existing employees of employing office . . . . .	443
<b>Division 6</b>	<b>Authorised persons and conciliators</b>	
541	Authorised persons . . . . .	443
542	Conciliators . . . . .	444
<b>Division 7</b>	<b>Existing agreements</b>	
543	Existing agreements continue under this Act . . . . .	444
<b>Division 8</b>	<b>Agreements to which repealed Acts would not have applied</b>	
544	Agreements to which repealed Acts did not apply or would not have applied . . . . .	445
545	Contracts of sale—s 30 . . . . .	445
<b>Division 9</b>	<b>Rental bonds</b>	
546	Existing rental bonds . . . . .	446
547	Rental bond held for agreements to which repealed Acts did not apply or would not have applied . . . . .	446
548	Rental bonds held for premises or rooming accommodation on university campus . . . . .	446
549	Payment of rental bond held when agreement under s 544(3) entered into . . . . .	447
<b>Division 10</b>	<b>Notices given, or applications or requests made, by parties to agreements</b>	
550	Notices given, or applications or requests made, under repealed Act continue under that Act . . . . .	447
551	Notices given, or applications or requests made, under this Act for matters happening before commencement . . . . .	448
<b>Division 11</b>	<b>Other transitional provisions</b>	
552	Period stated in previous provision . . . . .	449
<b>Part 3</b>	<b>Savings and transitional provisions for Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013</b>	
554	Notices given, and proceedings started, by the State . . . . .	450
555	Notices given, and proceedings started, by the tenant . . . . .	450
556	Applications by the State or community housing providers for particular termination orders . . . . .	451
<b>Part 4</b>	<b>Transitional provisions for Plumbing and Drainage and Other Legislation Amendment Act 2016</b>	
558	Definitions for pt 4 . . . . .	452
559	Meaning of particular terms . . . . .	452

Contents

---

560	Use of tenancy databases before commencement . . . . .	452
561	Listings proposed to be made before commencement . . . . .	453
562	Ensuring quality of existing listings . . . . .	453
563	Providing copy of personal information for existing listings . . . . .	453
564	Keeping existing listings in tenancy databases . . . . .	453
565	Applications to tribunal about breach . . . . .	454
566	Applications to tribunal about personal information listed . . . . .	454
567	Applications to tribunal about proposed listings . . . . .	454
568	Existing applications to tribunal . . . . .	455
<b>Part 5</b>	<b>Transitional provisions for Housing Legislation Amendment Act 2021</b>	
569	Changes in processes not limited to relevant circumstances happening after the commencement . . . . .	455
570	Incomplete processes to be completed under pre-amended Act	456
571	Pets previously approved for premises . . . . .	456
<b>Part 6</b>	<b>Transitional provisions for State Penalties Enforcement (Modernisation) Amendment Act 2022</b>	
572	Former rental bond interest account . . . . .	457
573	Transfer of value of current investments into rental bond account	457
574	Balancing of rental bond account . . . . .	458
<b>Part 7</b>	<b>Transitional provisions for Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2023</b>	
575	Limit on frequency of rental increases applies to all agreements from 1 July 2023 . . . . .	459
576	Amendment of section 277 . . . . .	459
<b>Part 8</b>	<b>Transitional provisions for Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2024</b>	
<b>Division 1</b>	<b>Preliminary</b>	
577	Definitions for part . . . . .	460
<b>Division 2</b>	<b>Provisions commencing on assent</b>	
578	Existing agreements not required to include date of last rent increase 461	
579	Rent increases before the commencement relevant to working out 12-month period—s 93 . . . . .	461
579A	Requirement for lessor to give evidence of rent increase if premises purchased within 12 months of commencement . . . . .	461
579B	Requirement for provider to give evidence of rent increase if rental premises purchased within 12 months of commencement . . . . .	462
580	Rent increases before the commencement relevant to working out 12-	

---

	month period—s 105B . . . . .	462
581	Payment of rental bond after dispute resolution process and application dismissed by tribunal . . . . .	462
<b>Division 3</b>	<b>Provisions commencing by proclamation</b>	
582	Existing applications for residential tenancies and rooming accommodation . . . . .	463
583	Application of amendments about payment of rent—existing residential tenancy agreements . . . . .	463
584	Application of changes about payment of rent—existing rooming accommodation agreements . . . . .	464
585	Evidence supporting claim on rental bond not required for certain rental bonds . . . . .	464
585A	Maximum amount of rental bond—provision for existing rental bonds	464
586	Existing residential tenancy agreements including term about paying reletting costs . . . . .	466
587	Existing rooming accommodation agreements including term about paying reasonable costs . . . . .	466
588	Transitional regulation making power . . . . .	466
<b>Schedule 1</b>	<b>Notice periods . . . . .</b>	468
<b>Schedule 2</b>	<b>Dictionary . . . . .</b>	476





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# Residential Tenancies and Rooming Accommodation Act 2008

**An Act about residential tenancy agreements, rooming accommodation agreements, and related matters**

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *Residential Tenancies and Rooming Accommodation Act 2008*.

#### 2 Commencement

This Act commences on a day to be fixed by proclamation.

#### 3 Act binds all persons

- (1) This Act binds all persons, including the State and, so 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 91 (Rent increases)
- 2 section 92 (Tenant's application to tribunal about rent increase)
- 3 section 163 (Outgoings other than service charges)

- (3) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.

#### **4 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.

## **Part 2 Objects of Act**

#### **5 Objects of Act**

- (1) The main objects of this Act are to state the rights and obligations of—
  - (a) tenants, lessors and agents for residential tenancies; and
  - (b) residents, providers and agents for rooming accommodation.
- (2) The objects are mainly achieved by—
  - (a) regulating the making, content, operation and ending of residential tenancy agreements and rooming accommodation agreements; and
  - (b) providing for the resolution of disputes about residential tenancy agreements and rooming accommodation agreements; and
  - (c) providing for the authority to receive, hold and pay rental bonds; and

- (d) providing for compliance with this Act to be monitored and enforced; and
- (e) providing for the establishment, functions and powers of the authority.

## Part 3 Interpretation

### Division 1 Location of definitions

#### 6 Definitions and dictionary

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

### Division 2 Meaning of key terms for residential tenancies

#### 7 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

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- (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.

## 8 Lessor

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

*Note—*

Under the *Acts Interpretation Act 1954*, section 35A, 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.

## 9 Premises

- (1) **Premises**, for a residential tenancy, include a part of premises and land occupied with premises.
- (2) **Premises**, for a residential tenancy, 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.

## 10 Residential premises

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

## 11 Residential tenancy

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

## 12 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.
- (4) An agreement is not a residential tenancy agreement if it is a rooming accommodation agreement.
- (5) However, an agreement is a residential tenancy agreement if it is taken to be a residential tenancy agreement under section 18.

## 13 Tenant

- (1) A *tenant* is the person to whom the right to occupy residential premises under a residential tenancy agreement is given.

*Note—*

Under the *Acts Interpretation Act 1954*, section 35A, a reference in an Act to a person as lessee includes a reference to the person's personal representatives, successors and assigns. Under schedule 1 of that Act, a lessee includes a tenant.

- (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.

## **Division 3                      Meaning of key terms for rooming accommodation**

### **14        Resident**

***Resident*** means a person—

- (a) who, in rental premises, occupies 1 or more rooms as the person's only or main residence; and
- (b) who is not—
  - (i) the provider; or
  - (ii) a relative of the provider.

### **15        Rooming accommodation**

- (1) ***Rooming accommodation*** is accommodation occupied or available for occupation by residents, in return for the payment of rent, if each of the residents—
- (a) has a right to occupy 1 or more rooms; and
  - (b) does not have a right to occupy the whole of the premises in which the rooms are situated; and
  - (c) does not occupy a self-contained unit; and

- (d) shares other rooms, or facilities outside of the resident's room, with 1 or more of the other residents.

*Example for paragraph (d)—*

a boarding house in which each of the residents occupies a room and shares a bathroom, kitchen, dining room and common room with the other residents

- (2) For subsection (1), it is immaterial whether or not—
  - (a) the rooms are in the same premises; or
  - (b) the resident is provided with a food service, personal care service or other service.

## 16 Rooming accommodation agreement

- (1) A **rooming accommodation agreement** is an agreement under which a provider provides rooming accommodation to a resident in rental premises.
- (2) Subsection (1) applies whether the agreement is—
  - (a) entirely in writing, entirely oral or entirely implied; or
  - (b) partly in a form mentioned in paragraph (a) and partly in 1 or both of the other forms.
- (3) However, an agreement is not a rooming accommodation agreement if it is taken to be a residential tenancy agreement under section 18.

## 17 Provider

A **provider** is a person who provides rooming accommodation to residents.

## **Division 4                      Prescribed minimum housing standards**

### **17A      Prescribed minimum housing standards**

- (1) A *prescribed minimum housing standard* means a standard prescribed by a regulation.
- (2) A regulation may prescribe minimum housing standards for—
  - (a) a residential premises let, or to be let, under a residential tenancy agreement; or
  - (b) premises in which rooming accommodation is, or is to be, provided; or
  - (c) inclusions for premises mentioned in paragraph (a) or (b); or
  - (d) facilities in a moveable dwelling park.
- (3) A prescribed minimum housing standard may be about any matter relating to the premises, inclusions or facilities mentioned in subsection (2), including, for example, the following—
  - (a) sanitation, drainage, cleanliness and repair of the premises, inclusions or facilities;
  - (b) ventilation and insulation;
  - (c) protection from damp and its effects;
  - (d) construction, condition, structures, safety and situation of the premises, inclusions or facilities;
  - (e) the dimensions of rooms in the premises;
  - (f) privacy and security;
  - (g) provision of water supply, storage and sanitary facilities;
  - (h) laundry and cooking facilities;
  - (i) lighting;
  - (j) freedom from vermin infestation;



- (k) energy efficiency.
- (4) If a regulation made under subsection (2) makes provision in relation to a matter and provision is also made in relation to that matter by, or under, any Act, the regulation—
  - (a) if not inconsistent with the Act, must be observed in addition to that Act; and
  - (b) if inconsistent with the Act, is, to the extent of the inconsistency, of no force or effect and that Act prevails.

*Example of inconsistency between a prescribed minimum housing standard and an Act—*

A prescribed minimum housing standard, that purports to require a lessor to keep residential premises and inclusions clean after the start of a tenancy, is inconsistent with the obligations of a tenant under section 188(2).
- (5) A regulation may also prescribe how compliance with minimum housing standards is to be monitored and enforced.

## **Part 4                      Application and operation of Act**

### **Division 1                Matters relating to residential tenancies and rooming accommodation**

#### **18            Opting in as residential tenancy agreement**

- (1) This section applies to rooming accommodation to which this Act applies.
- (2) If the parties to an agreement for the accommodation sign the agreement stating that it is a residential tenancy agreement, the agreement is taken to be a residential tenancy agreement.
- (3) This Act applies to the agreement despite section 32(1).

- (4) A person does not contract out of the provisions of this Act merely because the person signs an agreement under subsection (2).

## **19 References to agreements**

In this Act, unless a contrary intention appears, a reference to an agreement is—

- (a) for a residential tenancy, a reference to a residential tenancy agreement to which this Act applies; or
- (b) for rooming accommodation, a reference to a rooming accommodation agreement to which this Act applies.

## **20 Reference to lessors and tenants**

In this Act, unless a contrary intention appears, 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.

## **21 Reference to providers and residents**

In this Act, unless a contrary intention appears, a reference to a provider or resident is a reference to a provider or resident under a rooming accommodation agreement to which this Act applies.

## **22 References to premises**

In this Act, unless a contrary intention appears, a reference to premises is a reference to a residential premises under a residential tenancy agreement to which this Act applies.

## **23 References to tenancies**

In this Act, unless a contrary intention appears, a reference to a tenancy or residential tenancy is a reference to a residential tenancy under a residential tenancy agreement to which this Act applies.

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**24 Provision stating that lessor or lessor's agent or provider or provider'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 512(3) applies to a proceeding for the offence.
- (5) In this section—
  - (a) a reference to the lessor is taken to include a reference to the provider; and
  - (b) a reference to the lessor's agent is taken to be a reference to the provider's agent.

**25 Lessor's or provider's agent**

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

**26 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) Also, this Act does not apply to a lease if the lease is for, or for purposes that include, residential purposes if—
  - (a) the lease is entered into by the parties to a contract of sale under a term of the contract; and
  - (b) the lease relates to land for a project the subject of a direction under the *State Development and Public Works Organisation Act 1971*, section 100; and
  - (c) the lessor is the entity the subject of the direction, or the entity's successor in title; and
  - (d) the lessee is a seller under the contract of sale.
- (3) 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.
- (4) 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.
- (5) However, if the lessee of a lease mentioned in subsection (4) sublets the land or a part of the land for, or for purposes that include, residential purposes, this Act applies to the sublease.
- (6) 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*.

## **27 Application of Property Law Act to agreements**

- (1) The *Property Law Act 1974* does not apply to residential tenancy agreements.
- (2) 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.

## **28 Minor has capacity to enter into agreements**

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

## **Division 2 Residential tenancy agreements to which this Act applies and does not apply**

### **29 Act applies to certain residential tenancy agreements etc.**

- (1) This Act applies 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.

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

- 1 Under section 26, this Act does not apply to a lease given by the State under certain other Acts.
- 2 Under section 31, this Act does not apply to an agreement giving a right of occupancy for holiday purposes.

- 3 Under sections 32 and 44A, this Act generally does not apply to an agreement if the tenant or resident is a boarder or lodger.
- 4 Under sections 33 and 34, this Act generally does not apply to an agreement for premises that are part of an educational institution, hospital, nursing home or retirement village.
- 5 Under section 36, this Act does not apply to certain agreements under which the tenant is being supplied with temporary refuge accommodation.
- 6 Under section 37, this Act does not apply to agreements under the *Manufactured Homes (Residential Parks) Act 2003*.
- 7 Under sections 521, 522, 523 and 524, this Act does not apply to certain long-term leases.

### **30 Contracts of sale and mortgages**

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 and the tenancy is for a period of 28 days or less; or
- (b) between the parties to a mortgage of residential premises under a term of the mortgage.

### **31 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.

### **32 Boarders and lodgers**

- (1) This Act does not apply to a residential tenancy agreement if the tenant is a boarder or lodger.
- (2) However, if a rental bond is paid for a residential tenancy agreement under which the tenant is a boarder or lodger, the

provisions of this Act about rental bonds apply to the agreement.

*Note—*

See section 433 for the matters to which the tribunal must have regard in deciding whether a person is a boarder or lodger.

### **33 Educational institutions**

- (1) This Act does not apply to a residential tenancy agreement for premises used for—
  - (a) accommodation for school students—
    - (i) provided as part of, or under an agreement with, a school; or
    - (ii) arranged by a school for students of another school; or
    - (iii) provided with financial assistance from the education department; or
  - (b) accommodation for students within the external boundary of a registered higher education provider's campus provided—
    - (i) by the registered higher education provider; or
    - (ii) by an entity, other than the registered higher education provider, if the accommodation is provided other than for the purpose of making a profit.
- (2) Subsection (1)(b)(ii) applies even if the accommodation is provided on land owned by the entity within the external boundaries of a registered higher education provider's campus.
- (3) Despite subsection (1), if a rental bond is paid for a residential tenancy within the external boundary of a registered higher education provider's campus, the provisions of this Act about rental bonds apply to the agreement.

### **34 Hospitals, nursing homes and retirement villages**

- (1) This Act does not apply to a residential tenancy agreement for premises that are part of a hospital, nursing home or retirement village.
- (2) However, this Act applies to a residential tenancy agreement for premises mentioned in subsection (1) if—
  - (a) the premises are used as a person's place of residence under the person's employment at the hospital, nursing home or retirement village; or
  - (b) the premises are used as a person's place of residence at the retirement village and the person resides in the premises other than under—
    - (i) a residence contract under the *Retirement Villages Act 1999*; or
    - (ii) section 70B of the *Retirement Villages Act 1999*.

### **35 Rental purchase plan agreements**

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

### **36 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.

### **37 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) In this section—



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

### **38 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.

### **39 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 non-profit 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.

### **40 Hotels and motels**

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

### **41 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

[s 43]

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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 has occupied the premises under the agreement for a continuous period of not more than 13 weeks.
- (4) If the tenant under an agreement about approved supported accommodation has occupied the premises under the agreement for a continuous period of more than 13 weeks, the Act applies to the agreement as if the tenant's occupancy started on the day after the 13 week period ended.

## **Division 3                      Rooming accommodation    agreements to which this Act    applies and does not apply**

### **43       Act applies to certain rooming accommodation          agreements etc.**

- (1) This Act applies to rooming accommodation agreements and to—
  - (a) providers, residents and their respective rights and obligations under rooming accommodation agreements; and
  - (b) rental premises under rooming accommodation agreements.
- (2) However, this Act does not apply to all rooming accommodation agreements.

**44 Rooming accommodation agreements to which Act does not apply**

- (1) The Act does not apply to rooming accommodation agreements relating to the following rooming accommodation—
- (a) accommodation provided by a person in premises if—
    - (i) the premises are the person's only or main place of residence; and
    - (ii) not more than 3 rooms in the premises are occupied, or available for occupation, by residents;
  - (b) aged care accommodation provided by an approved provider under the *Aged Care Act 1997* (Cwlth);
  - (ba) accommodation provided at the forensic disability service under the *Forensic Disability Act 2011*;
  - (c) accommodation provided at an authorised mental health service under the *Mental Health Act 2016*;
  - (d) accommodation provided in a private hospital under a licence in force under the *Private Health Facilities Act 1999*;
  - (e) accommodation for school students—
    - (i) provided as part of, or under an agreement with, a school; or
    - (ii) arranged by a school for students of another school; or
    - (iii) provided with financial assistance from the education department;
  - (f) accommodation for students within the external boundaries of a registered higher education provider's campus provided—
    - (i) by the registered higher education provider; or
    - (ii) by an entity, other than the registered higher education provider, if the accommodation is

provided other than for the purpose of making a profit;

- (g) accommodation provided to holiday makers or travellers;

*Examples—*

motel, bed and breakfast facility, backpackers' hostel

- (h) accommodation provided under the program known as the Supported Accommodation Assistance Program;
  - (i) accommodation provided under funding given by, or in premises owned by, Aboriginal Hostels Limited ACN 008 504 587;
  - (j) accommodation for a person at a retirement village if the person resides in the accommodation under—
    - (i) a residence contract under the *Retirement Villages Act 1999*; or
    - (ii) section 70B of the *Retirement Villages Act 1999*;
  - (k) other accommodation prescribed under a regulation not to be rooming accommodation.
- (2) Subsection (1)(f)(ii) applies even if the accommodation is provided on land owned by the entity within the external boundaries of a university's campus.
  - (3) Despite subsection (1), if a rental bond is paid for rooming accommodation mentioned in subsection (1)(a) or (f), the provisions of this Act about rental bonds apply to the agreement.
  - (4) For subsection (1)(g), a right to occupy given for 6 weeks or longer is taken not to be given for holiday or travel purposes unless the contrary is proved.

## **44A Boarders and lodgers**

- (1) This Act does not apply to a rooming accommodation agreement if the resident is a boarder or lodger.

- (2) However, if a rental bond is paid for a rooming accommodation agreement under which the resident is a boarder or lodger, the provisions of this Act about rental bonds apply to the agreement.

*Note—*

See section 433 for the matters to which the tribunal must have regard in deciding whether a person is a boarder or lodger.

## Division 4                      Moveable dwelling premises

### 45            Application of div 4

This division applies only to agreements for moveable dwelling premises.

### 46            Purpose of division

- (1) This division provides for the classifying of tenancies of moveable dwelling premises as either short or long tenancies.
- (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 61 (which requires written agreements) applies to a long tenancy (moveable dwelling), but does not apply to a short tenancy (moveable dwelling).
- 2    Section 68 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).

### 47            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.

## **48 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.

## **49 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.

## **50 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)*.

## **51 Long tenancies**

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

## **Chapter 2      Residential tenancy agreements and rooming accommodation agreements**

### **Part 1            Agreements**

#### **Division 1        Residential tenancy agreements**

#### **Subdivision 1    General provisions**

##### **52      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) For premises, other than moveable dwelling premises, the by-laws under the *Body Corporate and Community Management Act 1997* or *Building Units and Group Titles Act 1980* for the time being in force, that apply to the occupation of the premises by the tenant, are also taken to be included as terms of the agreement.
- (3) If the premises are moveable dwelling premises in a moveable dwelling park, any park rules for the time being in force are also taken to be included as terms of the agreement.
- (4) If there is a conciliation agreement in force about the residential tenancy agreement, the terms of the conciliation agreement are also taken to be included as terms of the residential tenancy agreement.
- (5) This section applies even if the duty, entitlement or rule is not included as a term of a written agreement.

### **53 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.

### **54 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.

### **55 Standard terms**

- (1) A regulation may prescribe terms for inclusion in a residential tenancy agreement.
- (2) The terms prescribed for this section are the *standard terms* of a residential tenancy agreement.

### **56 Special terms**

The *special terms*, of a residential tenancy agreement, are the terms of the agreement that are not—

- (a) standard terms; or



(b) terms included in the agreement under section 52(1).

**57 Offer of residential tenancy must be for rent at a fixed amount**

- (1) A person must not advertise or otherwise offer a residential tenancy for premises unless a fixed amount is stated in the advertisement or offer as the amount of rent for the premises.

Maximum penalty—50 penalty units.

- (2) A person must not accept a rental bond from the tenant of premises if the residential tenancy for the premises was advertised or offered without stating a fixed amount of rent for the premises.

Maximum penalty—50 penalty units.

- (3) A person must not solicit or otherwise invite an offer, or accept an offer, of an amount for a residential tenancy for premises that is more than the fixed amount stated in an advertisement or offer as the amount of rent for the premises.

Maximum penalty—50 penalty units.

- (4) A person does not contravene this section merely by placing a sign on or near premises advertising or offering a residential tenancy for the premises without stating the amount of rent for the premises on the sign.

**57A Offer of residential tenancy must disclose particular information**

- (1) A lessor or lessor's agent must not advertise or otherwise offer a residential tenancy for premises unless the information prescribed by regulation is stated in, or otherwise disclosed with, the advertisement or offer.

Maximum penalty—20 penalty units.

- (2) A lessor or lessor's agent must not accept a rental bond from a tenant of premises if the residential tenancy for the premises was advertised or otherwise offered in contravention of subsection (1).

Maximum penalty—20 penalty units.

- (3) This section does not apply to a person merely placing a sign on or near premises advertising that the premises are available for residential tenancy.

## **57B Application for residential tenancy**

- (1) This section applies if a lessor or lessor's agent requires a prospective tenant to apply for a residential tenancy.
- (2) However, this section does not apply to a relevant lessor or an agent of a relevant lessor.
- (3) The lessor or lessor's agent must require the prospective tenant to apply for the residential tenancy using the required application form.

Maximum penalty—20 penalty units.

- (4) For subsection (3), the *required application form* is an approved form that requires only the following information—
  - (a) the name and contact details of the prospective tenant;
  - (b) details of any previous residential tenancy agreements or rooming accommodation agreements the prospective tenant has been a party to;
  - (c) the prospective tenant's current employment;
  - (d) details about the prospective tenant's income;
  - (e) referees for the prospective tenant;
  - (f) the intended term of the tenancy;
  - (g) any other information prescribed by regulation.
- (5) The lessor or lessor's agent must nominate at least 2 ways for the prospective tenant to submit the application.

Maximum penalty—20 penalty units.

- (6) For subsection (5), at least 1 of the nominated ways must be a way that is not a restricted way.
- (7) In this section—

**relevant lessor** means—

- (a) a lessor who receives funding for the premises under the *Housing Act 2003*, including, for example, funding for the provision of social housing services; or
- (b) a lessor who receives funding for the premises that is the subject of a funding declaration under the *Community Services Act 2007*; or
- (c) a lessor who is the chief executive of the housing department, acting on behalf of the State; or
- (d) a lessor who is the State, if the tenant is an officer or employee of the State; or
- (e) a lessor who is the replacement lessor under a community housing provider tenancy agreement; or
- (f) a lessor prescribed by regulation to be a relevant lessor.

**restricted way**, for submitting an application, means—

- (a) a way that involves a prospective tenant using an online platform to give personal information to a person, other than the lessor, who—
  - (i) collects the information on behalf of the lessor; and
  - (ii) is not a real estate agent; or
- (b) a way prescribed by regulation to be a restricted way.

## **57C Request for information for application**

- (1) A lessor or lessor's agent may request information about a prospective tenant only if—
  - (a) the information is of a type mentioned in section 57B(4); or
  - (b) the information comprises no more than 2 documents in each of the following categories—
    - (i) documents verifying the identity of the prospective tenant;

- (ii) documents about the prospective tenant's financial ability to pay rent;
- (iii) documents about the suitability of the prospective tenant for the residential tenancy.

Maximum penalty—20 penalty units.

- (2) However, a lessor or lessor's agent must not request information about a prospective tenant in relation to the following—
  - (a) legal action taken by the prospective tenant, including dispute resolution or matters considered by the tribunal;
  - (b) a notice to remedy breach given to the prospective tenant by a lessor or provider;
  - (c) a notice to remedy breach given by the prospective tenant to a lessor or provider;
  - (d) the prospective tenant's history in relation to rental bonds, including any claim on a rental bond;
  - (e) statements of credit accounts or bank accounts belonging to the prospective tenant detailing transactions.

Maximum penalty—20 penalty units.

## **57D Verification of identity for application**

- (1) A prospective tenant may give identity documents to a lessor or lessor's agent to verify the prospective tenant's identity by—
  - (a) giving a copy of the original identity document; or
  - (b) allowing the lessor or lessor's agent to access or sight the original identity document.
- (2) If a document is accessed or sighted by the lessor or lessor's agent under subsection (1)(b), the lessor or lessor's agent must not keep a copy of the original identity document without the prospective tenant's consent.

Maximum penalty—20 penalty units.

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**57AA Offer of residential tenancy—limitation on rent in advance**

- (1) This section applies if a residential tenancy for premises is advertised or otherwise offered by a lessor or lessor's agent.
- (2) A person must not solicit or otherwise invite an offer, or accept an offer, of an amount of rent in advance for the premises that is more than the amount required under section 87(1).

Maximum penalty—50 penalty units.

**58 Lessor must give particular information to prospective tenant**

- (1) The lessor or lessor's agent must give a prospective tenant for a residential tenancy the document prepared for section 61, and any other information prescribed by regulation, before doing any of the following—
  - (a) accepting a document from the prospective tenant that commits the tenant—
    - (i) to enter into the tenancy; or
    - (ii) to pay an amount in relation to the tenancy;
  - (b) accepting an amount in relation to the tenancy;
  - (c) entering into a residential tenancy agreement for the tenancy.

Maximum penalty—20 penalty units.

- (2) For subsection (1)(b), a person is not taken to accept an amount in relation to a tenancy if the only amount the person accepts is a key deposit.
- (3) This section does not apply to an agreement for a short tenancy (moveable dwelling).

**59      Restriction on amounts that may be taken from prospective tenant**

The lessor or lessor's agent must not take an amount from a prospective tenant for a residential tenancy other than the following—

- (a) a key deposit;
- (b) a holding deposit;
- (c) a rental bond;
- (d) rent.

Maximum penalty—20 penalty units.

**60      Orders of tribunal relating to noncompliance with s 58 or 59**

- (1) Subsection (2) applies if a tenant or prospective tenant believes that the lessor or lessor's agent has contravened or failed to comply with section 58 or 59.
- (2) The tenant or prospective tenant may apply to the tribunal for an order about the contravention or failure to comply.
- (3) The tribunal may make 1 or more of the following orders—
  - (a) that the lessor or lessor's agent pay an amount to the tenant or prospective tenant;
  - (b) that a residential tenancy agreement entered into is of no effect;
  - (c) an order varying the terms of the residential tenancy agreement;
  - (d) any other order the tribunal considers appropriate.

**61      Written agreements required**

- (1) The lessor or lessor's agent must ensure a residential tenancy agreement is in writing to the extent, and in the way, required by this section.

Maximum penalty—20 penalty units.

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- (2) The written agreement must—
    - (a) include the standard terms for the agreement; and
    - (b) include any special terms of the agreement; and
    - (c) include the day the rent for the premises was last increased, within the meaning of section 93, at the time the agreement is entered into.
  - (2A) However, subsection (2)(c) does not apply if the lessor is an exempt lessor.
  - (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.
  - (4) The agreement must be written in a clear and precise way.
  - (5) The costs of preparing the agreement are payable by the lessor.
  - (6) 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.
  - (7) This section does not apply to—
    - (a) an agreement for a short tenancy (moveable dwelling); or
    - (b) a periodic agreement mentioned in section 70(2).

## **62 Giving, signing and keeping written agreement**

- (1) The lessor or lessor's agent must give the document prepared for section 61 to the tenant for signing on or before the day the tenant occupies the premises under a residential tenancy agreement.

Maximum penalty—20 penalty units.

[s 63]

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- (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).

### **63 Period lessor or lessor's agent must keep agreement**

- (1) The lessor or lessor's agent must keep a copy of the agreement prepared for section 61 for a period of 1 year after the term of agreement ends.

Maximum penalty—20 penalty units.

- (2) Subsection (1) applies whether or not the agreement has been signed by all the parties to the agreement.

### **64 Orders of tribunal about giving and signing written agreement**

- (1) If the tenant reasonably believes the lessor has contravened section 62(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.
- (2) If the tenant reasonably believes the lessor has contravened section 62(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.
- (3) If the lessor reasonably believes the tenant has contravened section 62(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.
- (4) 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 section 62(1) or (3), the tribunal may make the order sought.

- (5) 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 62(2), the tribunal may order the tenant to sign and return the relevant document to the lessor by a stated day.

## **Subdivision 2      Associated documents**

### **65      Condition report at start of tenancy**

- (1) This section applies to a lessor or lessor's agent if the terms of the residential tenancy agreement are required to be in writing.
- (2) The lessor or agent must on or before the day the tenant occupies the premises under the residential tenancy agreement—
  - (a) prepare, in the approved form, a condition report for the premises and any inclusions; and
  - (b) sign the condition report; and
  - (c) give a copy of the condition report to the tenant.

Maximum penalty—20 penalty units.

- (3) The tenant must, within 7 days after the tenant occupies the premises under the residential tenancy agreement—
  - (a) sign the copy of the condition report given to the tenant; and
  - (b) if the tenant does not agree with the condition report—show the parts of the condition report the tenant disagrees with by marking the copy of the condition report in an appropriate way; and
  - (c) return the copy of the condition report to the lessor or agent.

Maximum penalty—20 penalty units.

- (4) However, if the lessor or agent has not given a copy of the condition report to the tenant before the tenant occupies the premises, subsection (3) applies to the tenant as if a reference to occupying the premises were a reference to receiving the copy.
- (5) If the tenant returns the copy of the condition report to the lessor or agent under subsection (3), the lessor or agent must make a copy of the condition report and return it to the tenant within 14 days.

Maximum penalty—20 penalty units.

- (6) The lessor or agent must keep, at least until 1 year after the last residential tenancy agreement, to which a condition report relates, ends—
  - (a) the signed copy of the condition 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 condition report.

Maximum penalty—20 penalty units.

- (7) If the lessor or agent complies with subsection (2) for a residential tenancy agreement (the *original agreement*), subsections (2) to (5) do not apply in relation to a later residential tenancy agreement (a *renewal agreement*) that continues the tenant's right to occupy the same premises.
- (8) Unless a new condition report is prepared for a renewal agreement, the condition report for the original agreement is taken to be the condition report for the renewal agreement at the start of the tenancy.

## 66 Condition report at end of tenancy

- (1) This section—
  - (a) applies if a tenant's right to occupy premises ends when a residential tenancy agreement ends; and

- (b) does not apply if the tenant's right to occupy the premises continues under another residential tenancy agreement.
- (2) The tenant must, on or before the day the residential tenancy agreement ends—
  - (a) prepare, in the approved form, a condition report for the premises and any inclusions; and
  - (b) sign the condition report; and
  - (c) as soon as practicable after the agreement ends, give a copy of the condition report to the lessor or agent.
- (3) The lessor or agent must, within 3 business days after receiving the copy of the condition report—
  - (a) sign the copy of the condition report; and
  - (b) if the lessor or agent does not agree with the condition report—show the parts of the condition report the lessor or agent disagrees with by marking the copy of the condition report in an appropriate way; and
  - (c) if the tenant has given a forwarding address to the lessor or agent—make a copy of the condition report and return it to the tenant at the address.
- (4) The lessor or agent must keep a copy of the condition report signed by both parties for at least 1 year after the agreement ends.

## **67 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

[s 68]

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- (b) the procedures for resolving disputes under the residential tenancy agreement (including conciliation processes); and
  - (c) entities to which issues about the residential tenancy agreement may be referred.
- (3) For a residential tenancy 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 a residential tenancy agreement that is an agreement for a short tenancy (moveable dwelling), the statement must be given to the tenant when the tenancy commences.
- (5) If a lessor or agent complies with subsection (1) for a tenant under a residential tenancy agreement, subsections (1) to (4) do not apply in relation to a later residential tenancy agreement that continues the tenant's right to occupy the same premises.

## **68 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.
- (5) If a lessor or agent complies with subsection (2) for a tenant under a residential tenancy agreement, subsections (2)(a) and (3) do not apply in relation to a later residential tenancy agreement that continues the tenant's right to occupy the same premises.

## **69 Body corporate by-laws**

- (1) If body corporate by-laws are to apply to the occupation of premises by a tenant, the lessor or lessor's agent must give the tenant a copy of the relevant by-laws, when giving the written agreement to the tenant for signing.

Maximum penalty—20 penalty units.

- (2) If a lessor or agent complies with subsection (1) for a tenant under a residential tenancy agreement, subsection (1) does not apply in relation to a later residential tenancy agreement that continues the tenant's right to occupy the same premises.

## **Subdivision 3 Fixed term agreements**

### **70 Continuation of fixed term agreements**

- (1) This section applies to a residential tenancy agreement if—
  - (a) it creates a residential tenancy for a fixed term; and
  - (b) none of the following notices is given, or agreements or applications made before the day the term ends (the *end day*)—
    - (i) a notice to leave;
    - (ii) a notice of intention to leave;
    - (iii) an abandonment termination notice;

[s 71]

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- (iv) a notice, agreement or application relating to the death of a sole tenant under section 324A;
  - (v) a separate written agreement between the lessor and tenant to end the residential tenancy agreement under section 277(a).
- (2) 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 agreement.
- (3) 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.
- (4) This section does not apply to a residential tenancy agreement if the tenancy is a short tenancy (moveable dwelling).

*Note—*

An agreement ends in the circumstances stated in section 277.

## **71 Tenant may apply to tribunal about significant change in subsequent agreement**

- (1) This section applies if—
  - (a) an agreement (the ***existing agreement***) between a lessor and tenant creates a residential tenancy for premises; and
  - (b) the lessor of the premises enters into a new agreement with the tenant (the ***new agreement***) for the premises that starts after the end of the existing agreement; and
  - (c) the new agreement contains 1 or more significant changes to the terms of the existing agreement; and
  - (d) at least 1 of the tenants mentioned in the existing agreement is a tenant for the new agreement.

- (2) Also, this section applies whether or not the lessor for the existing agreement and the lessor for the new agreement are the same person.
- (3) If the tenant considers the significant change is unreasonable, the tenant may apply to a tribunal for an order under this section.
- (4) The application must be made within 30 days after the tenant enters into the new agreement.
- (5) If the significant change relates to an increase in rent, the tribunal may reduce the rent payable under the agreement.
- (6) In deciding an application that relates to an increase in rent, 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.
- (7) If the significant change relates to a change other than an increase in rent, the tribunal may make any order the tribunal considers appropriate in the circumstances.
- (8) In deciding an application that relates to a significant change, other than an increase in rent, the tribunal must have regard to the following—
  - (a) how long the tenant has occupied the relevant premises;
  - (b) the impact of the significant change on the tenant;
  - (c) the impact on the lessor of not allowing the significant change;
  - (d) anything else the tribunal considers relevant.

- (9) In addition to any order the tribunal may make under this section, the tribunal may order that the new agreement is taken to be altered as ordered by the tribunal.
- (10) Subject to any order of the tribunal to the contrary, the terms of the new agreement apply from the day it is entered into.
- (11) This section does not apply to an increase in rent if—
  - (a) the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) the lessor is the State and the tenant is an officer or employee of the State.
- (12) In this section—

***significant change***, to the terms of an existing agreement, means a change to any of the following —

  - (a) the special terms for the tenancy agreement for the tenancy;
  - (b) the rent amount, and whether it must be paid weekly, fortnightly or monthly;
  - (c) the way the rent must be paid;
  - (d) any services supplied to the premises, other than water, for which the tenant must pay;
  - (e) whether the tenant must pay for water supplied to the premises;
  - (f) the number of occupants allowed to reside in the premises, if there is a limit on the number of occupants;
  - (g) whether pets are allowed;
  - (h) another matter prescribed under a regulation.



## Division 2                      Rooming accommodation agreements

### Subdivision 1              General provisions

#### 72              Terms of agreement include obligations under Act etc.

The following are taken to be included as terms of a rooming accommodation agreement between a provider and a resident—

- (a) the obligations imposed on the provider and resident under chapter 4, part 1;
- (b) the house rules for the rental premises;
- (c) the terms of any conciliation agreement in force about the rooming accommodation agreement;
- (d) other duties imposed on, or entitlements given to, the provider or resident under this Act.

#### 73              Standard terms

- (1) A regulation may prescribe terms for inclusion in a rooming accommodation agreement.
- (2) The terms prescribed for this section are the *standard terms* of a rooming accommodation agreement.

*Note—*

Under section 77(2)(a), every rooming accommodation agreement must include the standard terms.

#### 74              Special terms

- (1) The *special terms* of a rooming accommodation agreement are the terms of the agreement that are not—
  - (a) standard terms; or
  - (b) terms included in the agreement under section 72.

- (2) The special terms may include, for example, terms about the provision of a food service or a personal care service to the resident.

## **75 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 rooming accommodation 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 rooming accommodation agreement.

## **76 Inconsistency**

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

## **76AA Offer of rooming accommodation must be for rent at a fixed amount**

- (1) A person must not advertise or otherwise offer rooming accommodation for rental premises unless a fixed amount is stated in the advertisement or offer as the amount of rent for the rental premises.

Maximum penalty—50 penalty units.

- (2) A person must not accept a rental bond from the resident of rental premises if the rooming accommodation for the rental premises was advertised or offered without stating a fixed amount of rent for the rental premises.

Maximum penalty—50 penalty units.

- (3) A person must not solicit or otherwise invite an offer, or accept an offer, of an amount for rooming accommodation for rental premises that is more than the fixed amount stated in an advertisement or offer as the amount of rent for the rental premises.

Maximum penalty—50 penalty units.

- (4) A person does not contravene this section merely by placing a sign on or near rental premises advertising or offering rooming accommodation for the rental premises without stating the amount of rent for the rental premises on the sign.

### **76AB Offer of rooming accommodation—limitation on rent in advance**

- (1) This section applies if rooming accommodation for rental premises is advertised or otherwise offered by a provider or provider's agent.
- (2) A person must not solicit or otherwise invite an offer, or accept an offer, of an amount of rent in advance for the rental premises that is more than the amount required under section 101(1).

Maximum penalty—50 penalty units.

### **76A Offer of rooming accommodation must disclose particular information**

- (1) A provider or provider's agent must not advertise or otherwise offer rooming accommodation unless the information prescribed by regulation is stated in, or otherwise disclosed with, the advertisement or offer.

Maximum penalty—20 penalty units.

- (2) A provider or provider's agent must not accept a rental bond from a resident for rooming accommodation if the rooming accommodation was advertised or otherwise offered in contravention of subsection (1).

Maximum penalty—20 penalty units.

- (3) This section does not apply to a person merely placing a sign on or near rental premises advertising that a room is available for rooming accommodation.

### **76B Provider must give particular information to prospective resident**

A provider or provider's agent must give a prospective resident the information prescribed by regulation before doing any of the following—

- (a) accepting a document from the prospective resident that commits the resident—
- (i) to enter into a rooming accommodation agreement; or
  - (ii) to pay an amount for the accommodation;
- (b) accepting an amount from the prospective resident for the accommodation;
- (c) entering into a rooming accommodation agreement with the prospective resident.

Maximum penalty—20 penalty units.

### **76C Application for rooming accommodation**

- (1) This section applies if a provider or provider's agent requires a prospective resident to apply for rooming accommodation.
- (2) The provider or provider's agent must require the prospective resident to apply for the rooming accommodation using the required application form.

Maximum penalty—20 penalty units.

- (3) For subsection (2), the ***required application form*** is an approved form that requires only the following information—
- (a) the name and contact details of the prospective resident;
  - (b) details of any previous residential tenancy agreements or rooming accommodation agreements the prospective resident has been a party to;
  - (c) the prospective resident's current employment;
  - (d) details about the prospective resident's income;
  - (e) referees for the prospective resident;
  - (f) the intended term of the residency interest;
  - (g) any other information prescribed by regulation.
- (4) The provider or provider's agent must nominate at least 2 ways for the prospective resident to submit the application.

Maximum penalty—20 penalty units.

- (5) For subsection (4), at least 1 of the nominated ways must be a way that is not a restricted way.
- (6) In this section—

***restricted way***, for submitting an application, means—

- (a) a way that involves a prospective resident using an online platform to give personal information to a person, other than the provider, who—
  - (i) collects the information on behalf of the provider; and
  - (ii) is not a real estate agent; or
- (b) a way prescribed by regulation to be a restricted way.

## **76D Request for information for application**

- (1) A provider or provider's agent may request information about a prospective resident only if—
- (a) the information is of a type mentioned in section 76C(3); or

- (b) the information comprises no more than 2 documents in each of the following categories—
  - (i) documents verifying the identity of the prospective resident;
  - (ii) documents about the prospective resident's financial ability to pay rent;
  - (iii) documents about the suitability of the prospective resident for the rooming accommodation.

Maximum penalty—20 penalty units.

- (2) However, a provider or provider's agent must not request information about a prospective resident in relation to the following—
  - (a) legal action taken by the prospective resident, including dispute resolution or matters considered by the tribunal;
  - (b) a notice to remedy breach given to the prospective resident by a lessor or provider;
  - (c) a notice to remedy breach given by the prospective resident to a lessor or provider;
  - (d) the prospective resident's history in relation to rental bonds, including any claim on a rental bond;
  - (e) statements of credit accounts or bank accounts belonging to the prospective resident detailing transactions.

Maximum penalty—20 penalty units.

## **76E Verification of identity for application**

- (1) A prospective resident may give identity documents to a provider or provider's agent to verify the prospective resident's identity by—
  - (a) giving a copy of the original identity document; or
  - (b) allowing the provider or provider's agent to access or sight the original identity document.

- (2) If a document is accessed or sighted by the provider or provider's agent under subsection (1)(b), the provider or provider's agent must not keep a copy of the original identity document without the prospective resident's consent.

Maximum penalty—20 penalty units.

## **77 Written agreement required**

- (1) A provider or provider's agent must ensure a rooming accommodation agreement entered into with a resident is in writing to the extent, and in the way, required by this section.

Maximum penalty—40 penalty units.

- (2) The written agreement must include—

- (a) the standard terms for the agreement; and
- (b) any special terms of the agreement; and
- (c) the day the rent for the resident's room was last increased, within the meaning of section 105B, at the time the agreement is entered into.

- (2A) However, subsection (2)(c) does not apply if the provider is an exempt provider.

- (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 rental premises), the agreement is taken to include the standard term only if the information is properly included.

- (4) The agreement must—

- (a) be written in a clear and precise way; and
- (b) state the provider's name, address and any telephone number and the resident's name and any telephone number; and
- (c) fully describe the services to be provided under the agreement; and
- (d) state the amount of rent payable, when it is payable and how it must be paid; and

- (e) state the components of the rent attributable to accommodation, a food service, a personal care service or another service; and
  - (f) state the amount of any rental bond payable; and
  - (g) for a fixed term agreement, state the term for which it applies; and
  - (h) be signed by the parties; and
  - (i) comply with any other requirement prescribed under a regulation.
- (5) The costs of preparing the agreement are payable by the provider.

## **78 Resident's copy of agreement**

- (1) The provider or provider's agent must give the document prepared for section 77 to the resident for signing on or before the day the resident occupies the room in rental premises under the agreement.

Maximum penalty—20 penalty units.

- (2) Within 3 days after receiving the document signed by the resident, the provider or provider's agent must sign the document and return a copy signed by both parties to the resident.

Maximum penalty—10 penalty units.

## **79 Period provider or provider's agent must keep agreement**

- (1) The provider or provider's agent must keep a copy of the agreement prepared for section 77 for a period of 1 year after the term of agreement ends.

Maximum penalty—20 penalty units.

- (2) Subsection (1) applies whether or not the agreement has been signed by all the parties to the agreement.



## **Subdivision 2      Associated documents**

### **80      Application of sdiv 2**

This subdivision applies to the provider and resident under a rooming accommodation agreement only if a rental bond is payable, or has been paid, under the agreement.

### **81      Condition report at start of rooming accommodation**

- (1) The provider or provider's agent must on or before the day the resident occupies a room in rental premises under the rooming accommodation agreement—
  - (a) prepare, in the approved form, a condition report for the room and the facilities in the room; and
  - (b) sign the condition report; and
  - (c) give a copy of the condition report to the resident.

Maximum penalty—20 penalty units.

- (2) The resident must, within 7 days after the resident occupies the room under the rooming accommodation agreement—
  - (a) sign the copy of the condition report given to the resident; and
  - (b) if the resident does not agree with the condition report—show the parts of the condition report the resident disagrees with by marking the copy of the condition report in an appropriate way; and
  - (c) return the copy of the condition report to the provider or provider's agent.

Maximum penalty—20 penalty units.

- (3) However, if the provider or agent has not given a copy of the condition report to the resident before the resident occupies the room, subsection (2) applies to the resident as if a reference to starting to occupy the room were a reference to receiving the copy.

- (4) If the resident returns the copy of the condition report to the provider or agent under subsection (2), the provider or agent must make a copy of the condition report and return it to the resident within 14 days.

Maximum penalty—20 penalty units.

- (5) The provider or agent must keep, until at least 1 year after the last rooming accommodation agreement, to which a condition report relates, ends—
- (a) the signed copy of the condition report returned to the provider or agent by the resident; or
  - (b) if the resident does not return a signed copy—another copy of the condition report.

Maximum penalty—20 penalty units.

- (6) If the provider or agent complies with subsection (1) for a rooming accommodation agreement (the ***original agreement***), subsections (1) to (4) do not apply in relation to a later rooming accommodation agreement (a ***renewal agreement***) that continues the resident's right to occupy the same room.
- (7) Unless a new condition report is prepared for a renewal agreement, the condition report for the original agreement is taken to be the condition report for the renewal agreement at the start of the rooming accommodation.
- (8) In this section—  
***resident***, in relation to rental premises, includes a person who proposes to be a resident of the premises.

## Subdivision 3 Fixed term agreements

### 82 Continuation of fixed term agreement

- (1) This section applies to a rooming accommodation agreement if—

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- (a) under the agreement, accommodation is provided to the resident for a fixed term; and
  - (b) neither the provider nor the resident gives the other party a notice under chapter 5, part 2 ending the agreement or agrees in writing with the other party to end the agreement under section 366(a).
- (2) The rooming accommodation agreement continues to apply after the last day of the term, as a periodic agreement, on the same terms on which it applied immediately before the last day of the term, other than the term about the fixed term.
- (3) This section does not stop the provider and resident from entering into another rooming accommodation agreement starting at the end of the fixed term.

## Part 2 Rent

### Division 1 Residential tenancy agreements

#### 82A Meaning of *exempt lessor*

A lessor of premises is an *exempt lessor* if—

- (a) the lessor receives funding for the premises under the *Housing Act 2003* if the amount of rent payable for the premises is determined by household income; or

*Examples—*

- a community housing provider
  - a specialist homelessness service
- (b) the lessor receives funding for the premises that is the subject of a funding declaration under the *Community Services Act 2007* if the amount of rent payable for the premises is determined by household income; or
- (c) the lessor is the chief executive of the housing department, acting on behalf of the State; or

[s 83]

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- (d) the lessor is the State and the tenant is an officer or employee of the State; or
- (e) the lessor is the replacement lessor under a community housing provider tenancy agreement; or
- (f) the lessor is prescribed by regulation to be an exempt lessor.

### **83 How rent is to be paid**

- (1) A tenant must pay the rent in a way stated in the residential tenancy agreement.
- (2) The lessor or lessor's agent must ensure—
  - (a) the residential tenancy agreement states at least 2 ways for the tenant to pay the rent; and
  - (b) at least 1 of the ways for the tenant to pay rent stated in the agreement—
    - (i) does not incur any cost to the tenant in addition to bank fees or other account fees usually payable for the tenant's transactions; and
    - (ii) is reasonably available to the tenant.
- (3) This section applies subject to sections 84 and 84A.

### **84 Changes to way rent to be paid by agreement**

- (1) This section applies if, after signing a residential tenancy agreement—
  - (a) the lessor or tenant gives the other party a written notice changing 1 or more of the ways in which rent is to be paid under the agreement; and
  - (b) the other party agrees in writing (the ***rent agreement***) to payments of rent being made in the stated way.
- (2) While the rent agreement remains in effect, the stated way under the rent agreement applies despite the residential tenancy agreement.

### **84A Changes to way rent to be paid—no agreement**

- (1) This section applies if, after signing a residential tenancy agreement, the lessor or lessor's agent intends to change the way the tenant is required to pay the rent under the agreement, other than by agreement under section 84.
- (2) The lessor or lessor's agent must give the tenant a written notice stating a choice of at least 2 other ways for the payment of rent, including a way that—
  - (a) does not incur any cost to the tenant in addition to bank fees or other account fees usually payable for the tenant's transactions; and
  - (b) is reasonably available to the tenant.
- (3) From the day that is 14 days after the tenant is given the notice, the tenant must pay the rent in a way stated in the notice.

### **84B Tenant must be advised about associated costs and benefits**

- (1) A lessor or lessor's agent must comply with subsection (2) and (3) before—
  - (a) a tenant enters into a residential tenancy agreement; or
  - (b) a tenant enters into a rent agreement under section 84; or
  - (c) a notice is given to the tenant under section 84A.
- (2) The lessor or lessor's agent must give the tenant a written notice advising the tenant of the costs that are associated with the ways to pay rent offered to the tenant if—
  - (a) the tenant would not reasonably be aware of the costs; and
  - (b) the lessor or lessor's agent knows or could reasonably be expected to find out about the costs.

Maximum penalty—40 penalty units.

- (3) Also, the lessor or lessor's agent must declare any financial benefit the lessor or lessor's agent may receive if the tenant uses a particular way to pay rent.

Maximum penalty—20 penalty units.

## **85 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.

## **86 Payment of rent by electronic transaction**

- (1) This section applies—
  - (a) if a tenant effects an electronic transaction to pay rent to the account of the lessor or lessor's agent on a day; and
  - (b) does not take any action to defer the payment to the lessor's or lessors agent's account to a later day.
- (2) Payment is taken to be received by the lessor or lessor's agent on the day the tenant effects the electronic transaction.
- (3) Subsection (2) applies even if, because of circumstances beyond the tenant's control, the payment to the lessor's or lessors agent's account happens on a later day.

*Example—*

The tenant uses *BPay* to authorise payment of rent to be debited to the tenant's account on a Wednesday. However, the financial institution, because of its internal arrangements, does not actually debit the tenant's account and credit the lessor's or lessors agent's account until the next day. The rent payment is taken to have been received by the lessor or lessor's agent on the Wednesday.

## **87 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—10 penalty units.

## **88 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
  - (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.

## **89 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 a regulation and ending more than 1 year after the agreement ends; or
  - (b) if a period is not fixed under a regulation—the period ending 1 year after the agreement ends.

## 90 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 can not reasonably obtain, the necessary information.

Maximum penalty—20 penalty units.

## 91 Rent increases

- (1) This section applies to increases in rent for the following—
- (a) a periodic agreement;
  - (b) a fixed term agreement, during the term of the agreement.

*Note—*

See also section 93 for the minimum period before rent can be increased under a residential tenancy agreement.

- (2) If the lessor proposes to increase the rent, the lessor must give written notice of the proposal to the tenant in the way required by this section.
- (3) The notice must state—
- (a) the amount of the increased rent; and

- (b) the day from when the increased rent is payable; and
  - (c) the day the rent was last increased for the premises.
- (3A) However, subsection (3)(c) does not apply if the lessor is an exempt lessor.
- (4) The day stated in the notice under subsection (3)(b) must not be earlier than the later of the following—
  - (a) 2 months after the day the notice is given to the tenant;
  - (b) the end of the minimum period before the rent may be increased under section 93.
- (5) Subject to an order of a tribunal under section 92, the increased rent is payable from the day stated in the notice, and the agreement is taken to be amended accordingly.
- (6) However, the increased rent is payable by the tenant only if—
  - (a) the rent is increased in compliance with this section; and
  - (b) the increased rent is not payable before the end of the minimum period before the rent may be increased under section 93; and
  - (c) the increase in rent does not relate to—
    - (i) compliance of the premises or inclusions with the prescribed minimum housing standards; or
    - (ii) the keeping of a pet or working dog at the premises.
- (7) Also, the rent under a fixed term agreement may not be increased before the term ends unless—
  - (a) the agreement provides for a rent increase; and
  - (b) the agreement states the amount of the increase or how the amount of the increase is to be worked out; and
  - (c) the increase is made under the agreement.
- (8) This section applies subject to sections 93 and 93A.
- (9) This section does not apply if—

- (a) the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
- (b) the lessor is the State and the tenant is an officer or employee of the State; or
- (c) the lessor is the replacement lessor under a community housing provider tenancy agreement.

*Note—*

This section does not apply to an increase in rent from one fixed term agreement to the next.

## **92 Tenant's application to tribunal about rent increase**

- (1) This section applies if the lessor gives the tenant notice of a proposed rent increase and the tenant believes the increase—
  - (a) is excessive; or
  - (b) is not payable under section 91.
- (2) The tenant may apply to the tribunal for an order mentioned in subsection (4).
- (3) 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.
- (4) 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.
- (5) 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) if the proposed rent increase relates to the prescribed minimum housing standards—any repairs or maintenance carried out to the premises or inclusions;
  - (g) if the proposed rent increase relates to keeping a pet or working dog at the premises—the approval to keep the pet or the right to keep the working dog.
- (6) The tribunal may also have regard to other matters the tribunal considers relevant.
- (7) 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.
- (8) This section does not apply if—
- (a) the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) the lessor is the State and the tenant is an officer or employee of the State; or
  - (c) the lessor is the replacement lessor under a community housing provider tenancy agreement.

### **93 Minimum period before rent can be increased**

- (1) A lessor or lessor’s agent must not increase, or purport to increase, the rent payable by a tenant less than 12 months after the last rent increase for the residential premises.

Maximum penalty—20 penalty units.

- (2) For this section, rent is ***increased*** for the residential premises if—

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- (a) a rent increase happens during the term of a residential tenancy agreement; or
  - (b) a new residential tenancy agreement (a *new agreement*) is entered into for the residential premises and, immediately before rent becomes payable under the new agreement, either—
    - (i) rent was not payable for the residential premises; or
    - (ii) the amount of rent payable for the residential premises was less than the rent that will be payable under the new agreement.
  - (3) The 12-month period mentioned in subsection (1) applies even if the last rent increase for the residential premises related to a different residential tenancy agreement, including a residential tenancy agreement entered into by a previous owner of the premises.

*Example—*

Under a residential tenancy agreement with Tenant A, rent is increased on 1 November 2024. A new residential tenancy agreement for the residential premises is entered into with Tenant B, commencing on 1 February 2025. Under subsection (1), the rent must not be increased until 12 months after 1 November 2024.

- (4) Also, if the residential premises are moveable dwelling premises in a moveable dwelling park for a long tenancy (moveable dwelling), the 12-month period mentioned in subsection (1) applies whether the last rent increase was for the dwelling or its site, or both.
- (5) For subsection (1), it does not matter whether or not the lessor or agent who increases the rent is the same person as the lessor or agent who last increased the rent.
- (6) Nothing in this section prevents the lessor or agent from giving notice of an increase in rent within the 12 months mentioned in subsection (1) provided the increase does not take effect until the end of the 12 months.
- (7) This section does not apply—
  - (a) to an exempt lessor or an agent of an exempt lessor; or

- (b) to the extent the rent payable under a residential tenancy agreement is increased under an order of the tribunal under section 93B.

### **93A Evidence of last rent increase**

- (1) A tenant may, by written notice, ask a lessor or lessor's agent to give the tenant evidence of the day of the last rent increase for the residential premises.

*Examples of evidence of the day of the last rent increase—*

- a copy of a previous residential tenancy agreement for the residential premises
  - a written rent increase notice for the residential premises
  - a copy of the rent ledger for the residential premises
- (2) The lessor or lessor's agent must give the tenant the evidence within 14 days after receiving the request.
- Maximum penalty—40 penalty units.
- (3) Evidence must not be given to the tenant under this section unless personal information about any other person has been removed or otherwise de-identified.
- (4) This section does not apply in relation to an exempt lessor or an agent of an exempt lessor.

### **93B Tribunal order about rent increase**

- (1) This section applies if a lessor reasonably believes the lessor would be caused undue hardship because the lessor is not able to increase the rent payable under a residential tenancy agreement during the 12-month period mentioned in section 93(1).
- (2) The lessor may apply to a tribunal for an order mentioned in subsection (3).
- (3) The tribunal may make an order permitting the lessor to increase the rent payable under the residential tenancy agreement by a stated amount.

- (4) In deciding the application, the tribunal must have regard to any representation made by a tenant under the residential tenancy agreement about the proposed rent increase and its likely effect on—
  - (a) the affordability of the premises; and
  - (b) the tenant's ability to continue to pay the rent for the premises.
- (5) This section does not apply in relation to an exempt lessor or an agent of an exempt lessor.

## **94 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.
- (2) 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.
- (3) 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.
- (4) 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.

[s 95]

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- (5) Subsection (6) applies if the rent payable under an agreement—
  - (a) is decreased under this section or by order of a tribunal; and
  - (b) later reverts to the rent payable before the decrease.
- (6) The change in rent payable under the agreement mentioned in subsection (5)(b) is taken not to be a rent increase for section 91 or 93.

## **95 Seizure of tenant's goods for rent etc.**

- (1) A person must not seize or dispose of a tenant's goods 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 363 or an enforcement warrant.

## **96 Rent payment must not be applied for any other purpose**

- (1) This section applies if the tenant pays an amount for rent to the lessor or lessor's agent.
- (2) The lessor or lessor's agent must not apply the amount to, or use the amount for, any other purpose.

Maximum penalty—40 penalty units.



- (3) An amount paid by the tenant for rent is taken to be payment of rent even if the lessor or lessor's agent applies it to, or uses it for, another purpose.

## 97 Apportionment

- (1) The rent payable under an agreement accumulates from day to day.
- (2) On the ending 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.

## Division 2 Rooming accommodation agreements

### 97A Meaning of *exempt provider*

A provider of rooming accommodation is an *exempt provider* if—

- (a) the provider receives funding for the rooming accommodation under the *Housing Act 2003* if the amount of rent payable for the rooming accommodation is determined by household income; or

*Examples—*

a community housing provider, a specialist homelessness service

- (b) the provider receives funding for the rooming accommodation that is the subject of a funding declaration under the *Community Services Act 2007* if the amount of rent payable for the rooming accommodation is determined by household income; or

[s 98]

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- (c) the provider is the chief executive of the housing department, acting on behalf of the State; or
- (d) the provider is prescribed by regulation to be an exempt provider.

## **98 How rent is to be paid**

- (1) A resident must pay the rent in a way stated in the rooming accommodation agreement.
- (2) The provider or provider's agent must ensure—
  - (a) the rooming accommodation agreement states at least 2 ways for the resident to pay the rent; and
  - (b) at least 1 of the ways for the resident to pay rent stated in the agreement—
    - (i) does not incur any cost to the resident in addition to bank fees or other account fees usually payable for the resident's transactions; and
    - (ii) is reasonably available to the resident.
- (3) This section applies subject to sections 99 and 99A.

## **99 Changes to way rent to be paid by agreement**

- (1) This section applies if, after signing a rooming accommodation agreement—
  - (a) the provider or resident gives the other party a written notice changing 1 or more of the ways in which rent is to be paid under the agreement; and
  - (b) the other party agrees in writing (the ***rent agreement***) to payments of rent being made in the stated way.
- (2) While the rent agreement remains in effect, the stated way under the rent agreement applies despite the rooming accommodation agreement.

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**99A Changes to way rent to be paid—no agreement**

- (1) This section applies if, after signing a rooming accommodation agreement, the provider or provider's agent intends to change the way the resident is required to pay the rent under the agreement, other than by agreement under section 99.
- (2) The provider or provider's agent must give the resident a written notice stating a choice of at least 2 other ways for the payment of rent, including a way that—
  - (a) does not incur any cost to the resident in addition to bank fees or other account fees usually payable for the resident's transactions; and
  - (b) is reasonably available to the resident.
- (3) From the day that is 14 days after the resident is given the notice, the resident must pay the rent in a way stated in the notice.

**99B Resident must be advised about associated costs and benefits**

- (1) A provider or provider's agent must comply with subsections (2) and (3) before—
  - (a) a resident enters into a rooming accommodation agreement; or
  - (b) a resident enters into a rent agreement under section 99; or
  - (c) a notice is given to the resident under section 99A.
- (2) The provider or provider's agent must give the resident a written notice advising the resident of the costs that are associated with the ways to pay rent offered to the resident if—
  - (a) the resident would not reasonably be aware of the costs; and
  - (b) the provider or provider's agent knows or could reasonably be expected to find out about the costs.

Maximum penalty—40 penalty units.

- (3) Also, the provider or provider's agent must declare any financial benefit the provider or provider's agent may receive if the resident uses a particular way to pay rent.

Maximum penalty—20 penalty units.

## **100 Where rent is to be paid**

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

## **101 Rent in advance**

- (1) A provider or provider's agent must not require a resident to pay more than 2 weeks rent in advance.

Maximum penalty—20 penalty units.

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

Maximum penalty—10 penalty units.

## **102 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
  - (c) if the payment is made by cheque—within 3 business days after the day the payment is received.
- (5) The provider or provider'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 resident as required by this section, if the resident 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 resident must be given within 7 days after the request is made.
- (8) The receipt or rent payment record must state the following—
- (a) the resident's name;
  - (b) the address of the rental premises;

- (c) the number of the resident's room or, if the room does not have a number, another identifier for the room;
- (d) the date the payment is received;
- (e) the period for which the payment is made;
- (f) the amount of the payment;
- (g) that the payment is a payment of rent;
- (h) the individual amounts for each of the following—
  - (i) accommodation;
  - (ii) any food service;
  - (iii) any personal care service.

### 103 Keeping of records

- (1) The provider or provider'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 a regulation and ending more than 1 year after the agreement ends; or
  - (b) if a period is not fixed under a regulation—the period ending 1 year after the agreement ends.

### 104 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 can not reasonably obtain, the necessary information.

Maximum penalty—20 penalty units.

## **105 Rent increases**

- (1) This section applies if a provider proposes to increase the rent payable by a resident under a rooming accommodation agreement.
- (2) The provider must give the resident a written notice stating—
  - (a) the amount of the increased rent; and
  - (b) the day from which the increased rent is payable; and
  - (c) the day the rent was last increased for the resident's room.
- (2AA) However, subsection (2)(c) does not apply if the provider is an exempt provider.
- (2A) The day stated in the notice under subsection (2)(b) must not be earlier than the later of the following—
  - (a) 4 weeks after the day the notice is given to the resident;
  - (b) the end of the minimum period before the rent may be increased under section 105B.
- (3) Subject to an order of a tribunal under section 105A, the increased rent is payable from the day stated in the notice, and the rooming accommodation agreement is taken to be amended accordingly.
- (4) However, the increased rent is payable by the resident only if—

- (a) the rent is increased in compliance with this section; and
  - (b) the increased rent is not payable before the end of the minimum period before the rent may be increased under section 105B; and
  - (c) the rent increase does not relate to—
    - (i) compliance of the rental premises or inclusions with the prescribed minimum housing standards; or
    - (ii) the keeping of a pet or working dog in the resident's room.
- (5) Also, if the rooming accommodation agreement is for a fixed term, the rent may not be increased before the term ends unless—
  - (a) the agreement provides for a rent increase; and
  - (b) the agreement states the amount of the increase or how the amount of the increase is to be worked out; and
  - (c) the increase is made under the agreement.
- (6) Subsections (2) to (5) do not apply if the parties amend the rooming accommodation agreement to provide for another service to be provided by the provider to the resident and for an increase in the rent in payment of the service.
- (7) However, subsection (6) does not apply if the provision of the service—
  - (a) is necessary for the rental premises or inclusions to comply with the prescribed minimum housing standards; or
  - (b) is a condition of the provider's approval to keep a pet in the resident's room.

### **105A Resident's application to tribunal about rent increase**

- (1) This section applies if the provider gives the resident notice of a proposed rent increase and the resident believes the increase—



- (a) is excessive; or
  - (b) is not payable under section 105.
- (2) The resident may apply to the tribunal for an order mentioned in subsection (4).
- (3) The application must be made—
  - (a) within 30 days after the resident receives the notice; and
  - (b) if the rooming accommodation agreement is for a fixed term—before the term of the agreement ends.
- (4) The tribunal may make either of the following orders on the application—
  - (a) an order reducing the amount of the proposed increase of rent by a stated amount;
  - (b) an order stopping the proposed increase of rent.
- (5) In deciding the application, the tribunal must have regard to the following—
  - (a) the range of market rents usually charged for comparable accommodation;
  - (b) the proposed increased rent compared to the current rent;
  - (c) the state of repair of the rental premises;
  - (d) the term of the accommodation;
  - (e) the period since the last rent increase (if any);
  - (f) if the proposed rent increase relates to compliance of the rental premises or inclusions with the prescribed minimum housing standards—any repairs or maintenance carried out to the rental premises or inclusions since the resident began to occupy the rental premises;
  - (g) if the proposed rent increase relates to keeping a pet or working dog in the resident's room—the approval to keep the pet or the right to keep the working dog.

- (6) The tribunal may also have regard to any other matter the tribunal considers relevant.
- (7) 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.

### **105B Minimum period before rent can be increased**

- (1) A provider or provider's agent must not increase, or purport to increase, the rent payable by a resident less than 12 months after the last rent increase for the resident's room.

Maximum penalty—20 penalty units.

- (2) For this section, rent is *increased* for the resident's room if—
  - (a) a rent increase happens during the term of a rooming accommodation agreement; or
  - (b) a new rooming accommodation agreement (a *new agreement*) is entered into for the resident's room and, immediately before rent becomes payable under the new agreement, either—
    - (i) rent was not payable for the resident's room; or
    - (ii) the amount of rent payable for the resident's room was less than the rent that will be payable under the new agreement.
- (3) The 12-month period mentioned in subsection (1) applies even if the last rent increase for the resident's room related to a different rooming accommodation agreement, including a rooming accommodation agreement entered into by a previous provider of the rental premises.

*Example—*

Under a rooming accommodation agreement with Resident A, rent is increased on 1 November 2024. A new rooming accommodation agreement for the resident's room is entered into with Resident B, commencing on 1 February 2025. Under subsection (1), the rent must not be increased until 12 months after 1 November 2024.

- (4) For subsection (1), it does not matter whether or not the provider or agent who increases the rent is the same person as the provider or agent who last increased the rent.
- (5) If the amount of rent payable under a rooming accommodation agreement includes payment for both accommodation and a service, the 12-month period mentioned in subsection (1) applies only in relation to an increase in rent payable for accommodation under the agreement.
- (6) Nothing in this section prevents a provider or agent from giving notice of an increase in rent within the 12 months mentioned in subsection (1) provided the increase does not take effect until the end of the 12 months.
- (7) This section does not apply—
  - (a) to an exempt provider or an agent of an exempt provider; or
  - (b) to the extent the rent payable under a rooming accommodation agreement is increased under an order of the tribunal under section 105E.

### **105C Evidence of last rent increase**

- (1) A resident may, by written notice, ask a provider or provider's agent to give the resident evidence of the day of the last rent increase for the resident's room.

*Examples of evidence of the day of the last rent increase—*

- a copy of a previous rooming accommodation agreement for the resident's room
  - a written rent increase notice for the resident's room
  - a copy of the rent ledger for the resident's room
- (2) The provider or provider's agent must give the resident the evidence within 14 days after receiving the request.

Maximum penalty—40 penalty units.

[s 105D]

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- (3) Evidence must not be given to the resident under this section unless personal information about any other person has been removed or otherwise de-identified.
- (4) This section does not apply in relation to an exempt provider or an agent of an exempt provider.

### **105D Rent increase in relation to service provided under agreement**

An increase in the rent payable under a rooming accommodation agreement that relates only to an increase in the cost of a personal care service or food service provided under the agreement is taken not to be a rent increase for section 105 or 105B.

### **105E Tribunal order about rent increase**

- (1) This section applies if a provider reasonably believes the provider would be caused undue hardship because the provider is not able to increase the rent payable under a rooming accommodation agreement during the 12-month period mentioned in section 105B(1).
- (2) The provider may apply to a tribunal for an order mentioned in subsection (3).
- (3) The tribunal may make an order permitting the provider to increase the rent payable under the rooming accommodation agreement by a stated amount.
- (4) In deciding the application, the tribunal must have regard to any representation made by a resident under the rooming accommodation agreement about the proposed rent increase and its likely effect on—
  - (a) the affordability of the resident's room; and
  - (b) the resident's ability to continue to pay the rent for the room.

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**106 Rent decreases for matters including loss of amenity or service**

- (1) This section applies to a rooming accommodation agreement if—
  - (a) a resident's room or common areas become partly unfit to live in, or their amenity or standard substantially decreases, other than because of intentional or reckless damage caused by the resident or a guest of the resident; or
  - (b) a service provided to the resident under the agreement is no longer available or is withdrawn, or the standard of the service substantially decreases, other than because the resident has not met the resident's obligations under the agreement.
- (2) The rent payable under the agreement decreases by the amount, and from the time, agreed between the provider and the resident.
- (3) If the provider and the resident can not agree on the amount or time for the decrease, either of them may apply to a tribunal for an order decreasing the rent by a stated amount from a stated time.
- (4) On an application under this section a tribunal may make the order it considers appropriate.

**107 Rent decreases because of resident's absence**

- (1) This section applies to a rooming accommodation agreement if either of the following is not provided to the resident because of the resident's absence—
  - (a) a personal care service;
  - (b) a food service, but only if the resident is absent from the rental premises for a continuous period of more than 2 weeks.
- (2) The provider and the resident may agree to a reduction in rent for the period of the absence.

[s 107A]

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- (3) If the provider and the resident can not agree on a reduction in rent for the period of the absence, the resident may apply to a tribunal for an order decreasing the rent by a stated amount for the period.
- (4) On an application under this section a tribunal may make the order it considers appropriate.
- (5) Before making an order the tribunal must have regard to the following—
  - (a) any special term of the agreement in relation the matter;
  - (b) the reason for the absence;
  - (c) the length of the absence;
  - (d) whether the resident gave the provider notice of the absence;
  - (e) whether the resident was able to give the provider notice of the absence;
  - (f) if the resident gave the provider notice of the absence—the length of the notice;
  - (g) the impact of any reduction of rent on the provider or other residents.

### **107A Rent decreases**

- (1) This section applies if the rent payable under a rooming accommodation agreement—
  - (a) is decreased under section 106 or 107 or by order of a tribunal; and
  - (b) later reverts to the rent payable before the decrease.
- (2) The change in rent payable under the agreement mentioned in subsection (1)(b) is taken not to be a rent increase for section 105 or 105B.

## **108 Seizure of resident's goods for rent etc.**

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

Maximum penalty—40 penalty units.

- (2) However, subsection (1) does not apply to the deduction of an amount under section 392(4) or the seizure or disposal of property under section 393 or an enforcement warrant.

## **109 Apportionment**

- (1) The rent payable under an agreement accumulates from day to day.
- (2) On the ending of the agreement—
  - (a) the rent is to be appropriately apportioned; and
  - (b) the appropriate amount is payable by or to the resident.
- (3) If there is a dispute between the provider and resident 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 resident.

## **Part 3                      Rental bonds**

### **Division 1                      Application of part**

#### **110      Application of part**

- (1) This part applies to rental bonds—
  - (a) paid for residential tenancy agreements; or
  - (b) paid for rooming accommodation agreements; or
  - (c) paid by boarders and lodgers.

*Note—*

See section 433 for the matters to which the tribunal must have regard in deciding whether a person is a boarder or lodger.

- (2) For the purpose of applying this part to a rental bond paid by a boarder or lodger—
  - (a) a reference to a resident is taken to be a reference to the boarder or lodger; and
  - (b) a reference to a provider is taken to be a reference to the person providing the accommodation to the boarder or lodger; and
  - (c) a reference to a rooming accommodation agreement is taken to be a reference to the arrangement under which accommodation is provided to the boarder or lodger.

### **Division 2                      Payments to authority**

#### **111      Meaning of *rental bond***

- (1) A ***rental bond*** is an amount—
  - (a) for a residential tenancy agreement—
    - (i) paid by or for the tenant under the agreement; and



- (ii) intended to be available for the financial protection of the lessor against the tenant breaching the agreement; or
- (b) for a rooming accommodation agreement—
  - (i) paid by or for the resident under the agreement; and
  - (ii) intended to be available for the financial protection of the provider against the resident breaching the agreement.
- (2) However, a **rental bond** does not include rent paid in advance.
- (3) 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 residential tenancy agreement or rooming accommodation agreement about the payment of the amount.
- (4) A **rental bond** includes a part of a rental bond.

## 112 Meaning of **maximum rental bond**

- (1) A **maximum rental bond**, for a residential tenancy agreement, is an amount equal to the rent payable under the agreement for the period of—
  - (a) for moveable 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.

- (2) A **maximum rental bond**, for a rooming accommodation agreement, is an amount equal to the rent payable under the agreement for the period of 4 weeks.

*Note—*

See section 146 for an offence of requiring or accepting more than the maximum amount for a rental bond.

### 113 Who is a **contributor** for a rental bond

- (1) A person is a **contributor** for a rental bond for a residential tenancy agreement if—
- (a) for an agreement with 1 tenant—the person is the tenant; or
  - (b) for an agreement with more than 1 tenant—
    - (i) the person is 1 of the tenants; and
    - (ii) the authority is satisfied the person is responsible for payment of all or part of the bond.
- (2) A person is a **contributor** for a rental bond for a rooming accommodation agreement if—
- (a) for an agreement with 1 resident—the person is the resident; or
  - (b) for an agreement with more than 1 resident—
    - (i) the person is 1 of the residents; and
    - (ii) the authority is satisfied the person is responsible for payment of all or part of the bond.
- (3) Without limiting subsection (1)(b)(ii) or (2)(b)(ii), the authority may be satisfied a person is responsible for payment of all or part of a rental bond because—
- (a) the rental bond notice for the agreement indicates the person paid the bond or contributed to payment of the bond; or
  - (b) a tenant or resident—

- (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) a former tenant or former resident—
  - (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 tenant or former resident.

#### 114 Bond loan contributor

A person is a *bond loan contributor* if—

- (a) the person is a contributor for a rental bond; and
- (b) the person is a cotenant or coresident; and
- (c) the person's share of the bond was provided, in whole or in part, by way of loan, by the department in which the *Housing Act 2003* is administered.

#### 115 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 written notice from the contributors, of the amount for which each of the contributors is responsible.

## **116 Duty to pay rental bond**

- (1) A person receiving an amount that is to be applied to 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 117 or 118 applies.

## **117 Duty to pay rental bond instalments under residential tenancy agreement**

- (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 or lessor's agent has received all the rental bond instalments, the lessor or agent 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 ends before the lessor or agent receives all the rental bond instalments, the lessor or agent must, within 10 days after the ending of the agreement—
  - (a) pay the instalments received by the lessor or agent to the authority; and
  - (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty—40 penalty units.

## **118 Duty to pay rental bond instalments under rooming accommodation agreement**

- (1) This section applies if the provider under a rooming accommodation agreement receives from the resident a number of rental bonds for the agreement (the *rental bond instalments*).
- (2) If the provider or provider's agent has received all the rental bond instalments, the provider or agent 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 ended before the provider or provider's agent receives all the rental bond instalments, the provider or agent must, within 10 days after the ending of the agreement—
  - (a) pay to the authority the instalments received by the provider or agent; and
  - (b) give the authority a notice, in the approved form, about the instalments.

Maximum penalty—40 penalty units.

- (4) If, on the day that is 3 months after the provider or provider's agent receives the first rental bond instalment, the agreement

has not ended and the provider or agent has not received all the rental bond instalments, the provider or agent must—

- (a) within 10 days after that day—
  - (i) pay to the authority the instalments received by the provider or agent; and
  - (ii) give the authority a notice, in the approved form, about the instalments; and
- (b) for each instalment received after that day—
  - (i) pay the instalment to the authority within 10 days after receiving it; and
  - (ii) give the authority a notice, in the approved form, about the instalment.

Maximum penalty—40 penalty units.

- (5) This section does not apply in relation to a rental bond for accommodation of a boarder or lodger.

## **119 Duty to pay rental bond if financial protection given**

- (1) This section applies to a lessor under a residential tenancy agreement, or a provider under a rooming accommodation agreement, if—
  - (a) financial protection against a breach of the agreement by the tenant or resident is given to the lessor or provider (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, provider or the lessor's or provider's agent 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, to the authority under subsection (2) is taken to be a rental bond.

## 120 Acknowledging receipt of rental bond

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

## 121 No entitlement to interest

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

## 122 Continuance of rental bond

- (1) This section applies if—
  - (a) the authority holds a rental bond for a residential tenancy agreement or a rooming accommodation agreement; and
  - (b) the agreement ends; and
  - (c) either—
    - (i) the tenant continues occupying the premises under another agreement (the **renewal agreement**) with the lessor; or
    - (ii) the resident continues occupying a room in the rental premises under another agreement (also the **renewal agreement**) with the provider; 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 renewal agreement.

## **Division 3                      Payments by authority**

### **Subdivision 1              Preliminary**

#### **123      Purpose of division**

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

#### **124      Making payment**

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

#### **125      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, provider or a contributor for the bond.

### **Subdivision 2              Payment of bond if only 1 contributor**

#### **126      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.

*Note—*

See, however, section 135A.



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**127 Joint application by contributor and lessor or provider**

- (1) This section applies if the application is made jointly by the contributor and—
  - (a) for a rental bond for a residential tenancy agreement—the lessor; or
  - (b) for a rental bond for a rooming accommodation agreement—the provider.
- (2) The authority must make each payment as directed by the application.

**128 Application only by lessor or provider**

- (1) This section applies if the application is made only by the lessor or provider.
- (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 or provider—
  - (a) the authority must make the payment as required under subdivision 4; and
  - (b) the contributor is the interested person for the payment.

**129 Application only 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 or provider, the authority must make the payment.
- (3) If the application directs that a payment be made to the contributor—
  - (a) the authority must make the payment as required under subdivision 4; and
  - (b) the lessor or provider is the interested person for the payment.

## **Subdivision 3      Payment of bond if more than 1 contributor**

### **130      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.

*Note—*

See, however, section 135A.

### **131      Joint application by every contributor and the lessor or provider**

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

### **132      Joint application by some contributors and the lessor or provider**

- (1) This section applies if the application is made jointly by—
  - (a) some, but not all, of the contributors; and
  - (b) the lessor or provider.
- (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) the authority must make the payment as required under subdivision 4; 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.

### **133 Application only by lessor or provider**

- (1) This section applies if the application is made only by the lessor or provider.
- (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) the authority must make the payment as required under subdivision 4; and
  - (b) each contributor is an interested person for the payment.

### **134 Application made only by all contributors**

- (1) This section applies if the application is made by every contributor but not jointly with the lessor or provider.
- (2) If the application directs that a payment be made to the lessor or provider, the authority must make the payment.
- (3) If the application directs that a payment be made to a contributor—
  - (a) the authority must make the payment as required under subdivision 4; and
  - (b) the lessor or provider is the interested person for the payment.

### **135 Application only 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 or provider.
- (2) If the application directs that a payment be made to the lessor or provider—
  - (a) the authority must make the payment as required under subdivision 4; 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) the authority must make the payment as required under subdivision 4; and
  - (b) the lessor or provider 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 3A Payment of bond if applicant affected by domestic violence**

### **135A Application of subdivision**

- (1) This subdivision applies to an application to the authority for payment of a rental bond made by a tenant or resident who, after experiencing domestic violence—
  - (a) ended a residential tenancy agreement or an interest in an agreement under chapter 5, part 1, division 3, subdivision 2A; or

- (b) ended a rooming accommodation agreement or an interest in an agreement under chapter 5, part 2, division 3, subdivision 2A.
- (2) If an application to the authority for payment of a rental bond is made by a person mentioned in subsection (1), subdivisions 2 and 3 do not apply to the application.
- (3) To remove any doubt, it is declared that this subdivision applies to the application regardless of the number of contributors for the rental bond.

### **135B Joint application by contributor and lessor or provider**

- (1) This section applies if the application is made jointly by the contributor and—
  - (a) for a rental bond for a residential tenancy agreement—the lessor; or
  - (b) for a rental bond for a rooming accommodation agreement—the provider.
- (2) The authority must make each payment as directed by the application.

### **135C Application only by lessor or provider**

- (1) This section applies if the application is made only by the lessor or provider.
- (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 or provider—
  - (a) the authority must make the payment as required under subdivision 4; and
  - (b) the contributor is the interested person for the payment.

### **135D Application only 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 or provider, the authority must make the payment.
- (3) If the application directs that a payment be made to the contributor—
  - (a) the authority must make the payment as required under subdivision 4; and
  - (b) the lessor or provider is the interested person for the payment.

## **Subdivision 4      General process for payment of rental bond if interested persons for the payment**

### **136 Notice of application for payment of rental bond**

- (1) This section applies if—
  - (a) the authority receives an application for payment of a rental bond under section 125; and
  - (b) under subdivision 2, 3 or 3A, there are 1 or more interested persons for the payment directed to be made under the application.
- (2) The authority must give written notice of the application to each interested person.

### **136A Response by interested person to application for payment of rental bond**

- (1) This section applies if the authority gives an interested person written notice of an application for payment of a rental bond.

- (2) The interested person may, within 14 days after receiving the written notice, make a dispute resolution request to the authority about the payment.

*Note—*

See section 402 for making a dispute resolution request.

### **136AA Evidence of claim on rental bond to be given to tenant or resident**

- (1) This section applies if—
  - (a) the authority receives an application for payment of a rental bond under section 125 and the application directs that a payment be made to the lessor or provider; or
  - (b) an interested person who is a lessor or provider makes a dispute resolution request to the authority about the payment of a rental bond.
- (2) The lessor or provider must, within the period mentioned in subsection (3), give the tenant or resident evidence supporting—
  - (a) the claim on all or part of the rental bond; or
  - (b) the dispute resolution request about the payment of all or part of the rental bond.

Maximum penalty—20 penalty units.

*Examples of evidence—*

receipts, quotes to repair damage, records of unpaid rent

- (3) For subsection (2), the period is 14 days after the day the application or dispute resolution request is made.
- (4) Subsection (2) does not apply if the lessor, lessor's agent, provider or provider's agent has been unable to contact the tenant or resident after making reasonable efforts.
- (5) Without limiting subsection (4), reasonable efforts to contact the tenant or resident include the following—

- (a) attempting to contact the tenant or resident by telephone, including text message, email or private message on a social media platform;
  - (b) attempting to contact an emergency contact listed in the agreement.
- (6) Section 525(2) and (3) applies as if—
  - (a) this section were a provision of this Act that requires the provider to give a notice to the resident; and
  - (b) a reference in section 525(2) or (3) to a notice were a reference to the evidence mentioned in subsection (2).

### **136B Application to tribunal if conciliation process ends without conciliated resolution**

- (1) This section applies if—
  - (a) an interested person makes a dispute resolution request about payment of a rental bond mentioned in section 136A; and
  - (b) the conciliation process ends without a conciliated resolution being reached; and
  - (c) the authority gives the interested person written notice about the ending of the conciliation process.
- (2) The interested person may apply to the tribunal for an order about the payment of the rental bond.
- (3) The application must be made within 7 days after the interested person is given the written notice from the authority about the ending of the conciliation process.
- (4) If the interested person applies to the tribunal for an order about the payment of the rental bond, the person must give the authority written notice of the application.



### **136C Extension of time to apply to tribunal**

- (1) This section applies if, under section 136B, an interested person may apply to the tribunal for an order about the payment of a rental bond.
- (2) The interested person may, within the claim period, make a written request to the authority for an extension of the claim period of up to 3 days.
- (3) The authority may grant the request only if the authority is satisfied there is sufficient reason to extend the claim period.

*Examples of a sufficient reason—*

- 1 The interested person did not receive the written notice under section 136B(1)(c) because the mail was affected by a natural disaster.
  - 2 The interested person was hospitalised during the claim period.
- (4) In this section—

***claim period***, for an application under section 136B, means the period within which the application must be made under that section.

### **136D Tribunal order about payment of rental bond**

- (1) This section applies if, under section 136B, an interested person applies to the tribunal for an order about the payment of a rental bond.
- (2) The tribunal may make any order about payment of the rental bond the tribunal considers appropriate having regard to—
  - (a) for a residential tenancy agreement—
    - (i) the efforts made by the tenant to comply with the tenant's obligation under section 188(4); and
    - (ii) the lessor and tenant's compliance with this Act for the agreement; and
    - (iii) the evidence supporting any claim on all or part of the rental bond; or
  - (b) for a rooming accommodation agreement—

- (i) the efforts made by the resident to comply with the resident's obligation under section 253(i); and
  - (ii) the provider and resident's compliance with this Act for the agreement; and
  - (iii) the evidence supporting any claim on all or part of the rental bond.
- (3) However, the tribunal's order must not have the effect of penalising a tenant or resident for any damage, caused by an act of domestic violence committed against the tenant or resident, to—
  - (a) for a residential tenancy agreement—the premises or inclusions; or
  - (b) for a rooming accommodation agreement—the resident's room or inclusions.

### **136E Payment of rental bond after dispute resolution process**

- (1) This section applies if—
  - (a) the authority receives an application for payment of a rental bond under section 125; and
  - (b) under subdivision 2, 3 or 3A, there are 1 or more interested persons for the payment directed to be made under the application.

*Note—*

See section 136 for the requirement that the authority give each interested person written notice of the application.

- (2) The authority must make the payment as directed by the application if—
  - (a) no dispute resolution requests are made about the payment under section 136A; or
  - (b) 1 or more dispute resolution requests are made about the payment under section 136A but all the requests are withdrawn; or
  - (c) all of the following apply—

- (i) 1 or more dispute resolution requests are made about the payment under section 136A;
  - (ii) the conciliation process for each dispute resolution request ends without a conciliated resolution;
  - (iii) none of the interested persons, given notice about the ending of the conciliation process, gives the authority notice of the person applying to the tribunal for an order about the payment under section 136B; or
- (d) all of the following apply—
- (i) 1 or more dispute resolution requests are made about the payment;
  - (ii) the conciliation process for each dispute resolution request ends without a conciliated resolution;
  - (iii) 1 or more of the interested persons, given notice about the ending of the conciliation process, apply to the tribunal for an order about the payment under section 136B but all of the applications are withdrawn or dismissed.

### **137 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.

### **138 Payment to rental bond supplier**

- (1) This section applies if—
- (a) all or part of a rental bond is payable to a contributor for the bond; and

- (b) all or part of the contributor's part of the bond was provided by way of loan from the housing department; and
  - (c) an amount of the loan is owing to the housing department.
- (2) The authority must pay the contributor's part of the rental bond as follows—
  - (a) to the extent of the amount owing to the housing department—to the housing department;
  - (b) the remainder, if any, to the contributor.

### **139 Limitation affecting early payment**

- (1) The authority must not pay a rental bond for a residential tenancy agreement if it knows—
  - (a) the lessor or tenant has given a notice to leave, or notice of intention to leave, the premises and the handover day for the notice has not arrived; or
  - (b) the lessor has given an abandonment termination notice to the tenant and the agreement has not ended.
- (2) Also, the authority must not pay a rental bond for a rooming accommodation agreement if it knows—
  - (a) the provider or resident has given a notice terminating the rooming accommodation agreement on a stated day and the stated day has not arrived; or
  - (b) the provider has given the resident a notice requiring the resident to leave the rental premises by a stated day and the stated day has not arrived.
- (3) However, subsections (1) and (2) do not prevent the authority making a payment it may make without giving notice to—
  - (a) the lessor or tenant; or
  - (b) the provider or resident.

*Note—*

See sections 127(2), 128(2), 129(2), 131, 132(2), (3) or (4), 133(2), 134(2), 135B(2), 135C(2) or 135D(2) for payments to which subsection (3) applies.

- (4) Subsection (5) applies if the application for payment of the rental bond was made by a tenant or resident who, after experiencing domestic violence—
  - (a) ended a residential tenancy agreement or an interest in an agreement under chapter 5, part 1, division 3, subdivision 2A; or
  - (b) ended a rooming accommodation agreement or an interest in an agreement under chapter 5, part 2, division 3, subdivision 2A.
- (5) The authority must not pay a rental bond for a residential tenancy agreement or rooming accommodation agreement if the authority knows the applicant has not vacated the premises.

## **140 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.

## **141 Payment under person's direction**

- (1) This section applies if the authority is required to pay a rental bond to a person.
- (2) If payment is required to be made to the tenant or resident, the authority may make the payment to a person other than the tenant or resident only if, under a regulation, the person is taken to have contributed to the rental bond.
- (3) Subsection (2) is subject to section 138.
- (4) Also—
  - (a) if the payment is required to be made to the lessor, the authority may make the payment only to the lessor or lessor's agent; or
  - (b) if the payment is required to be made to the provider, the authority may make the payment only to the provider or provider's agent.

## **Subdivision 5 Payment by authority in stated circumstances if bond loan contributor**

### **142 Application of sdiv 5**

This subdivision applies to an application to the authority for payment of a rental bond if—

- (a) there is more than 1 contributor for the bond; and
- (b) at least 1 of the contributors is a bond loan contributor; and
- (c) not all contributors are bond loan contributors; and
- (d) the bond loan contributor's share is proportionally less than the share of the other contributors having regard to the initial contribution of each contributor; and
- (e) the amount of the bond loan contributor's share is less than the balance owing for the bond loan to the

department in which the *Housing Act 2003* is administered.

### **143 Chief executive taken to be interested person**

If this subdivision applies, the chief executive of the department in which the *Housing Act 2003* is administered is taken to be an interested person for payment of the rental bond.

### **144 Sdvs 3, 3A and 4 apply subject to this subdivision**

- (1) Subdivisions 3, 3A and 4 apply subject to this subdivision.
- (2) Without limiting subsection (1), if this subdivision applies—
  - (a) the chief executive is taken to be an interested person for subdivision 3 or 3A; and
  - (b) subdivision 4 applies with any modifications necessary because the chief executive is taken to be an interested person.

## **Division 4 Enforcement provisions**

### **145 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 name of the tenant or resident;
  - (c) if the person receiving the rental bond is not the lessor or provider—the name of the lessor or provider;
  - (d) the address of the premises for which the rental bond is paid;
  - (e) the date the rental bond was received;
  - (f) the amount of the rental bond;
  - (g) if there is more than 1 tenant or resident and they tell the person receiving the rental bond the proportions in which the bond is paid—the amount paid by each tenant or resident.
- (4) The person giving the receipt must keep a copy of it for at least 1 year after the agreement ends.

Maximum penalty—10 penalty units.

## **146 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) for a residential tenancy agreement for which the lessor is the tenant's employer and gives the tenant a rental subsidy—the amount fixed under subsection (2); or
  - (b) for a rooming accommodation agreement for which the provider is the resident's employer and gives the resident a rental subsidy—the amount fixed under subsection (2); or
  - (c) otherwise—the maximum rental bond for the residential tenancy agreement or rooming accommodation agreement.

Maximum penalty—20 penalty units.

- (2) For subsection (1)(a) and (b), the amount is the greater of the following amounts—
- (a) \$400;



- (b) the maximum rental bond for the residential tenancy agreement or rooming accommodation agreement.

#### **147 Order for payment if guilty of offence**

- (1) If a person is found guilty of an offence against section 116, 117, 118 or 119, 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.

#### **148 Order for return of bond if bond wrongfully taken**

- (1) This section applies if—
  - (a) a lessor or lessor's agent is convicted of an offence against section 57(2) or 57A(2); or
  - (b) a provider or provider's agent is convicted of an offence against section 76A(2) or 76AA(2).
- (2) If the authority holds the bond, the authority must refund it—
  - (a) if there is only 1 contributor—to that contributor; or
  - (b) if there is more than 1 contributor—to the contributors in the shares in which they contributed.
- (3) No part of the rental bond may be paid to, or claimed by, the lessor or provider, or the lessor or provider's agent.
- (4) In this section—  
***convicted***, of an offence in relation to a person, includes any of the following in relation to the offence—

[s 150]

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- (a) a court finding the person guilty or accepting the person's plea of guilty, whether or not a conviction is recorded;
- (b) the person opting to pay a fine under an infringement notice;
- (c) the registration of a default certificate for an infringement notice given to the person.

**default certificate** see the *State Penalties Enforcement Act 1999*, schedule 2.

**infringement notice** see the *State Penalties Enforcement Act 1999*, schedule 2.

## Division 5                      Rental bond account

### 150      Rental bond account

- (1) The authority must keep a rental bond account.
- (2) The account is in addition to other accounts the authority is required or permitted to keep under this or another Act.
- (3) The authority must pay into the rental bond account all rental bonds it receives under this Act.
- (4) The authority may pay only the following amounts out of the rental bond account—
  - (a) amounts payable under division 3;
  - (b) amounts paid under section 151.

*Note—*

See section 482A in relation to the banking arrangements for the rental bond account.

### 151      Unclaimed amounts in rental bond account

- (1) This section applies if—

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- (a) in order to make a payment out of the rental bond account under division 3, 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
  - (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) This section also applies if—
- (a) the authority has made 1 or more attempts to make a payment out of the rental bond account under division 3 using an electronic payment method; and
  - (b) the payment could not be effected because of incomplete or incorrect information about the intended payee's bank account or for another reason; and
  - (c) it is at least 7 years since the first attempt; and
  - (d) the person has not received the amount and, since the last attempt, has not asked the authority to be paid the amount.
- (3) With the Minister's agreement, the authority may pay an amount mentioned in subsection (1) or (2) out of the rental bond account 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 and providers and residents; or
  - (d) facilitating the resolution of disputes about agreements by tribunals; or

- (e) conducting a scheme, or helping another entity to conduct a scheme, to provide housing or a related service.
- (4) Subsection (3) does not affect a person's entitlement to be paid an amount mentioned in subsection (1) or (2).

### **153 Guaranteed payment of rental bonds**

- (1) The payment of rental bonds under this Act by the authority is guaranteed by the Treasurer on behalf of the State.
- (2) An amount payable by the Treasurer under the guarantee is to be paid out of the consolidated fund, which is appropriated accordingly.

## **Division 6 Miscellaneous**

### **154 Increase in rental bond**

The tenant or resident must increase a rental bond if—

- (a) the rent payable under the residential tenancy agreement or rooming accommodation agreement increases; and

*Note—*

See sections 91 and 105 for the requirements to be met before rent may be increased.

- (b) the lessor or provider gives written notice to the tenant or resident to increase the rental bond; and
- (c) the notice is given at least 11 months after—
  - (i) the residential tenancy agreement or rooming accommodation 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 or resident is given the notice about the increase.

## **155 Rental bond resulting from rent decrease**

- (1) This section applies if, in the first 6 months of the term of a residential tenancy agreement or rooming accommodation 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 or provider disputes the amount being treated as a rental bond, the lessor or provider 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 or resident on payment of the excess amount to it.

## **155A Transfer of rental bond**

- (1) This section applies if a rental bond has been paid for a residential tenancy agreement or rooming accommodation agreement.
- (2) The authority may, in the circumstances prescribed by regulation, transfer all or part of the rental bond to another agreement (the *new agreement*).
- (3) For section 111, an amount of rental bond transferred under this section is taken to be an amount paid by or for the tenant under the new agreement.

- (4) Without limiting subsection (2), a regulation may provide for the following matters—
  - (a) any requirements relating to the transfer of the rental bond that must be complied with for the transfer to take effect, including, for example, the payment of fees;
  - (b) how a provision of this Act relating to payment or refund of a rental bond applies in relation to a rental bond transferred under this section;
  - (c) how a provision of this Act relating to the making of claims against the rental bond applies in relation to a rental bond transferred under this section.
- (5) This section and any regulation made under this section expire 2 years after this section commences.

## **Part 4                      Key and holding deposits for residential tenancies**

### **Division 1                      Key deposits**

#### **156      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.

#### **157      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.

### **158 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**

### **159 Payment of holding deposits**

- (1) A person may require a prospective tenant to pay, or accept from a prospective tenant, a holding deposit for a tenancy of premises.
- (2) However, a person must not do either of the following during the option period relating to the payment of a holding deposit by a prospective tenant for the same premises—
  - (a) require another prospective tenant to pay a holding deposit;
  - (b) accept a holding deposit from another prospective tenant.

Maximum penalty—20 penalty units.

(3) In this section—

*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.

## **160 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.



## **161 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 24 and 25 apply to this section as if a reference in the sections to the lessor were a reference to the prospective lessor.

## **162 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 or provider**

## **Division 1 Residential tenancy agreements**

### **Subdivision 1 Outgoings other than service charges**

#### **163 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.

### **Subdivision 2 Service charges**

#### **164 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 a regulation, supplied to, or used at, the premises.
- (2) 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.
- (3) 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 a regulation, supplied to, or used at, the premises or park.

## **165 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 a regulation—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.
- (4) If the tenant is required to pay an amount for outgoings to which subsection (3)(b)(ii) applies, the lessor must give the tenant a copy of a document issued by the relevant supply authority showing the amount charged by the authority for the thing, service or facility.
- (5) The lessor must comply with subsection (4) within 4 weeks after the lessor receives the document.
- (6) Despite subsection (3), the tenant is not required to pay an amount for outgoings to which subsection (3)(b)(ii) applies if the tenant has not received the document mentioned in subsection (4).

## **166 Water service charges for premises other than moveable dwelling premises**

- (1) This section applies to premises that are not moveable dwelling premises.
- (2) The tenant may be required to pay an amount for the water consumption charges for the premises only if—
  - (a) the tenant is enjoying or sharing the benefit of a water service to the premises; and
  - (b) the premises are individually metered for the supply of water or water is supplied to the premises by delivery by means of a vehicle; and

- (c) the agreement states that an amount for the water consumption charges for the premises is payable by the tenant.
- (3) The tenant may be required to pay an amount for all of the water consumption charges payable for the premises for a period only if, during the period, the premises are water efficient.
- (4) If during a period the premises are not water efficient, the tenant may only be required to pay an amount for the water consumption charges payable for the premises for the period that is more than an amount payable for a reasonable quantity of water supplied to the premises.
- (5) Without limiting subsection (4), in deciding what is a reasonable quantity of water for subsection (4), regard must be had to the matters mentioned in section 169(4)(a) to (e).
- (6) Despite subsections (2) to (5), the tenant may not, for a period, be required to pay an amount for water consumption charges for the premises that is more than the amount of the water consumption charges payable to the relevant water supplier.
- (7) If the tenant is required to pay an amount for water consumption charges, the lessor must give the tenant a copy of a document issued by the relevant water supplier showing the amount of the water consumption charges payable to the supplier.
- (8) The lessor must comply with subsection (7) within 4 weeks after the lessor receives the document.
- (9) Despite subsections (2) to (5), the tenant is not required to pay an amount for water consumption charges if the tenant has not received the document mentioned in subsection (7).
- (10) Also, the tenant may not be required to pay an amount of the water service charges payable for the premises for a fixed charge for the water service to the premises.
- (11) For this section, premises are water efficient only if they comply with the water efficiency requirements prescribed under a regulation.

(12) This section applies subject to section 166A.

(13) In this section—

***water consumption charge***, for premises, means the variable part of a water service charge assessed on the volume of water supplied to the premises.

### **166A Water service charges for premises other than moveable dwelling premises—charge for partial billing period**

(1) This section applies if—

- (a) under section 166, a tenant would otherwise be required to pay an amount for water consumption charges for the premises for a period; and
- (b) the premises are individually metered for the supply of water; and
- (c) the premises are water efficient for the purposes of section 166 during the period; and
- (d) the period includes part, but not all, of a period (the ***partial billing period***) specified, or to be specified, in a water consumption charges document.

*Examples—*

- The agreement takes effect on 1 February, part-way through the period of 1 January to 31 March specified in a water consumption charges document. The partial billing period is 1 February to 31 March.
- The agreement terminates on 1 November, part-way through the period of 1 October to 31 December specified in a water consumption charges document. The partial billing period is 1 October to 1 November.

(2) The tenant may not be required to pay an amount for water consumption charges for the premises for the partial billing period unless—

- (a) a meter reading for the premises is taken at the following time and recorded in a condition report under section 65 or 66—

- (i) if the partial billing period starts when the agreement takes effect—when the agreement takes effect;
  - (ii) if the partial billing period ends when the agreement is terminated—when the tenant hands over vacant possession of the premises; and
- (b) the amount is calculated based on—
  - (i) a reasonable estimate of the volume of water supplied to the premises during the partial billing period having regard to the meter reading mentioned in paragraph (a); and
  - (ii) the rate used to calculate the water consumption charge stated in the most recent water consumption charges document.
- (3) Section 166(6) to (9) does not apply in relation to the water consumption charges document that includes the partial billing period.
- (4) In this section—

***water consumption charge*** see section 166(13).

***water consumption charges document*** means a document, issued to the lessor by the relevant water supplier, stating the amount of water consumption charges for the premises that are payable to the supplier.

## **167 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 a regulation—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, the premises.
- (4) If the tenant is required to pay an amount for outgoings to which subsection (3)(b) applies, the lessor must give the tenant a copy of a document issued by the relevant supply authority showing the amount charged by the authority for the thing, service or facility.
- (5) The lessor must comply with subsection (4) within 4 weeks after the lessor receives the document.
- (6) Despite subsection (2), the tenant is not required to pay an amount for the outgoings to which subsection (3)(b) applies if the tenant has not received the document mentioned in subsection (4).

## **168 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.

## **169 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.

- (4) 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.
- (5) 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.

## **Division 2                      Rooming accommodation agreements**

### **170      Charge for utility service**

- (1) This section applies to the amounts payable by a provider, as the owner or occupier of rental premises, for utility services provided to the premises.
- (2) A provision of a rooming accommodation agreement requiring the resident to pay an amount for a utility service is of no effect unless—
  - (a) the resident's room is separately metered for the utility service by an appliance approved by the supplying entity; and

- (b) the amount the resident is required to pay is not more than the amount that the provider is charged by the supplying entity for the utility service used by the resident.
- (3) If the rooming accommodation agreement requires the resident to pay an amount for a utility service, the provider must give the resident a copy of a document issued by the supplying entity showing the amount charged by the entity for the utility service.
- (4) The provider must comply with subsection (3) within 4 weeks after the provider receives the document.
- (5) Despite subsection (2), the resident is not required to pay an amount for the utility service if the resident has not received the document mentioned in subsection (3).
- (6) In this section—  
*utility service*, provided to premises, means—
  - (a) electricity, gas or water supplied to the premises; or
  - (b) water fit for human consumption supplied to the premises by delivery by means of a vehicle; or
  - (c) another service supplied to the premises, or facility used at the premises, prescribed under a regulation.

## Part 6                      Penalties and premiums for residential tenancy agreements and rooming accommodation agreements

### Division 1                Residential tenancy agreements

#### 171      Supply of goods and services

- (1) A person (the *proposer*) must not require another person (the *prospective tenant*) to agree to buy goods or services from the

[s 172]

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proposer or someone else as a condition of the prospective tenant being accepted as the tenant under an agreement.

Maximum penalty—20 penalty units.

- (2) 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.

- (3) This section does not apply to—
- (a) a requirement about a service charge; or
  - (b) a condition of an approval to keep a pet at the premises if the condition—
    - (i) requires the carpets at the premises to be cleaned, or the premises to be fumigated, at the end of the tenancy; and
    - (ii) complies with section 184F; and
    - (iii) does not require the tenant to buy cleaning or fumigation services from a particular person or business.

## **172 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 other amount required or permitted to be paid under this Act.

Maximum penalty—40 penalty units.

## **173 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.
- (2) However, subsection (1) does not apply to a term of an agreement requiring the tenant to pay the costs incurred by the lessor in reletting the premises if the term complies with section 357A.
- (3) 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 for subsection (3)—20 penalty units.

## **174 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.

## **175 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.

## **Division 2                      Rooming accommodation agreements**

### **176 Supply of goods and services**

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

Maximum penalty—20 penalty units.

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

Maximum penalty—20 penalty units.

- (3) This section does not apply to—
- (a) a requirement about a food service, personal care service or utility service; or

- (b) a condition of an approval to keep a pet in a resident's room if the condition—
  - (i) requires the carpets in the room to be cleaned, or the room to be fumigated, at the end of a rooming accommodation agreement; and
  - (ii) complies with section 256F; and
  - (iii) does not require the resident to buy cleaning or fumigation services from a particular person or business.

- (4) In this section—

***utility service***, provided to premises, means—

- (a) electricity, gas or water supplied to the premises; or
- (b) water fit for human consumption supplied to the premises by delivery by means of a vehicle; or
- (c) another service supplied to the premises, or facility used at the premises, prescribed under a regulation.

## **177 Incentive amounts prohibited**

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

Maximum penalty—40 penalty units.

## **178 Certain terms about penalties and other payments void**

- (1) A term of an agreement is void to the extent it provides that, if the resident breaches the agreement or this or another Act, the resident 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.
- (2) However, subsection (1) does not apply to a term of an agreement requiring the resident to pay the costs incurred by the provider in reletting the resident's room if the term complies with section 396A.
- (3) A provider or provider's agent must not require a resident to enter into an agreement containing a term that is void under subsection (1).

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

## **179 Terms about rent reductions etc.**

- (1) This section applies to a term of an agreement providing that, if the resident does not breach the agreement or this or another Act—
  - (a) the rent will, or may be, reduced; or
  - (b) the resident 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 rooming accommodation agreement providing only that, if the resident pays the rent before or when it is payable—
  - (a) the rent will, or may be, reduced; or
  - (b) the resident 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 resident 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.



## Part 7 Tenancy guarantees

### 180 Tenancy guarantees

- (1) A ***tenancy guarantee***, for a residential tenancy agreement between a lessor and tenant, is an undertaking to pay up to a stated amount to the lessor if—
  - (a) loss or expense is incurred by the lessor because of a breach of the agreement by the tenant; and
  - (b) the amount of any rental bond provided by the tenant is not sufficient to cover the amount owing to the lessor for the breach.
- (2) A tenancy guarantee is not—
  - (a) a rental bond; or
  - (b) financial protection under section 119; or
  - (c) an amount for entering into, extending or continuing an agreement under section 172.
- (3) The department or a community housing guarantor may give a tenancy guarantee for a residential tenancy agreement between a lessor and a tenant.
- (4) In this section—

***community housing guarantor***, for the giving of a tenancy guarantee for a residential tenancy agreement, means a community housing provider for the residential tenancy under the agreement who has been approved by the chief executive of the department to give the tenancy guarantee.

***department*** means the department in which the *Housing Act 2003* is administered.

## **Chapter 3      Rights and obligations of parties for residential tenancies**

### **Part 1              Occupation and use of the premises**

#### **181      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.

#### **182      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.

#### **183      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.

## 184 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 1A Pets

### Division 1 Preliminary

#### 184A Definitions for part

In this part—

***pet***—

- (a) means—
  - (i) a domesticated animal; or
  - (ii) an animal that is dependent on a person for the provision of food or shelter; but
- (b) does not include—
  - (i) a working dog; or
  - (ii) an animal prescribed by regulation not to be a pet.

***working dog*** means—

- (a) an assistance dog, guide dog or hearing dog under the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4; or
- (b) a corrective services dog under the *Corrective Services Act 2006*, schedule 4; or
- (c) a police dog under the *Police Powers and Responsibilities Act 2000*, schedule 6.

## **Division 2                      Keeping pets and other animals at premises**

### **184B   Keeping pets and other animals at premises**

- (1) The tenant may keep a pet or other animal at the premises only with the approval of the lessor.
- (2) However, the tenant may keep a working dog at the premises without the lessor's approval.
- (3) An authorisation to keep a pet, working dog or other animal at premises is subject to a body corporate by-law, park rule or other law relating to keeping animals at the premises.

*Examples—*

- 1 The premises may be subject to a local law that limits the number or types of animals that may be kept at the premises.
- 2 The premises may be subject to a body corporate by-law that requires the tenant to obtain approval from the body corporate before keeping a pet at the premises.

### **184C   Tenant responsible for pets and other animals**

- (1) The tenant is responsible for all nuisance caused by a pet or other animal kept at the premises, including, for example, noise caused by the pet or other animal.
- (2) The tenant is responsible for repairing any damage to the premises or inclusions caused by the pet or other animal.
- (3) Damage to the premises or inclusions caused by the pet or other animal is not fair wear and tear for the purpose of section 188(4).

## **Division 3                      Approvals, refusals and conditions for keeping pets at premises**

### **184D Request for approval to keep pet at premises**

- (1) The tenant may request, in the approved form, the lessor's approval for the tenant to keep a stated pet at the premises.
- (2) The lessor must respond to the tenant's request within 14 days after receiving the request.
- (3) The lessor's response must be in writing and state—
  - (a) whether the lessor approves or refuses the tenant's request; and
  - (b) if the lessor approves the tenant's request subject to conditions—the conditions of the approval; and
  - (c) if the lessor refuses the tenant's request—
    - (i) the grounds for the refusal; and
    - (ii) the reasons the lessor believes the grounds for the refusal apply to the request.

*Note—*

See section 184E for the permitted grounds for refusal.

- (4) The lessor is taken to approve the keeping of the pet at the premises if—
  - (a) the lessor does not comply with subsection (2); or
  - (b) the lessor's response does not comply with subsection (3).
- (5) To remove any doubt, it is declared that a lessor's refusal of a tenant's request on the grounds that 'no pets are allowed' is not enough to comply with subsection (3)(c).

### **184E Grounds for refusing pets being kept at premises**

- (1) The following are the only grounds for a lessor to refuse a tenant's request for approval to keep a stated pet at the premises—
  - (a) keeping the pet would exceed a reasonable number of animals being kept at the premises;
  - (b) the premises are unsuitable for keeping the pet because of a lack of appropriate fencing, open space or another thing necessary to humanely accommodate the pet;
  - (c) keeping the pet is likely to cause damage to the premises or inclusions that could not practicably be repaired for a cost that is less than the amount of the rental bond for the premises;
  - (d) keeping the pet would pose an unacceptable risk to the health and safety of a person, including, for example, because the pet is venomous;
  - (e) keeping the pet would contravene a law;
  - (f) keeping the pet would contravene a body corporate by-law or park rule applying to the premises;
  - (g) the tenant has not agreed to the reasonable conditions proposed by the lessor for approval to keep the pet;
  - (h) the animal stated in the request is not a pet;
  - (i) if the premises is a moveable dwelling premises—keeping the pet would contravene a condition of a licence applying to the premises;
  - (j) another ground prescribed by regulation.
- (2) Subsection (1)(g) applies only to conditions to which an approval may be subject under section 184F.

### **184F Conditions for approval to keep pet at premises**

- (1) The lessor's approval for the tenant to keep a pet at the premises may be subject to conditions if the conditions—
  - (a) relate only to keeping the pet at the premises; and

- (b) are reasonable having regard to the type of pet and the nature of the premises; and
  - (c) are stated in the written approval given to the tenant under section 184D(2).
- (2) Without limiting subsection (1)(b), the following conditions of the lessor's approval are taken to be reasonable—
  - (a) if the pet is not a type of pet ordinarily kept inside—a condition requiring the pet to be kept outside at the premises;
  - (b) if the pet is capable of carrying parasites that could infest the premises—a condition requiring the premises to be professionally fumigated at the end of the tenancy;
  - (c) if the pet is allowed inside the premises—a condition requiring carpets in the premises to be professionally cleaned at the end of the tenancy.
- (3) A condition of the lessor's approval for the tenant to keep a pet at the premises is void if the condition—
  - (a) would have the effect of the lessor contravening section 171 or 172; or
  - (b) would, as a term of a residential tenancy agreement, be void under section 173; or
  - (c) would increase the rent or rental bond payable by the tenant; or
  - (d) would require any form of security from the tenant.
- (4) For subsection (2), the premises are professionally fumigated, and carpets are professionally cleaned, if the fumigation and cleaning are done to a standard ordinarily achieved by businesses selling those services.

## **184G Continuation of authorisation to keep pet or working dog at premises**

- (1) This section applies if—

- (a) the lessor gives approval for the tenant to keep a pet at the premises; or

*Note—*

See section 184D(4) for circumstances in which a lessor is taken to have approved a pet being kept at the premises.

- (b) the tenant is authorised under section 184B(2) to keep a working dog at the premises.
- (2) The authorisation to keep the pet or working dog at the premises continues for the life of the pet or working dog and is not affected by any of the following matters—
- (a) the ending of a residential tenancy agreement, if the tenant continues occupying the premises under a new agreement;
  - (b) a change in the lessor or lessor's agent;
  - (c) for a working dog—the retirement of the dog from the service the dog provided as a working dog.

## **Part 2                      General standard of the premises**

### **185      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; and
  - (e) the premises and inclusions otherwise comply with any prescribed minimum housing standards applying to the premises or inclusions.
- (3) While the tenancy continues, the lessor—
- (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
  - (d) if the premises include a common area—must keep the area clean; and
  - (e) must ensure the premises and inclusions otherwise comply with any prescribed minimum housing standards applying to the premises or inclusions.

*Note—*

See section 217 for the tenant's obligations to notify the lessor about damage to premises and the need for repairs.

- (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—
    - (i) the State; or
    - (ii) the replacement lessor under a community housing provider tenancy agreement; 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.

## **186 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 facilities otherwise comply with any prescribed minimum housing standards applying to the facilities; and
  - (e) 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 must—
  - (a) keep the facilities clean; and
  - (b) maintain the facilities in a way that the facilities remain fit for the tenant to use; and
  - (c) maintain the facilities in good repair; and

- (d) ensure the facilities otherwise comply with any prescribed minimum housing standards applying to the facilities; and
- (e) ensure any law dealing with issues about the health or safety of persons using the facilities is complied with.

### **187 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—
  - (a) the premises are clean and are a fit site for a moveable dwelling; and
  - (b) the premises otherwise complies with any prescribed minimum housing standards applying to the premises.
- (3) While the tenancy continues, the lessor—
  - (a) must ensure—
    - (i) the premises remain a fit site for a moveable dwelling; and
    - (ii) the premises otherwise complies with any prescribed minimum housing standards applying to the premises; and
  - (b) may make any improvements to the premises the lessor considers appropriate.

### **188 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).

[s 189]

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- (2) The tenant must keep the premises and inclusions clean, having regard to their condition at the start of the tenancy.
- (3) The tenant must not maliciously damage, or allow someone else to maliciously damage, the premises or inclusions.
- (4) 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.

*Note—*

See section 217 for the tenant's obligations to notify the lessor about damage to premises and the need for repairs.

- (5) However, the tenant's obligations under this section do not apply to the extent the obligations would have the effect of requiring the tenant to repair, or compensate the lessor for, damage to the premises or inclusions caused by an act of domestic violence experienced by the tenant.

## **189 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.

## **190 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.

## **191 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—
  - (a) the lessor has failed to comply with the lessor's maintenance obligation under section 185(3) or 186(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**

## **192 Grounds for entry**

- (1) 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) if repairs or maintenance have been made or carried out under paragraph (b)—within 14 days after the completion of the repairs or maintenance, to inspect the repairs or maintenance; or

- (d) to comply with the *Fire Services Act 1990* in relation to smoke alarms; or
- (e) to comply with the *Electrical Safety Act 2002* in relation to approved safety switches; or
- (f) to show the premises to a prospective buyer or tenant; or
- (g) to allow a valuation of the premises to be carried out; or
- (h) if the lessor or agent believes, on reasonable grounds, the premises have been abandoned; or
- (i) if the lessor or agent has given the tenant a notice to remedy a breach of the agreement that is a significant breach—within 14 days after the end of the allowed remedy period, to inspect to ascertain whether the tenant has remedied the breach; or
- (j) if the tenant agrees; or
- (k) in an emergency; or
- (l) 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 under paragraph (k)—*

to make emergency repairs to the roof of the premises

(2) In this section—

***significant breach***, for a notice to remedy breach, means a breach relating to any of the following—

- (a) using the premises for an illegal purpose;
- (b) the number of occupants allowed to reside in the premises;
- (c) keeping an animal, other than a working dog, at the premises without the approval of the lessor;
- (d) another matter, if the reasonable cost of rectifying the matter exceeds 1 week's rent for the premises.

## 193 Notice of entry

- (1) The lessor or lessor's agent may enter the premises under section 192(1)(a) to (i) 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 192(1)(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 48 hours before entering the premises.

*Example for another entry under paragraph (c)(ii)—*

If the lessor or agent hands the tenant an entry notice at 2.30p.m. on a Tuesday, the lessor or agent may enter from 2.30p.m. on the Thursday.

- (2) An entry under section 192(1)(k) or (l) 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 192(1)(b), (d) or (e) 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 192(1)(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.

#### **194 Entry by lessor or lessor's agent with another person**

- (1) The lessor or lessor's agent may enter the premises with another person if it is necessary to achieve the purpose of entry under section 192.
- (2) Without limiting subsection (1), the lessor or agent may enter premises under section 192(1)(l) with a police officer.

#### **195 When lessor or lessor's agent may enter**

- (1) An entry under section 192(1)(a) to (i)—
  - (a) must be made at a reasonable time; and
  - (b) unless the tenant otherwise agrees, must not be made on—
    - (i) a Sunday or public holiday; or
    - (ii) another day after 6p.m. or before 8a.m.
- (2) However, for an entry under section 192(1)(b), (d) or (e), subsection (1)(b) does not apply if it is not practicable to comply with that provision 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.
- (3) Unless the tenant otherwise agrees, an entry under section 192(1)(a) may not be made less than 3 months after a previous entry by the lessor, or the renting or a secondary agent, under section 192(1)(a).
- (4) The lessor or lessor's agent may enter the premises under section 192(1)(f) only if a reasonable time has elapsed since a



previous entry by the lessor, or the renting or a secondary agent, under section 192(1)(f).

- (5) The lessor or lessor's agent may enter the premises under section 192(1)(j) only at a time agreed with the tenant.

### **195A When lessor or lessor's agent may enter—notice to leave or notice of intention to leave given**

- (1) This section applies if—
  - (a) a notice to leave the premises has been given by the lessor to the tenant; or
  - (b) a notice of intention to leave the premises has been given by the tenant to the lessor.
- (2) The lessor or lessor's agent must not enter the premises more than twice in a 7-day period.
- (3) However, subsection (2) does not prevent the lessor or lessor's agent from entering the premises under section 192(1)(d), (e) or (j) to (l).

### **196 Period for entry must be stated for entry by lessor and lessor's agent without another person**

- (1) This section applies to entry under section 192 by—
  - (a) the lessor or lessor's renting or selling agent; or
  - (b) both the lessor and lessor's renting or selling agent.
- (2) The lessor or agent—
  - (a) must state a period of up to 2 hours within which entry will happen (the *entry period*), in the entry notice under section 193; and
  - (b) may only enter within the entry period.
- (3) Subsection (2) applies only to the initial entry and does not prevent the lessor or lessor's agent remaining on the premises after the end of the entry period.

- (4) This section does not apply if another person is to accompany the lessor or lessor's renting or selling agent to achieve the purpose of entry under section 192.

*Example of another person—*

a tradesperson

- (5) Also, for an entry under section 192(1)(b), (d) or (e), subsection (2) does not apply if it is not practicable to comply with that provision 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.

## **197 Entry to show premises to a prospective tenant**

- (1) The lessor or lessor's agent may enter the premises under section 192(1)(f) to show the premises to a prospective tenant only if—
- (a) a notice to leave the premises is given to the tenant before, or when, the entry notice is given to the tenant; or
  - (b) a notice of intention to leave the premises has been given to the lessor by the tenant.
- (2) The lessor or agent must not allow a prospective tenant to enter the premises unless accompanied by the lessor or agent.
- (3) However, a lessor or agent may allow a prospective tenant to enter without being accompanied by the lessor or agent if the tenant agrees.

*Note—*

For an entry under section 192(1)(f), the lessor or agent is also required to give an entry notice to the tenant under section 193(1).

## **198 Entry to show premises to a prospective buyer**

- (1) The lessor or lessor's agent may enter the premises under section 192(1)(f) to show the premises to a prospective buyer only if—
  - (a) the lessor or agent gives the tenant a notice in the approved form of the lessor's intention to sell the premises before, or when, the entry notice for the first entry to the premises is given to the tenant; and
  - (b) for entry by a secondary agent, the secondary agent gives the renting agent—
    - (i) a copy of the notice of intention to sell given under paragraph (a) before, or when, the entry notice for the first entry to the premises is given to the renting agent; and
    - (ii) unless otherwise agreed with the renting agent—an entry notice before each entry to show the premises to a prospective buyer.
- (2) Subsection (1)(a) applies whether or not the tenant has agreed to the entry under section 192(1)(j).
- (3) The lessor or agent must not allow a prospective buyer to enter the premises unless accompanied by the lessor or agent.
- (4) However, a lessor or agent may allow a prospective buyer to enter without being accompanied by the lessor or agent if the tenant agrees.

*Note—*

For an entry under section 192(1)(f), the lessor or agent is also required to give an entry notice to the tenant under section 193(1).

## **199 Entry by secondary agents generally**

- (1) A secondary agent of the lessor may enter the premises under section 192(1)(a) to (e) and (g) to (i) 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 192(1)(h) the tenant does not respond to the entry notice within a reasonable time.
- (2) However, for an entry under section 192(1)(b), (d) or (e), subsection (1) does not apply if it is not practicable to comply with that provision 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.

## **200 Rules of entry**

The rights and obligations under sections 192 to 199 about the entry of premises are called the *rules of entry*.

## **201 Entry by lessor or lessor's agent 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 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 agent may enter the premises only under the rules as changed.

## **202 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.

## **203 Lessor or lessor's agent must not use photo or image showing tenant's possessions in advertisement**

Unless the lessor or lessor's agent has the tenant's written consent, the lessor or agent must not use a photo or other image of the premises in an advertisement if the photo or image shows something belonging to the tenant.

Maximum penalty—20 penalty units.

## **204 Lessor or lessor's agent must not conduct open house or on-site auction without tenant's consent**

- (1) The lessor or lessor's agent for premises must not do either of the following without the tenant's written consent—
  - (a) conduct an auction, or allow an auction to be conducted, on the premises;
  - (b) conduct an open house, or allow an open house to be conducted, on the premises.

Maximum penalty—20 penalty units.

- (2) In this section—

*open house* means an advertised period during which premises that are for sale or rent may be entered and inspected by prospective buyers or tenants generally.

## Part 4                      **Personal details of the parties and agents**

### **205      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 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)—

- (a) applies only if the lessor or lessor's agent asks the tenant in writing to state the new address; but
- (b) does not apply to a tenant who, after experiencing domestic violence, ended the residential tenancy agreement, or the tenant's interest in the residential tenancy agreement, under chapter 5, part 1, division 3, subdivision 2A.

### **206      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 a regulation (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 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.

- (4) In this section—

*address for service* means—

- (a) for an individual—the individual's place of residence or place of business; or
- (b) for a body corporate—the body corporate's registered office or place of business.

## **Part 5                      The dwelling**

### **Division 1                Fixtures and structural changes**

#### **Subdivision 1          Fixtures and structural changes generally**

##### **206A   Application of subdivision**

- (1) This subdivision applies in relation to attaching a fixture, or making a structural change, to premises.

- (2) However, this subdivision does not apply if subdivision 2 applies in relation to the attachment of the fixture or the making of the structural change.

## **207 Process for approval to attach fixtures or make structural changes—body corporate approval**

- (1) This section applies to premises that are part of a body corporate scheme if a body corporate law or a body corporate by-law requires approval of the body corporate for the attachment of a fixture, or the making of a structural change, to the premises.
- (2) A tenant may give the lessor a request, in the approved form, for approval to attach a fixture, or make a structural change, to the premises.
- (3) The lessor must—
  - (a) decide the tenant's request within 28 days after receiving the request; and
  - (b) advise the tenant of the lessor's decision; and
  - (c) if the lessor approves the request—state that the lessor's approval is subject to agreement by the body corporate.
- (4) If the lessor approves the request, the lessor must give the request to the body corporate within 28 days after receiving the request.
- (5) The lessor must advise the tenant as soon as reasonably practicable of the body corporate's decision about the request.
- (6) If the lessor and body corporate agree to the request, the tenant may attach the fixture, or make the structural change, to the premises—
  - (a) in accordance with the lessor's agreement; and
  - (b) subject to any conditions of the agreement given by the lessor or body corporate.

*Note—*

For the lessor's approval and conditions, see also section 209.



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**208 Process for approval to attach fixtures and make structural changes—lessor approval**

- (1) This section applies if section 207 does not apply in relation to the attaching of a fixture, or the making of a structural change, to premises.
- (2) The tenant may give the lessor a request, in the approved form, for approval to attach a fixture, or make a structural change, to the premises.
- (3) The lessor—
  - (a) must decide the tenant's request within—
    - (i) 28 days after receiving the request; or
    - (ii) if agreed to by the tenant and lessor—a longer period; and
  - (b) may either agree, or refuse to agree, to the request; and
  - (c) if the request is agreed to—may give the agreement subject to conditions.

*Note—*

See also section 209 in relation to the lessor's agreement.

- (4) The lessor must not act unreasonably in refusing the request.
- (5) The tenant may attach the fixture, or make the structural change, to the premises in accordance with the lessor's agreement.

*Note—*

See also section 209A.

- (6) Also, the tenant may attach the fixture or make the structural change in accordance with an order of a tribunal.

*Note—*

See subdivision 3 for an order by a tribunal about attaching fixtures, or making structural changes, to premises.

## **209 Agreement about fixtures and structural changes**

- (1) For sections 207 and 208, a lessor's agreement in relation to attaching a fixture, or making a structural change, to premises must—
  - (a) be in writing; and
  - (b) describe the nature of the fixture or structural change; and
  - (c) state any conditions of the agreement.
- (2) For an agreement about attaching a fixture to premises, the conditions may include terms about—
  - (a) maintenance obligations if the fixture is attached by the tenant; and
  - (b) whether the tenant may remove the fixture; and
  - (c) if removal of the fixture by the tenant is allowed—
    - (i) when and how the removal may be performed; and
    - (ii) that the tenant is obliged to repair any damage caused to the premises in removing the fixture or to compensate the lessor for the lessor's reasonable costs of repairing the damage; and
  - (d) if removal of the fixture by the tenant is not allowed—that the lessor is obliged to compensate the tenant for any improvement the fixture makes to the premises.

### **209A Attaching fixture or making structural change without lessor's agreement**

- (1) This section applies if—
  - (a) a tenant attaches a fixture, or makes a structural change, to premises; and
  - (b) under section 208, the lessor's agreement to the attachment of the fixture, or the making of the structural change, is required; and

- (c) the tenant does not attach the fixture, or make the structural change, in accordance with the lessor's agreement.
- (2) The lessor may—
  - (a) waive the breach; and
  - (b) treat the fixture or structural change as an improvement to the premises for the lessor's benefit.
- (3) The lessor may take the action under subsection (2) instead of taking action for a breach of a term of the residential tenancy agreement by the tenant.

## **Subdivision 2      Fixtures and structural changes for safety, security or accessibility**

### **209B    Attaching fixtures or making structural changes for safety, security or accessibility**

A fixture may be attached, or a structural change may be made, to premises if the fixture or structural change—

- (a) is necessary for a tenant's safety, security or accessibility; and
- (b) is attached or made in the circumstances, and in accordance with any requirements, prescribed by regulation.

## **Subdivision 3      Tribunal orders about fixtures and structural changes**

### **209C    Tribunal order about attaching fixtures or making structural changes**

- (1) This section applies if—

- (a) a tenant makes a request to attach a fixture, or make a structural change, to premises under subdivision 1 or 2; and
  - (b) the request is refused.
- (2) The tenant may apply to the tribunal for an order about the attachment of the fixture, or the making of the structural change, to the premises.
- (3) The tribunal may make any order about the attachment of the fixture or making of the structural change that the tribunal considers appropriate.
- (4) In deciding the application, the tribunal may have regard to the following—
  - (a) the potential for the proposed fixture or structural change to improve the safety, security and accessibility of the premises for the tenant;
  - (b) the likelihood that the proposed fixture or structural change can be removed at the end of the tenancy or that the premises can be restored to the condition the premises were in at the beginning of the tenancy;
  - (c) whether the proposed fixture or structural change would add value to the premises and whether the lessor may treat the fixture or structural change as an improvement to the premises;
  - (d) whether building approvals are required for the proposed fixture or structural change;
  - (e) whether the proposed fixture or structural change would need to be installed by a qualified tradesperson;
  - (f) if the premises are part of a body corporate scheme—whether body corporate approval is required for the fixture to be attached or for the structural change to be made;
  - (g) for a proposed structural change—the extent to which the proposed structural change will modify the premises;

- (h) any other matter the tribunal considers relevant.

## Division 2                      Locks and keys

### 210      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.

## **211 Changing locks**

- (1) The lessor or tenant may change a lock at the premises only if—
  - (a) the other party to the residential tenancy agreement agrees to the change; or
  - (b) the lessor or tenant has a reasonable excuse for making the change; or
  - (c) the lessor or tenant believes the change is necessary because of an emergency; or
  - (d) the lock is changed to comply with an order of the tribunal.
- (2) However, the tenant may also change a lock at the premises if the tenant—
  - (a) believes the change is necessary to protect the tenant or another occupant of the premises from domestic violence; and
  - (b) engages a locksmith or other qualified tradesperson to change the lock.
- (3) If the lessor or tenant changes a lock, the lessor or tenant must give the other party to the residential tenancy agreement a key for the changed lock, unless—
  - (a) the other party agrees to not being given the key; or
  - (b) a tribunal orders that the key not be given to the other party.
- (4) If the tenant changes a lock under subsection (2) and gives the lessor a key for the changed lock, the lessor must not give a key for the changed lock to any person other than the tenant without the tenant's agreement or a reasonable excuse.

Maximum penalty—50 penalty units.

- (5) The right of the lessor or tenant to change a lock at the premises under this section is subject to a body corporate law or a body corporate by-law that applies to the premises.

## **212 Agreement about changing locks**

The lessor or tenant must not act unreasonably in failing to agree to the change of a lock.

## **213 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;
  - (b) an order requiring the lessor to carry out stated maintenance of a lock;
  - (c) an order authorising the lessor or tenant to change a lock;
  - (d) an order that the lessor or tenant is not required to give to the other party a key to a lock;
  - (e) 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 (c), 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

### 214      **Meaning of *emergency repairs***

- (1) *Emergency repairs* are works needed to repair any of the following—
- (a) a burst water service or a serious water service leak;
  - (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 tenant of premises;
  - (l) a serious fault in a staircase, lift or other common area of premises that unduly inconveniences a tenant in gaining access to, or using, the premises.
- (2) Also, *emergency repairs* are works needed for the premises or inclusions to comply with the prescribed minimum housing standards.

### 215      **Meaning of *routine repairs***

*Routine repairs* are repairs that are not emergency repairs.



## **216 Nominated repairer for emergency repairs**

- (1) The lessor must 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 must be stated in the residential tenancy agreement or a written notice given by the lessor to the tenant.
- (3) The residential tenancy agreement or notice must state—
  - (a) the name and telephone number of the nominated repairer; and
  - (b) 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 or the telephone number of the nominated repairer.
- (5) This section does not apply if—
  - (a) the lessor has given the tenant a telephone number of the lessor; and
  - (b) under the residential tenancy agreement, the lessor is to arrange for emergency repairs to be made to the premises or inclusions.

## **217 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.

[s 218]

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- (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.
- (5) This section does not apply to a tenant for damage caused by an act of domestic violence experienced by the tenant.

## **218 Tenant may arrange for emergency repairs to be made or may apply to the tribunal for an order about the repairs**

- (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—

- (a) arrange for a suitably qualified person to make the repairs; or
- (b) apply to a tribunal under section 221 for orders about the repairs.

## **219 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 residential tenancy agreement for 4 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

## **219A Lessor's agent may arrange for emergency repairs to be made**

- (1) The lessor's agent may arrange for a suitably qualified person to carry out emergency repairs to the premises or inclusions if the repairs are not likely to cost more than the emergency repair limit for the residential tenancy agreement.

- (2) If the lessor's agent acts under subsection (1) and pays for the emergency repairs, the agent may make deductions from payments of rent, up to the cost of the repairs, before disbursement of the payments to the lessor's account.
- (3) If the lessor's agent acts under subsection (1) or (2), the agent must inform the lessor of the action as soon as practicable after taking it.
- (4) In this section—  
*emergency repair limit*, for a residential tenancy agreement, means an amount equal to the amount payable under the agreement for 4 weeks rent.

## **220 Orders of tribunal about reimbursement or payment for emergency repairs**

- (1) This section applies if the tenant makes a requirement of the lessor under section 219 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.

*Examples of appropriate documents for subsection (5)(a)—*

invoices, accounts and receipts

- (6) If an application is made under subsection (2) or (3), a tribunal or registrar may make any order or give any directions about the reimbursement or payment the tribunal or registrar considers appropriate in all the circumstances of the case.
- (7) In deciding an application under subsection (2) or (3), the tribunal or registrar may have regard to—
  - (a) whether the tenant obtained a number of quotations for the repairs; and
  - (b) whether the repairs were necessary because of a breach of a term of the agreement by the tenant.
- (8) Subsection (7) does not limit the issues to which the tribunal or registrar may have regard.

## 221 Application for repair order

- (1) The tenant, or a representative entity, may apply to the tribunal for an order (a ***repair order***) about repairs to the premises or inclusions if—
  - (a) the premises or inclusions need repair; and
  - (b) for routine repairs—
    - (i) the tenant has informed the lessor or lessor's agent under section 217 of the need for the repair; and
    - (ii) the repair was not made within a reasonable time after the lessor or lessor's agent was informed by the tenant of the need for the repair; and
  - (c) for emergency repairs—
    - (i) the tenant has been unable to notify the lessor or nominated repairer of the need for the repair; or

- (ii) the repair was not made within a reasonable time after the tenant gave the lessor or nominated repairer notice of the need for the repair.
- (2) However, the representative entity may not apply for the repair order if—
  - (a) the tenant does not consent to the entity applying for the order; or
  - (b) the tenant and entity do not agree on the order to be sought.
- (3) This section does not apply for a short tenancy (moveable dwelling).

## **221A Granting repair order**

- (1) The tribunal may grant an application for a repair order if the tribunal is satisfied the application is made under section 221.
- (2) In considering the application, the tribunal—
  - (a) must consider—
    - (i) the conduct of the lessor and lessor’s agent; and
    - (ii) the risk of injury the damage is likely to cause a person at the premises; and
    - (iii) the loss of amenity caused by the damage; and
  - (b) may consider any other matter the tribunal considers relevant.
- (3) In granting the repair order, the tribunal may—
  - (a) make any order, or give any directions, about the repairs the tribunal considers appropriate in the circumstances; or
  - (b) if the premises is vacant—make an order that the premises not be occupied under a residential tenancy agreement until stated repairs are completed.
- (4) Without limiting subsection (3), the tribunal may make an order about 1 or more of the following matters—

- (a) what is, or is not, to be repaired;
  - (b) that the lessor must carry out the repairs by a stated date;
  - (c) that the tenant may arrange for a suitably qualified person to carry out the repairs for an amount decided by the tribunal;
  - (d) who must pay for the repairs;
  - (e) that the tenant may pay a reduced rent until the repairs are carried out to the standard decided by the tribunal;
  - (f) that the lessor must pay an amount to the tenant as compensation for loss of amenity;
  - (g) that a suitably qualified person must assess the need for the repairs or inspect the premises or inclusions;
  - (h) that the residential tenancy agreement ends if the repairs are not completed by a stated date.
- (5) Until a repair order is complied with, the repair order—
- (a) continues to apply in relation to the premises; and
  - (b) does not end with any particular residential tenancy agreement.
- (6) The tribunal must give the authority a copy of a repair order made under this section.

## **221B Extension of time to comply with repair order**

- (1) The lessor may apply to the tribunal for an extension of time to comply with a repair order applying to the lessor.
- (2) The tribunal may grant the application if the tribunal is satisfied the lessor is unable to complete the ordered repairs before the required time for any of the following reasons—
  - (a) hardship;
  - (b) a shortage of a material necessary to make the repairs;
  - (c) the remote location of the premises is causing the lessor difficulty in—

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- (i) being supplied with a material necessary to make the repairs; or
  - (ii) engaging a suitably qualified person to make the repairs.
- (3) The tribunal must notify the authority of an extension granted under this section.

### **221C Offence to contravene repair order**

- (1) A person must comply with a repair order to the extent the order applies to the person, unless the person has a reasonable excuse.

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 week the offence continues after a conviction against subsection (1)—5 penalty units.

## **Part 6 Additional provisions for moveable dwelling premises**

### **Division 1 Application of part**

#### **222 Application of pt 6**

This part applies only if premises under an agreement are moveable dwelling premises in a moveable dwelling park.



## Division 2 Relocation

### 223 Notice to relocate

- (1) The lessor may give a notice (*notice to relocate*) to the tenant requiring the tenant to relocate to another site in the moveable dwelling park within a stated period.
- (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.

*Note—*

See section 283 in relation to a failure of the tenant to comply with the notice to relocate.

## **224 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
- (b) a tribunal orders the tenant to relocate to the site mentioned in the notice.

Maximum penalty—20 penalty units.

## **225 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.

## **226 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).

## **227 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).

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- (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 notice to relocate;
    - (b) an order setting aside the notice to relocate.

## **Division 3                      Park rules**

### **228      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 a regulation.

### **229      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.

## **230 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.

## **231 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*).

## **232 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.

## **233 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.

## **234 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.

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- (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.

## **235 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
  - (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.

## **236 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.



## **Part 7                      Change of lessor or tenant**

### **Division 1                Transfer or subletting by tenant**

#### **237      Tenant's action subject to lessor's unqualified discretion**

- (1) This section applies to an agreement if—
  - (a) the lessor is the State; or
  - (b) the lessor is an entity receiving financial or other assistance from the State to supply rented accommodation to persons; or
  - (c) the tenant's right to occupy the premises is given under the tenant's terms of employment; or
  - (d) the tenancy is a short tenancy (moveable dwelling).
- (2) The tenant may transfer the whole or a part of the tenant's interest under the agreement, or sublet the premises, only if the lessor agrees in writing to the transfer or subletting.

#### **238      Tenant's action subject to lessor's qualified discretion**

- (1) This section applies to an agreement only if section 237 does not apply to the agreement.
- (2) The tenant may transfer all or a part of the tenant's interest under the agreement, or sublet the premises, only if—
  - (a) the lessor agrees in writing to the transfer or subletting; or
  - (b) the transfer or subletting is made under an order of a tribunal.
- (3) The lessor must act reasonably in failing to agree to the transfer or subletting.
- (4) The lessor is taken to act unreasonably in failing to agree to the transfer or subletting if the lessor acts in a capricious or retaliatory way.

## **239 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 238, 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 (3) does not limit the issues to which the tribunal may have regard.

## **240 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.

## **241 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 a regulation) 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—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

### 242      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 *buyer*)—give written notice of the tenancy to the buyer; and
  - (b) if the lessor transfers the interest subject to the tenancy—give written notice of the transfer (the *attornment notice*) to the tenant.

- (2) The attornment notice operates as an attornment as tenant to the buyer 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 buyer's name and address; and
- (b) directs the tenant to make all future payments of rent to the buyer.

*Note—*

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

- (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**

### **243      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—

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- (a) when making another application to, or in a proceeding before, the tribunal; or
  - (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.

*Example of an order 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.

## **244 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.

## **245 Injury to domestic associate**

- (1) This section applies to—
- (a) the domestic associate of the tenant occupying the premises with the tenant; and
  - (b) a cotenant whose domestic associate is the other, or another, cotenant.
- (2) The person may apply to a tribunal for an order to be recognised as the sole tenant, or a cotenant, under the agreement instead of the person's domestic associate because the person's domestic associate has committed 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 domestic associate;
  - (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 domestic associate 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 domestic associate
  - 3 an order that any other person must not list the person's personal information in a tenancy database under section 459
- (7) A person in whose favour an order is made under subsection (3) is taken to be the sole 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.
- (9) In this section—  
***domestic associate*** means a person in any of the following relationships—
- (a) an intimate personal relationship;
  - (b) a family relationship;
  - (c) an informal care relationship.
- (10) A term used in subsection (9)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.

## 246 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.

## Part 8                      Retaliation

### 246A Retaliatory action taken against tenant

- (1) This section applies if—
  - (a) any of the following apply—
    - (i) the tenant, or a representative entity, takes action to enforce the tenant's rights, including, for example, by—
      - (A) giving the lessor a notice to remedy breach; or
      - (B) requesting repairs or maintenance to the premises or inclusions; or



- (C) requiring the lessor to reimburse the tenant for an amount properly incurred by the tenant for emergency repairs; or
  - (D) applying to the tribunal for an order under this Act;
- (ii) the lessor or lessor's agent knows the tenant or a representative entity has complained to the authority or another government entity about an act or omission of the lessor that adversely affected the tenant;
- (iii) an order of the tribunal is in force in relation to the lessor and tenant; and
- (b) after a matter mentioned in paragraph (a) arises, the lessor—
  - (i) gives the tenant a notice to remedy breach, other than a notice relating to a failure to pay rent for at least 7 days; or
  - (ii) increases the rent payable under the residential tenancy agreement; or
  - (iii) takes action to end the residential tenancy agreement; or
  - (iv) refuses to enter into a further residential tenancy agreement, at the end of the current agreement, with the tenant.
- (2) The tenant may apply to the tribunal for an order to set aside the lessor's action if the tenant reasonably believes the action was taken to intimidate or punish the tenant for a matter mentioned in subsection (1)(a).
- (3) The application must be made within 1 month after the tenant becomes aware of the lessor taking the action.
- (4) The tribunal may make the order sought if the tribunal is satisfied the lessor's action was likely to have been taken by the lessor to intimidate or punish the tenant for a matter mentioned in subsection (1)(a).

- (5) The tenant may form a belief under subsection (2), and the tribunal may be satisfied of a matter under subsection (4), whether or not—
- (a) the tenant was intimidated or suffered a punishment; or
  - (b) any person was convicted or found guilty of an offence against this Act.

## **Chapter 4            Rights and obligations of parties for rooming accommodation**

### **Part 1                Rights and obligations generally**

#### **Division 1            Provider's obligations**

##### **247    Provider's obligations generally**

- (1) The provider for rooming accommodation has the following obligations in relation to each resident in the rental premises—
- (a) to ensure the provider is not in breach of a law dealing with issues about the health or safety of persons using or entering the resident's room or common areas;
  - (b) to take reasonable steps to ensure the resident—
    - (i) always has access to the resident's room and to bathroom and toilet facilities; and
    - (ii) has reasonable access to any other common areas;

- (c) to take reasonable steps to ensure the security of the resident's room and the resident's personal property in the room;
- (d) to maintain the resident's room and common areas in a way that the room and areas remain fit for the resident to live in;
- (e) to take reasonable steps to ensure the resident's room and common areas and facilities provided in the room and areas—
  - (i) are kept safe and in good repair; and
  - (ii) subject to any agreement with the resident about cleaning the resident's room or common areas or facilities—are kept clean;
- (f) not to unreasonably restrict the resident's guests in visiting the resident;
- (g) to ensure that the times during which the provider, or an agent of the provider, is available to be contacted by the resident are reasonable, having regard to all the circumstances including the services being provided to the resident under the rooming accommodation agreement;

*Note—*

Under section 72, these and other obligations under this part are taken to be included as terms of the rooming accommodation agreement.

- (h) to ensure the rental premises and inclusions otherwise comply with any prescribed minimum housing standards for the rental premises or inclusions.
- (2) For subsection (1)(e)(ii), an agreement about cleaning common areas may be made only for a common area used by the resident and a minority of other residents of the provider.

*Example for subsection (2)—*

Four residents have individual rooms opening out onto a living area which is available for use only by those residents. The provider and the 4 residents may agree that the cleaning of the living area is to be done by the 4 residents.

## **248 Provider's or agent's name and other details**

- (1) On or before the day the resident starts occupying the premises, the provider or provider's agent must give a written notice to the resident stating—
  - (a) the provider's name and address for service; or
  - (b) if the provider has an agent who is authorised to stand in the provider's place in a proceeding prescribed under a regulation (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 provider or provider's agent must give written notice of the change to the resident 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 resident under this section, the agent stands in the provider's place for a prescribed proceeding and, for example—
  - (a) the proceeding may be taken against the agent as if the agent were the provider; and
  - (b) a tribunal may make an order against the agent as if the agent were the provider; and
  - (c) settlement may be made with the agent as if the agent were the provider.
- (4) In this section—

***address for service*** means—

  - (a) for an individual—the individual's place of residence or place of business; or
  - (b) for a body corporate—the body corporate's registered office or place of business.

## 249 Quiet enjoyment

- (1) The provider must take reasonable steps to ensure the resident has quiet enjoyment of the resident's room and common areas.
- (2) The provider or provider's agent must not interfere with the reasonable peace, comfort or privacy of the resident in using the resident's room and common areas.

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

## Division 2 Locks and keys

### 250 Supply of locks and keys

- (1) The provider must supply and maintain the locks that are necessary to ensure the resident's room is reasonably secure.
- (2) The provider must give the resident a key for each lock that secures entry to the following—
  - (a) the resident's room;
  - (b) a building or building within which the resident's room and common areas are situated.
- (3) The resident must not make a copy of a key without the provider's permission.
- (4) The resident must not tamper with a door lock in the premises.
- (5) In this section—

**resident** means a person named in a rooming accommodation agreement as a resident.

### 251 Changing locks

- (1) The resident may request the provider to change or repair a lock that secures entry to the resident's room if the resident reasonably believes there is the likelihood of—
  - (a) risk to the resident's safety; or

- (b) theft of, or damage to, the resident's belongings.
- (2) The provider must not act unreasonably in failing to agree to change or repair the lock.
- (3) Also, the provider must change or repair the lock if the request states it is made for the purpose of protecting the resident from domestic violence.
- (4) If the provider changes a lock under subsection (3), the provider must not give a key for the changed lock to any person other than the resident without the resident's agreement or a reasonable excuse.

Maximum penalty—50 penalty units.

## **252 Application to tribunal about lock or key**

- (1) A provider or resident may apply to the tribunal for an order relating to a lock or key mentioned in section 250.
- (2) The tribunal may make any of the following orders—
  - (a) an order requiring the provider to supply a lock, or a lock of a particular kind;
  - (b) an order requiring the provider to carry out stated maintenance of a lock;
  - (c) an order authorising the provider or resident to change a lock;
  - (d) an order that the provider or resident is not required to give to the other party a key to a lock;
  - (e) an order requiring the provider or resident to give to the other party a key to a lock.
- (3) In making an order mentioned in subsection (2)(a) or (c), the tribunal may have regard to the following—
  - (a) the likelihood of risk to the resident's personal safety or theft of, or damage to, the resident's belongings;
  - (b) the requirements of insurance companies for allowing the resident to obtain insurance for property of the resident 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                      Resident's obligations**

### **253      Resident's obligations generally**

- (1) A resident in rental premises has the following obligations—
  - (a) to use the resident's room and common areas only or mainly as a place of residence;
  - (b) not to use the resident's room or common areas for an illegal purpose;
  - (c) not to interfere with, and to ensure the resident's guests do not interfere with, the reasonable peace, comfort or privacy of another resident or another resident's appropriate use of the other resident's room or common areas;
  - (d) to pay the rent when it falls due;
  - (e) not to keep an animal on the rental premises without an authorisation under section 256B;
  - (f) not to intentionally or recklessly damage or destroy, or allow the resident's guests to intentionally or recklessly damage or destroy, any part of the rental premises or a facility in the rental premises;
  - (g) to keep the resident's room and inclusions clean, having regard to their condition at the start of the rooming accommodation agreement;

- (h) to maintain the resident's room in a condition that does not give rise to a fire or health hazard;

*Examples of fire hazard—*

- 1 allowing newspapers to build up in the resident's room
- 2 blocking access to the resident's room

- (i) at the end of the rooming accommodation agreement, to leave the resident's room and inclusions, as far as possible, in the same condition they were in at the start of the agreement, fair wear and tear excepted.

*Note—*

Under section 72, these and other obligations under this part are taken to be included as terms of the rooming accommodation agreement.

- (2) However, the resident's obligations under subsection (1) do not apply to the extent the obligations would have the effect of requiring the resident to repair, or compensate the provider for, damage to the resident's room or inclusions caused by an act of domestic violence experienced by the resident.

## **Division 4                      Fixtures and structural changes**

### **Subdivision 1              Fixtures and structural changes generally**

#### **253A    Application of subdivision**

- (1) This subdivision applies in relation to attaching a fixture, or making a structural change, to rental premises.
- (2) However, this subdivision does not apply if subdivision 2 applies in relation to the attachment of the fitting or the making of the structural change.



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**254 Process for approval to attach fixtures or make structural changes—body corporate approval**

- (1) This section applies to rental premises that are part of a body corporate scheme if a body corporate law or a body corporate by-law requires approval of the body corporate for the attachment of a fixture, or the making of a structural change, to the premises.
- (2) The resident may give the provider a request, in the approved form, for approval to attach a fixture, or make a structural change, to the rental premises.
- (3) The provider must—
  - (a) decide the resident's request within 28 days after receiving the request; and
  - (b) advise the resident of the provider's decision; and
  - (c) if the provider approves the request—state that the provider's approval is subject to agreement by the body corporate.
- (4) If the provider approves the request, the provider must give the request to the body corporate within 28 days after receiving the request.
- (5) The provider must advise the resident as soon as reasonably practicable of the body corporate's decision about the request.
- (6) If the provider and the body corporate agree to the request, the resident may attach the fixture, or make the structural change, to the premises—
  - (a) in accordance with the provider's agreement; and
  - (b) subject to any conditions of the agreement given by the provider or body corporate.

*Note—*

For the provider's approval and conditions, see also section 255A.

**255 Process for approval to attach fixtures and make structural changes—provider approval**

- (1) This section applies if section 254 does not apply in relation to the attaching of a fixture, or the making of a structural change, to premises.
- (2) The resident may give the provider a request, in the approved form, for approval to attach a fixture, or make a structural change, to the rental premises.
- (3) The provider—
  - (a) must decide the resident's request within—
    - (i) 28 days after receiving the request; or
    - (ii) if agreed to by the resident and provider—a longer period; and
  - (b) may either agree, or refuse to agree, to the request; and
  - (c) if the request is agreed to—may give the agreement subject to conditions.

*Note—*

See also section 255A in relation to the provider's agreement.

- (4) The provider must not act unreasonably in refusing the request.
- (5) The resident may attach the fixture, or make the structural change, to the rental premises in accordance with the provider's agreement.

*Note—*

See also section 256.

- (6) Also, the resident may attach the fixture or make the structural change in accordance with an order of a tribunal.

*Note—*

See subdivision 3 for an order by a tribunal about attaching fixtures, or making structural changes, to rental premises.

## **255A Agreement about fixtures and structural changes**

- (1) For sections 254 and 255, a provider's agreement in relation to attaching a fixture, or making a structural change, to rental premises must—
  - (a) be in writing; and
  - (b) describe the nature of the fixture or structural change; and
  - (c) state any conditions of the agreement.
- (2) For an agreement about attaching a fixture to premises, the conditions may include terms about—
  - (a) maintenance obligations if the fixture is attached by the resident; and
  - (b) whether the resident may remove the fixture; and
  - (c) if removal of the fixture by the resident is allowed—
    - (i) when and how the removal may be performed; and
    - (ii) that the resident is obliged to repair any damage caused to the rental premises in removing the fixture or to compensate the provider for the provider's reasonable costs of repairing the damage; and
  - (d) if removal of the fixture by the resident is not allowed—that the provider is obliged to compensate the resident for any improvement the fixture makes to the rental premises.

## **256 Attaching fixture or making structural change without provider's agreement**

- (1) This section applies if—
  - (a) a resident attaches a fixture, or makes a structural change, to rental premises; and
  - (b) under section 255, the provider's agreement to the attachment of the fixture, or the making of the structural change, is required; and

- (c) the resident does not attach the fixture, or make the structural change, in accordance with the provider's agreement.
- (2) The provider may—
  - (a) waive the breach; and
  - (b) treat the fixture or structural change as an improvement to the rental premises for the provider's benefit.
- (3) The provider may take the action under subsection (2) instead of taking action for a breach of a term of the rooming accommodation agreement by the resident.

## **Subdivision 2      Fixtures and structural changes for safety, security or accessibility**

### **256AA Attaching fixtures or making structural changes for safety, security or accessibility**

A fixture may be attached, or a structural change may be made, to rental premises if the fixture or structural change—

- (a) is necessary for a resident's safety, security or accessibility; and
- (b) is attached or made in the circumstances, and in accordance with any requirements, prescribed by regulation.

## **Subdivision 3      Tribunal orders about fixtures and structural changes**

### **256AB Tribunal order about attaching fixtures or making structural changes**

- (1) This section applies if—

- 
- (a) a resident makes a request to attach a fixture, or make a structural change, to rental premises under subdivision 1 or 2; and
  - (b) the request is refused.
- (2) The resident may apply to the tribunal for an order about the attachment of the fixture, or the making of the structural change, to the rental premises.
- (3) The tribunal may make any order about the attachment of the fixture or the making of the structural change that the tribunal considers appropriate.
- (4) In deciding the application, the tribunal may have regard to the following—
- (a) the potential for the proposed fixture or structural change to improve the safety, security and accessibility of the rental premises for the resident;
  - (b) the likelihood that the proposed fixture or structural change can be removed at the end of the agreement or that the rental premises can be restored to the condition the rental premises were in at the beginning of the agreement;
  - (c) whether the proposed fixture or structural change would add value to the rental premises and whether the provider may treat the fixture or structural change as an improvement to the rental premises;
  - (d) whether building approvals are required for the proposed fixture or structural change;
  - (e) whether the proposed fixture or structural change would need to be installed by a qualified tradesperson;
  - (f) if the rental premises are part of a body corporate scheme—whether body corporate approval is required for the fixture to be attached or for the structural change to be made;
  - (g) for a proposed structural change—the extent to which the proposed structural change will modify the rental premises;

- (h) any other matter the tribunal considers relevant.

## Part 1A                      Pets

### Division 1                      Preliminary

#### 256A Definitions for part

In this part—

***pet***—

- (a) means—
  - (i) a domesticated animal; or
  - (ii) an animal that is dependent on a person for the provision of food or shelter; but
- (b) does not include—
  - (i) a working dog; or
  - (ii) an animal prescribed by regulation not to be a pet.

***working dog*** means—

- (a) an assistance dog, guide dog or hearing dog under the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4; or
- (b) a corrective services dog under the *Corrective Services Act 2006*, schedule 4; or
- (c) a police dog under the *Police Powers and Responsibilities Act 2000*, schedule 6.

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## **Division 2                      Keeping pets and other animals in resident's rooms**

### **256B   Keeping pets and other animals in resident's rooms**

- (1) The resident may keep a pet or other animal in the resident's room only with the approval of the provider.
- (2) However, the resident may keep a working dog in the resident's room without the provider's approval.
- (3) An authorisation to keep a pet, working dog or other animal in a resident's room is subject to a body corporate by-law, house rules or other law relating to keeping animals at the rental premises.

*Examples—*

- 1 The rental premises may be subject to a local law that limits the number or types of animals that may be kept at the premises.
- 2 The rental premises may be subject to a body corporate by-law that requires the resident obtain approval from the body corporate before keeping a pet at the premises.

### **256C   Resident responsible for pets and other animals**

- (1) The resident is responsible for all nuisance caused by a pet or other animal kept in the resident's room, including, for example, noise caused by the pet or other animal.
- (2) The resident is responsible for repairing any damage to the resident's room or inclusions caused by the pet or other animal.
- (3) Damage to the resident's room or inclusions caused by the pet or other animal is not fair wear and tear for the purpose of section 253(1)(i).

## **Division 3                      Approvals, refusals and conditions for keeping pets in residents' rooms**

### **256D   Request for approval to keep pet in resident's room**

- (1) The resident may request, in the approved form, the provider's approval for the resident to keep a stated pet in the resident's room.
- (2) The provider must respond to the resident's request within 14 days after receiving the request.
- (3) The provider's response must be in writing and state—
  - (a) whether the provider approves or refuses the resident's request; and
  - (b) if the provider approves the resident's request subject to conditions—the conditions of the approval; and
  - (c) if the provider refuses the resident's request—
    - (i) the grounds for the refusal; and
    - (ii) the reasons why the provider believes the grounds for the refusal apply to the request.

*Note—*

See section 256E for the permitted grounds for refusal.

- (4) The provider is taken to approve the keeping of the pet in the resident's room if—
  - (a) the provider does not comply with subsection (2); or
  - (b) the provider's response does not comply with subsection (3).
- (5) To remove any doubt, it is declared that a provider's refusal of a resident's request on the grounds that 'no pets are allowed' is not enough to comply with subsection (3)(c).



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## **256E Grounds for refusing pets being kept in resident's room**

- (1) The following are the only grounds for a provider to refuse a resident's request for approval to keep a stated pet in the resident's room—
  - (a) keeping the pet would exceed a reasonable number of animals being kept in the room or at the rental premises;
  - (b) the resident's room is unsuitable for keeping the pet because of a lack of appropriate space or other things necessary to humanely accommodate the pet;
  - (c) keeping the pet is likely to cause damage to the resident's room or inclusions that could not practicably be repaired for a cost that is less than the amount of the rental bond for the room;
  - (d) keeping the pet would pose an unacceptable risk to the health and safety of a person, including, for example, because the pet is venomous;
  - (e) keeping the pet would contravene a law;
  - (f) keeping the pet would contravene a body corporate by-law or house rule applying to the rental premises;
  - (g) the resident has not agreed to the reasonable conditions proposed by the provider for approval to keep the pet;
  - (h) the animal stated in the request is not a pet;
  - (i) another ground prescribed by regulation.
- (2) Subsection (1)(g) applies only to conditions to which an approval may be subject under section 256F.

## **256F Conditions for approval to keep pet in resident's room**

- (1) The provider's approval for the resident to keep a pet in the resident's room may be subject to conditions if the conditions—
  - (a) relate only to keeping the pet in the resident's room; and
  - (b) are reasonable having regard to the type of pet, the room and the rental premises; and

- (c) are stated in the written approval given to the resident under section 256D(2).
- (2) Without limiting subsection (1)(b), the following conditions of the provider's approval are taken to be reasonable—
  - (a) a condition requiring the pet generally be kept in the resident's room;
  - (b) if the pet is capable of carrying parasites that could infest the room—a condition requiring the room to be professionally fumigated at the end of the rooming accommodation agreement;
  - (c) if the pet is allowed inside the room—a condition requiring carpets in the room to be professionally cleaned at the end of the rooming accommodation agreement.
- (3) A condition of the provider's approval for the resident to keep a pet in the resident's room is void if the condition—
  - (a) would have the effect of the provider contravening section 176 or 177; or
  - (b) would, as a term of a rooming accommodation agreement, be void under section 178; or
  - (c) would increase the rent or rental bond payable by the resident; or
  - (d) would require any form of security from the resident.
- (4) For subsection (2), a room is professionally fumigated, and carpets are professionally cleaned, if the fumigation and cleaning are done to a standard ordinarily achieved by businesses selling those services.

## **256G Continuation of authorisation to keep pet or working dog in resident's room**

- (1) This section applies if—
  - (a) the provider gives approval for the resident to keep a pet in the resident's room; or

*Note—*

See section 256D(4) for circumstances in which a provider is taken to have approved a pet being kept in the resident's room.

- (b) the resident is authorised under section 256B(2) to keep a working dog in the resident's room.
- (2) The authorisation to keep the pet or working dog in the resident's room continues for the life of the pet or working dog and is not affected by any of the following matters—
- (a) the ending of a rooming accommodation agreement, if the resident continues occupying the room under a new agreement;
  - (b) a change in the provider or provider's agent;
  - (c) for a working dog—the retirement of the dog from the service the dog provided as a working dog.

## **Part 2                      Entry to residents' rooms**

### **257      Entry with resident's agreement**

- (1) The provider may enter the resident's room, for any reason, if the resident agrees.

*Examples of resident's agreement to entry—*

- 1    The provider orally asks to enter the resident's room and the resident orally agrees.
  - 2    The rooming accommodation agreement states times at which the provider may enter the room each week to carry out cleaning.
- (2) If the provider has agreed to provide a service other than accommodation to the resident, the provider may enter the resident's room at the times that are reasonably necessary to provide the service.

### **258      Entry to carry out inspection**

- (1) The provider may enter the resident's room, at a reasonable time, to inspect the room.

- (2) The provider must give a written notice of the proposed entry to the resident at least 48 hours before the entry.
- (3) An entry may not be made under this section more than once each month.

## 259 Entry after giving notice

- (1) The provider may enter the resident's room, at a reasonable time—
  - (a) to clean the room; or
  - (b) to carry out pest control in the room; or
  - (c) to make routine repairs to, or carry out maintenance of, the room or another part of the rental premises; or
  - (d) to show the room to a prospective buyer or resident; or
  - (e) to allow a valuation of the rental premises to be carried out; or
  - (f) to install, maintain or replace a smoke alarm.
- (2) The provider must give a written notice of the proposed entry to the resident—
  - (a) for an entry under subsection (1)(a)—at least 24 hours before the entry; or
  - (b) otherwise—at least 48 hours before the entry.
- (3) Subsection (4) applies to an entry by the provider or the provider's agent (the ***selling agent***) to show the room to a prospective buyer, if the selling agent is not the agent to whom the resident normally pays the rent.
- (4) The provider or selling agent must also give a written notice of the proposed entry to the agent to whom the resident normally pays the rent—
  - (a) for an entry under subsection (1)(a)—at least 24 hours before the entry; or
  - (b) otherwise—at least 48 hours before the entry.
- (5) A notice under subsection (2)—

- (a) may relate to more than 1 proposed entry to a room; and
- (b) may relate to entry to more than 1 room; and
- (c) if it relates to entry to more than 1 room—may be given by posting it, at least 48 hours before the entry, or first entry, to which it relates, on a notice board or other place in the rental premises where it is likely to be seen by the residents to whom it is given.

*Example for subsection (5)—*

The provider may post a notice stating the times at which entry is proposed to be made each week to residents' rooms to clean the rooms.

## **259A When provider or provider's agent may enter—notice to leave or notice of intention to leave given**

- (1) This section applies if—
  - (a) a provider gives a resident a notice under chapter 5, part 2 requiring the resident to leave the rental premises; or
  - (b) a provider or a resident gives a notice under chapter 5, part 2 terminating a rooming accommodation agreement on a stated day.
- (2) The provider or provider's agent must not enter the resident's room more than twice in a 7-day period, unless the resident agrees.
- (3) However, subsection (2) does not prevent the provider or provider's agent from entering the resident's room under section 257 or 260.

## **260 Entry without notice**

The provider may enter the resident's room without notice—

- (a) in an emergency; or
- (b) if the provider reasonably believes the room has been abandoned; or

*Note—*

See section 509.

- (c) to carry out urgent repairs to the rental premises or a facility in the rental premises.

*Examples for paragraph (c)—*

- 1 to repair a facility for providing gas, electricity or water
- 2 to carry out repairs to prevent imminent flooding or water damage
- 3 to make emergency repairs to the roof of the rental premises
- 4 to repair a fault or damage that makes the rental premises unsafe or insecure or is likely to unreasonably disrupt a resident's appropriate use of the premises

## **261 General qualifications about entry**

- (1) Immediately before entering the resident's room, the provider must tell the resident about the proposed entry, unless the resident is not in or near the room at the time.
- (2) After entering the resident's room, the provider—
  - (a) must preserve, as far as practicable, the resident's privacy; and
  - (b) must not remain in the room for longer than is reasonably necessary to carry out the purpose of the entry.

## **262 Entry by provider's agent or other person**

- (1) A reference in sections 257, 258, 259(1) and (2), 259A, 260 and 261 to the provider includes an agent of the provider.
- (2) However, if—
  - (a) an agent of the provider proposes to enter or remain in the resident's room under this part; and
  - (b) the agent is not accompanied by the provider; and
  - (c) the agent is not a person to whom the resident normally pays the rent; and

- (d) the resident asks for written evidence of the agent's appointment;  
the agent must not enter or remain in the room without producing the evidence.
- (3) The provider may enter the resident's room under this part with someone else as far as is necessary to achieve the purpose of the entry.

## **263 Rules of entry**

The rights and obligations under sections 257 to 262 about the entry to the resident's room are called the *rules of entry*.

## **264 Entry by provider or provider's agent under order of tribunal**

- (1) This section applies if, on an application made to a tribunal by the provider or resident, the tribunal is satisfied—
  - (a) the resident has not allowed the provider or provider's agent to enter the resident's room under the rules of entry; or
  - (b) the provider or agent has entered the resident's room in contravention of the rules of entry; or
  - (c) the provider or agent has entered the resident's room in a way, or at a time, that interferes with the reasonable peace, comfort or privacy of the resident in using the resident's room.
- (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 provider or agent may enter the resident's room 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) or (c), the provider or agent may enter the resident's room only under the rules as changed.

[s 265]

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- (5) An application under this section may be made by 2 or more residents if the application relates to the same or a similar matter.
- (6) If an application is made by 2 or more residents, the tribunal may order that any change to the rules of entry applies to the provider and all the applicants.

## **265 Unlawful entry of resident's room**

The provider or provider's agent, must not enter the resident's room 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 3 House rules**

## **Division 1 General**

### **266 House rules**

- (1) House rules are rules about the use, enjoyment, control or management of rental premises.
- (2) The house rules in force for rental premises are—
  - (a) the prescribed rules that apply to the rental premises; and
  - (b) any other house rules made by the provider under this part.

### **267 Prescribed rules**

- (1) A regulation may prescribe house rules for rental premises (the *prescribed rules*).



- (2) A prescribed rule may state that it applies to rental premises subject to another house rule made for the premises under this part by the provider that deals with a particular circumstance or matter.

*Example—*

A prescribed rule states that a resident must not consume an amount of alcohol in the rental premises that causes the resident to become drunk. The rule also states that it applies subject to any house rule made under this part by the provider that prohibits the consumption of any alcohol in the rental premises.

- (3) Unless it provides otherwise, a prescribed rule applies to all rental premises.

## **268 Rules made by the provider**

- (1) A provider may make house rules for rental premises about any of the following matters—
- (a) using shared facilities;
  - (b) parking motor vehicles;
  - (c) drinking alcohol or illegally consuming other drugs;
  - (d) smoking;
  - (e) making noise;
  - (f) keeping pets;
  - (g) guests;
  - (h) another matter prescribed under a regulation.
- (2) A rule made under subsection (1) has effect as a house rule for the rental premises only if—
- (a) it is consistent with—
    - (i) the prescribed rules; and
    - (ii) the provider's obligations and the resident's rights under this Act; and
  - (b) the rule is made under division 2.

- (3) Subsection (2)(b) does not apply to the making of a rule when there are no residents for the rental premises.
- (4) A provider must not make a rule about a matter not provided for under subsection (1).

Maximum penalty for subsection (4)—20 penalty units.

## Division 2                      Rule changes

### 269      **Meaning of *rule change***

A reference in this division to making a ***rule change*** for rental premises is a reference to—

- (a) making a new house rule for the premises; or
- (b) amending, revoking or replacing an existing house rule for the premises.

### 270      **Notice of proposed rule change**

- (1) Before making a rule change for rental premises, a provider must give a written notice to each resident—
  - (a) setting out the proposed change; and
  - (b) stating the day when it is proposed the change is to take effect (the ***proposed commencement day***); and
  - (c) stating that the resident may object to the change; and
  - (d) stating how the objection may be made.
- (2) The notice must be given to a resident—
  - (a) at least 7 days before the proposed commencement day; or
  - (b) for a person who becomes a resident less than 7 days before the proposed commencement day—when the person becomes a resident.

## **271 Withdrawal of proposed rule change**

If a provider decides not to proceed with a proposed rule change, the provider may withdraw the proposed change by giving a written notice to each resident to whom a notice under section 270 has been given.

## **272 Objection to proposed rule change**

- (1) A resident may object to a proposed rule change if the resident considers the change is unreasonable.
- (2) The objection may be made only by giving a written notice to the provider, before the proposed commencement day, stating—
  - (a) the resident's name; and
  - (b) that the resident objects to the proposed change; and
  - (c) why the resident considers the proposed change is unreasonable.
- (3) If the provider does not receive objections from at least the prescribed number of residents before the proposed commencement day, and does not withdraw the proposed change under section 271, the change takes effect on the proposed commencement day.
- (4) If the provider receives objections from at least the prescribed number of residents before the proposed commencement day—
  - (a) the proposed change does not take effect; and
  - (b) the provider must immediately give a written notice to each resident stating—
    - (i) that at least the prescribed number of residents have objected to the change; and
    - (ii) that the proposed change will not take effect on the proposed commencement day.
- (5) In this section—

***prescribed number***, of residents, means the lesser of—

- (a) 10 residents; or
- (b) half of the total number of residents.

## **273 Application to tribunal about proposed rule change**

- (1) This section applies if, under section 272(4), a proposed rule change does not take effect.
- (2) The provider may apply to a tribunal for an order declaring the proposed change to be reasonable.
- (3) The application may only be made within 7 days after the proposed commencement day for the change.
- (4) The application must—
  - (a) be accompanied by a copy of each objection to the proposed change given under section 272; and
  - (b) state particulars of why the provider considers the proposed change to be reasonable.
- (5) The tribunal may decide the application by—
  - (a) declaring the proposed change to be reasonable; or
  - (b) amending the proposed change in a way it considers appropriate to make it reasonable; or
  - (c) declaring the proposed change to be unreasonable; or
  - (d) making any other order it considers appropriate.
- (6) If the tribunal makes an order declaring the proposed change to be reasonable or amending it in a way the tribunal considers appropriate to make it reasonable, the proposed change takes effect on the day decided by the tribunal.
- (7) As soon as practicable after the tribunal decides the application, the provider must give a written notice of the decision to each resident of the rental premises.

## **274 Application to tribunal by resident about existing rule**

- (1) A resident may apply to a tribunal for an order declaring an existing house rule to be unreasonable.
- (2) The resident's application must—
  - (a) state particulars of why the resident considers the rule to be unreasonable; and
  - (b) provide evidence that other residents also consider the rule to be unreasonable.
- (3) The tribunal must decide the application by—
  - (a) confirming the existing house rule; or
  - (b) declaring the rule to be unreasonable.
- (4) If the tribunal declares the rule to be unreasonable the tribunal—
  - (a) must declare that the existing house rule is void or amend the rule in a way it considers appropriate; and
  - (b) may make any other order it considers appropriate.
- (5) In deciding the application, the tribunal must have regard to the views of other residents bound by the rule.
- (6) An order of the tribunal takes effect on the day decided by the tribunal.
- (7) As soon as practicable after the tribunal decides the application, the provider must give a written notice of the decision to each resident of the rental premises.

## **Division 3 Publication of house rules**

### **275 Proposed resident to be given a copy of house rules**

The provider or provider's agent for rental premises must not enter into a rooming accommodation agreement to provide accommodation in the premises to a person unless the provider or provider's agent has given the person a copy of the house rules for the premises.

Maximum penalty—10 penalty units.

## **276 Display of house rules**

The provider or provider's agent for rental premises must ensure a copy of the house rules for the premises is displayed, at all times, at a place in the rental premises where it is likely to be seen by the residents.

Maximum penalty—10 penalty units.

# **Part 4 Retaliation**

## **276A Retaliatory action taken against resident**

- (1) This section applies if—
  - (a) any of the following apply—
    - (i) the resident takes action to enforce the resident's rights, including, for example, by—
      - (A) giving the provider a notice to remedy breach; or
      - (B) requesting repairs or maintenance to the rental premises or inclusions; or
      - (C) applying to the tribunal for an order under this Act;
    - (ii) the provider or provider's agent knows the resident has complained to the authority or another government entity about an act or omission of the provider that adversely affected the resident;
    - (iii) an order of the tribunal is in force in relation to the provider and resident; and
  - (b) after a matter mentioned in paragraph (a) arises, the provider—

- (i) gives the resident a notice to remedy breach, other than a notice relating to a failure to pay rent for at least 7 days; or
  - (ii) increases the rent payable under the rooming accommodation agreement; or
  - (iii) takes action to end the rooming accommodation agreement; or
  - (iv) refuses to enter into a further rooming accommodation agreement, at the end of the current agreement, with the resident.
- (2) The resident may apply to the tribunal for an order to set aside the provider's action if the resident reasonably believes the action was taken to intimidate or punish the resident for a matter mentioned in subsection (1)(a).
- (3) The application must be made within 1 month after the resident becomes aware of the provider taking the action.
- (4) The tribunal may make the order sought if the tribunal is satisfied the action was likely to have been taken by the provider to intimidate or punish the resident for a matter mentioned in subsection (1)(a).
- (5) The resident may form a belief under subsection (2), and the tribunal may be satisfied of a matter under subsection (4), whether or not—
  - (a) the resident was intimidated or suffered a punishment; or
  - (b) any person was convicted or found guilty of an offence against this Act.

## **Chapter 5      Ending of agreements**

### **Part 1              Ending of residential tenancy agreements**

#### **Division 1          General**

#### **277      Ending of residential tenancy agreements**

A residential tenancy agreement ends only in 1 of the following ways—

- (a) the lessor and tenant agree, in a separate written document, to end the residential tenancy agreement;
- (b) the lessor gives the tenant a notice to leave under section 326 and the tenant hands over vacant possession of the premises on or after the handover day for the notice;
- (c) the tenant gives the lessor a notice of intention to leave under section 327 and hands over vacant possession of the premises on or after the handover day for the notice;
- (d) if there is only 1 tenant for the agreement—
  - (i) the tenant gives the lessor a notice ending tenancy interest, and hands over vacant possession of the premises, in accordance with division 3, subdivision 2A; or
  - (ii) the tenant dies;

*Note—*

See section 324A in relation to the death of a sole tenant.

- (e) the tenant vacates, or is removed from, the premises after receiving a notice from a mortgagee or appointed person under section 317;



- (f) the tenant abandons the premises and the period for which the tenant has paid rent has ended;

*Note—*

See division 8 for alternative procedures the lessor needs to follow in relation to abandonment of the premises.

- (g) the tribunal makes an order terminating the agreement.

*Note—*

See division 6 for the making of termination orders by the tribunal.

*Note—*

See also the *Body Corporate and Community Management Act 1997* for the termination of a residential tenancy agreement if a community titles scheme is terminated.

## **278 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 280 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.

**279 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—

- (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.

**Division 2 Action by lessor**

**Subdivision 1 Notices to remedy breach given by lessor**

**280 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 notice to the tenant requiring the tenant to remedy the breach within the allowed remedy period.
- (3) This section does not apply to an agreement for a short tenancy (moveable dwelling).

*Notes—*

- 1 See section 325 for requirements for the notice.
- 2 See section 328 and schedule 2, definition *allowed remedy period*.

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## Subdivision 2      Notices to leave premises given by lessor

### 281      Notice to leave for unremedied breach

- (1) The lessor may give a notice to leave the premises to the tenant because the tenant has failed to comply, within the allowed remedy period, with a notice to remedy breach given to the tenant by the lessor.
- (2) A notice to leave under this section is called a notice to leave for an ***unremedied breach***.

*Notes—*

- 1    See section 326 for requirements for the notice under this section.
- 2    See section 328 and schedule 2, definition *allowed remedy period*.

### 282      Notice to leave for tenant's noncompliance 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 ***noncompliance (tribunal order)***.

### 283      Notice to leave for noncompliance (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 relocate given to the tenant by the lessor.

*Note—*

- See section 223 for requirements for the notice to relocate.

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

## **284 Notice to leave if agreement frustrated**

- (1) The lessor may give a notice to leave the premises to the tenant because the premises—
- (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*.
- (4) A notice to leave under subsection (1)(c) is called a notice to leave for *compulsory acquisition*.

## **285 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.
- (5) A notice to leave under this section is called a notice to leave for *non-livability*.

## **286 Notice to leave if premises being sold**

- (1) The lessor may give the tenant a notice to leave the premises because—
  - (a) the lessor is preparing to sell the premises and the preparation requires the premises to be vacant; or
  - (b) 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*.
- (3) This section does not apply to a residential tenancy that is a short tenancy (moveable dwelling).

## **287 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.
- (4) A notice to leave under subsection (2) is called a notice to leave for *voluntary park closure*.

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

**288 Notice to leave if tenant's employment ends or entitlement to occupy under employment ends**

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

**289 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—
    - (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 premises to the tenant.

- (3) A notice to leave under this section is called a notice to leave for *ending of accommodation assistance*.

**290 Notice to leave if tenant's entitlement under affordable housing scheme ends**

- (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*.

**290A Notice to leave because of serious breach at public or community housing**

- (1) This section applies to the following lessors—
- (a) the chief executive of the housing department, acting on behalf of the State;
  - (b) a community housing provider.

*Note—*

See section 297B in relation to other lessors seeking tribunal orders to terminate a residential tenancy agreement on the grounds mentioned in subsection (2).

- (2) The lessor may give a notice to leave the premises to the tenant if the lessor reasonably believes the tenant, an occupant, a guest of the tenant or a person allowed on the premises by the tenant has—
- (a) used the premises or any property adjoining or adjacent to the premises (including any property that is available

- for use by the tenant in common with others) for an illegal activity; or
- (b) intentionally or recklessly—
- (i) destroyed or seriously damaged a part of the premises; or
  - (ii) endangered another person in the premises or a person occupying, or allowed on, premises nearby; or
  - (iii) interfered significantly with the reasonable peace, comfort or privacy of another tenant or another tenant's appropriate use of the other tenant's premises.
- (3) A notice to leave under this section is called a notice to leave for *serious breach at public or community housing*.
- (4) A lessor may form a reasonable belief that premises or property has been used for an illegal activity whether or not anyone has been convicted or found guilty of an offence in relation to the activity.

### **290B Notice to leave for State government program**

- (1) The lessor may give a notice to leave the premises to the tenant if the premises are required for use under a program administered by the State under an Act.
- (2) A notice to leave under this section is called a notice to leave for *State government program*.
- (3) This section does not apply to a residential tenancy that is a short tenancy (moveable dwelling).

### **290C Notice to leave for planned demolition or redevelopment**

- (1) The lessor may give a notice to leave the premises to the tenant if the lessor requires the premises to be vacant for a planned demolition or redevelopment.



- (2) A notice to leave under this section is called a notice to leave for *demolition or redevelopment*.
- (3) This section does not apply to a residential tenancy that is a short tenancy (moveable dwelling).

## **290D Notice to leave for significant repair or renovations**

- (1) The lessor may give a notice to leave the premises to the tenant if—
  - (a) the premises requires significant repairs or the lessor intends to carry out significant renovations to the premises; and
  - (b) the repairs or renovations cannot be safely carried out while the tenant occupies the premises.
- (2) A notice to leave under this section is called a notice to leave for *significant repair or renovations*.
- (3) This section does not apply to a residential tenancy that is a short tenancy (moveable dwelling).

## **290E Notice to leave for change of use**

- (1) The lessor may give a notice to leave the premises to the tenant if—
  - (a) the lessor requires the premises for a use other than residential tenancy; or
  - (b) the lessor will require the premises for the other use for a period of at least 6 months.
- (2) A notice to leave under this section is called a notice to leave for *change of use*.
- (3) This section does not apply to a residential tenancy that is a short tenancy (moveable dwelling).

## **290F Notice to leave if entitlement to student accommodation ends**

- (1) This section applies if—
  - (a) premises are used for student accommodation; and
  - (b) the tenant's entitlement to occupy the premises depends on the tenant being a student.
- (2) The lessor may give a notice to leave the premises to the tenant if the tenant stops being a student.
- (3) A notice to leave under this section is called a notice to leave for ***ending of entitlement to student accommodation***.
- (4) This section does not apply to moveable dwelling premises in a moveable dwelling park.
- (5) In this section—

***student*** means a person enrolled in a course that, under the *Social Security Act 1991* (Cwlth), section 569B, is an approved course of education or study for section 569A(b) of that Act.

***student accommodation*** means premises primarily used to provide accommodation to persons who are students.

## **290G Notice to leave for owner occupation**

- (1) The lessor may give a notice to leave the premises to the tenant if the lessor, or a relative of the lessor, needs to occupy the premises.
- (2) A notice to leave under this section is called a notice to leave for ***owner occupation***.
- (3) This section does not apply to a residential tenancy that is a short tenancy (moveable dwelling).

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**291 Notice to leave for end of fixed term agreement**

- (1) The lessor may give a notice to leave the premises to the tenant if the residential tenancy agreement is a fixed term agreement and the notice relates to the end of the agreement.
- (2) 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.
- (3) 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.
- (4) A notice to leave under this section is called a notice to leave for *end of fixed term agreement*.
- (5) This section does not apply to a residential tenancy that is a short tenancy (moveable dwelling).

**292 Notice to leave for end of agreed short tenancy period**

- (1) This section applies in relation to a residential tenancy that is a short tenancy (moveable dwelling) for moveable dwelling premises in a moveable dwelling park.
- (2) The lessor may give a notice to leave the premises to the tenant relating to the ending of the tenant's occupation of the premises at the end of—
  - (a) the base period; or

- (b) if a short tenancy (extension) statement has been made—the extended period.
- (3) A notice to leave under this section must be given at least 2 days before the period mentioned in subsection (2) ends.
- (4) A notice to leave under this section is called a notice to leave for *end of short tenancy (moveable dwelling)*.

### **Subdivision 3      Applications for termination by lessor**

#### **293      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.
- (3) An application made under this section is called an application made because of a *failure to leave*.

#### **294      Application for termination for failure to leave as intended**

- (1) The lessor may apply to a tribunal for a termination order 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.
- (3) An application under this section is called an application made because of a *failure to leave as intended*.

*Note—*

See sections 335(1) and 342 for other provisions about the application.

## **295 Application for termination for excessive hardship**

- (1) The lessor may apply to a tribunal for a termination order 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*.

*Note—*

See sections 335(1) and 343 for other provisions about the application.

## **296 Application for termination for damage or injury**

- (1) The lessor 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 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*.
- (5) In this section—
  - lessor* does not include—
    - (a) the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
    - (b) a community housing provider.

*Note—*

See sections 335(1) and 344 for other provisions about the application.

## **296A Application for termination for damage or injury in public or community housing**

- (1) The lessor may apply to a tribunal for a termination order because the tenant, an occupant, a guest of the tenant or a person allowed on the premises by 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*.
- (5) In this section—  
*lessor* means—
  - (a) the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) a community housing provider.

## **297 Application for termination for tenant’s objectionable behaviour**

- (1) The lessor may apply to a tribunal for a termination order 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*.
- (3) In this section—  
*lessor* does not include—
  - (a) the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) a community housing provider.

*Note—*

See sections 335(1) and 345 for other provisions about the application.

## **297A Application for termination for objectionable behaviour in public or community housing**

- (1) The lessor may apply to a tribunal for a termination order because the tenant, an occupant, a guest of the tenant or a person allowed on the premises by 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; or
  - (c) has intentionally or recklessly endangered another person at the premises or interfered with the reasonable peace, comfort or privacy of a person occupying premises nearby.
- (2) An application under this section is called an application made because of *objectionable behaviour*.
- (3) In this section—

*lessor* means—

  - (a) the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) a community housing provider.

*Note—*

See sections 335(1) and 345A for other provisions about the application.

## **297B Application for termination because of serious breach**

- (1) The lessor may apply to the tribunal for a termination order if the lessor reasonably believes the tenant, an occupant, a guest of the tenant or a person allowed on the premises by the tenant has—



- 
- (a) used the premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others) for an illegal activity; or
  - (b) intentionally or recklessly—
    - (i) destroyed or seriously damaged a part of the premises; or
    - (ii) endangered another person in the premises or a person occupying, or allowed on, premises nearby; or
    - (iii) interfered significantly with the reasonable peace, comfort or privacy of another tenant or another tenant's appropriate use of the other tenant's property.
- (2) An application made under this section is called an application made because of *serious breach*.
- (3) The lessor may form a reasonable belief that premises or property has been used for an illegal activity whether or not anyone has been convicted or found guilty of an offence in relation to the activity.
- (4) This section does not apply if the lessor is—
- (a) the chief executive of the housing department, acting on behalf of the State; or
  - (b) a community housing provider.

## **298 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 order 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*.

*Note—*

See sections 335(1) and 346 for other provisions about the application.

## **299 Application by lessor for termination for repeated breaches by tenant**

- (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
  - (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 regulation for this section.
- (2) The lessor may apply to a tribunal for a termination order.
- (3) An application under this section is called an application made because of *repeated breaches*.
- (4) In this section—
- provision*** means—
- (a) section 184 (Tenant’s use of premises); or
  - (b) section 188 (Tenant’s obligations generally); or
  - (c) section 189 (Tenant’s obligations for facilities in moveable dwelling parks); or
  - (d) section 190 (Tenant’s obligations for moveable dwelling site); or

- (e) a provision of a section mentioned in paragraphs (a) to (d); or
- (f) a provision of an agreement providing for the payment of rent; or
- (g) a provision of a body corporate by-law or park rule.

*Note—*

See sections 335(1) and 347 for other provisions about the application.

### **300 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.
- (2) The lessor may apply to a tribunal for an order to restrain the tenant from causing the further damage or injury.

*Note—*

See section 348 for provisions about making the order.

## **Division 3 Action by tenant**

### **Subdivision 1 Notices to remedy breach given by tenant**

#### **301 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 notice to the lessor requiring the lessor to remedy the breach within the allowed remedy period.

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

*Notes—*

- 1 See section 325 for requirements for the notice.
- 2 See section 328 and schedule 2, definition *allowed remedy period*.

## **Subdivision 2 Notices of intention to leave premises given by tenant**

### **302 Notice of intention to leave for unremedied breach**

- (1) The tenant may give a notice of intention to leave the premises 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.
- (2) A notice of intention to leave under this section is called a notice of intention to leave for an ***unremedied breach***.

### **303 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.

### **304 Notice of intention to leave for lessor's noncompliance with tribunal order**

- (1) The tenant may give a notice of intention to leave the premises 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 *noncompliance (tribunal order)*.

### **305 Notice of intention to leave if agreement frustrated**

- (1) The tenant may give a notice of intention to leave the premises 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*.
- (4) A notice of intention to leave under subsection (1)(c) is called a notice of intention to leave for *compulsory acquisition*.

### **306 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 premises to the lessor because the park has become an unfit place in which to live in a moveable dwelling.
- (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.

[s 307]

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- (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*.

### **307 Notice of intention to leave if premises being sold**

- (1) The tenant may give notice of intention to leave the premises to the lessor or lessor's agent if either of the following happen within 2 months (the *prescribed period*) after the start of the agreement—
  - (a) the premises are advertised for sale;
  - (b) the lessor or lessor's agent enters the premises under section 192(1)(f) to show the premises to a prospective buyer.
- (2) However, subsection (1) does not apply if the lessor gave the tenant written notice of the lessor's intention to sell the premises before the agreement was entered into.
- (3) A notice of intention to leave under this section must be given not later than 2 weeks after the end of the prescribed period.
- (4) A notice of intention to leave under subsection (1) is called a notice of intention to leave for *intention to sell*.

### **307A Notice of intention to leave because of condition of premises**

- (1) Within the first 7 days on which the tenant occupies the premises under the residential tenancy agreement, the tenant may give a notice of intention to leave the premises to the lessor because—
  - (a) the premises are not fit for the tenant to live in; or
  - (b) the premises or inclusions are not in good repair; or

- (c) the lessor is in breach of a law dealing with issues about the health or safety of persons using or entering the premises; or
  - (d) the premises or inclusions do not comply with the prescribed minimum housing standards.
- (2) However, the tenant may not give a notice to leave under subsection (1) if the circumstance mentioned in that subsection was caused by an action or failure of the tenant.
- (3) A notice of intention to leave under this section is called a notice of intention to leave because of *condition of premises*.
- (4) This section does not apply to a residential tenancy that is a short tenancy (moveable dwelling).

### **307B Notice of intention to leave because of death of cotenant**

- (1) The tenant may give a notice of intention to leave the premises to the lessor if—
- (a) another tenant under the residential tenancy agreement dies; and
  - (b) continuing with the residential tenancy agreement would—
    - (i) be impractical for the tenant; or
    - (ii) cause the tenant excessive hardship.
- (2) A notice of intention to leave under this section is called a notice of intention to leave because of *death of cotenant*.
- (3) This section does not apply to a residential tenancy that is a short tenancy (moveable dwelling).

### **307C Notice of intention to leave if entitlement to student accommodation ends**

- (1) This section applies if—
- (a) premises are used for student accommodation; and

- (b) the tenant's entitlement to occupy the premises depends on the tenant being a student.
- (2) The tenant may give a notice of intention to leave the premises to the lessor if the tenant stops being a student.
- (3) A notice of intention to leave under this section is called a notice of intention to leave for *ending of entitlement to student accommodation*.
- (4) This section does not apply to moveable dwelling premises in a moveable dwelling park.
- (5) In this section—

*student* means a person enrolled in a course that, under the *Social Security Act 1991* (Cwlth), section 569B, is an approved course of education or study for section 569A(b) of that Act.

*student accommodation* means premises primarily used to provide accommodation to students.

### **307D Notice of intention to leave because of failure to comply with repair order**

- (1) The tenant may give a notice of intention to leave the premises to the lessor if—
  - (a) a repair order applies to the lessor; and
  - (b) the repair order requires repairs be carried out to the premises or inclusions by a stated day; and
  - (c) the lessor fails to comply with the repair order by the stated day.
- (2) A notice of intention to leave under this section is called a notice of intention to leave because of *failure to comply with repair order*.



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**307E Notice of intention to leave for end of agreed short tenancy period**

- (1) This section applies in relation to a residential tenancy that is a short tenancy (moveable dwelling) for moveable dwelling premises in a moveable dwelling park.
- (2) The tenant may give a notice of intention to leave the premises to the lessor or lessor's agent relating to the ending of the tenant's occupation of the premises at the end of—
  - (a) the base period; or
  - (b) if a short tenancy (extension) statement has been made—the extended period.
- (3) A notice of intention to leave under this section must be given at least 1 day before the period mentioned in subsection (2) ends.
- (4) A notice of intention to leave under this section is called a notice of intention to leave for *end of short tenancy (moveable dwelling)*.

**308 Notice of intention to leave without ground**

- (1) The tenant may give a notice of intention to leave the premises 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*.

**Subdivision 2A Domestic violence**

**308A Victim's right to leave**

- (1) This section applies if a tenant believes the tenant can no longer safely continue to occupy the premises because of domestic violence experienced by the tenant.
- (2) The tenant may end the tenant's interest in the residential tenancy agreement by giving the lessor a notice ending tenancy interest.

### **308B Notice ending tenancy interest**

- (1) A notice given by a tenant exercising the right under section 308A to end the tenant's interest in a residential tenancy agreement must—
  - (a) be in the approved form; and
  - (b) be supported by the evidence prescribed by regulation.
- (2) For subsection (1)(b), the notice is supported by evidence prescribed for the subsection if—
  - (a) a copy of the evidence accompanies the notice; or
  - (b) the tenant allows the lessor or lessor's agent to inspect the evidence.
- (3) A notice that complies with this section is a *notice ending tenancy interest*.

### **308C Lessor's response to notice ending tenancy interest**

- (1) This section applies if a tenant (the *vacating tenant*) gives the lessor a notice ending tenancy interest.
- (2) The lessor must, within 7 days after receiving the notice ending tenancy interest, inform the vacating tenant whether the lessor proposes to apply to the tribunal under section 308H to have the notice set aside because it does not comply with section 308B.
- (3) Also, if there are other tenants for the residential tenancy agreement, the lessor must inform the vacating tenant—
  - (a) that the other tenants will be informed that the tenant is vacating the premises; and
  - (b) when the other tenants will be informed that the tenant is vacating the premises; and
  - (c) that the residential tenancy agreement continues for the other tenants.

### **308D Effect of notice ending tenancy interest if sole tenant**

- (1) This section applies if—
  - (a) a tenant gives the lessor a notice ending tenancy interest; and
  - (b) the tenant is the sole tenant for the residential tenancy agreement.
- (2) The residential tenancy agreement ends on the later of the following days—
  - (a) the day that is 7 days after the notice ending tenancy interest is given to the lessor;
  - (b) the day the tenant hands over vacant possession of the premises.

*Note—*

See section 125 and chapter 2, part 3, division 3, subdivision 3A in relation to the tenant applying to the authority for payment of the rental bond for the residential tenancy agreement.

### **308E Effect of notice ending tenancy interest if more than 1 tenant**

- (1) This section applies if—
  - (a) a tenant (the ***vacating tenant***) gives the lessor a notice ending tenancy interest; and
  - (b) the vacating tenant is not the sole tenant for the residential tenancy agreement.
- (2) The vacating tenant's interest in the residential tenancy agreement ends on the later of the following days—
  - (a) the day that is 7 days after the notice ending tenancy interest is given to the lessor;
  - (b) the day the tenant vacates the premises.

*Note—*

See section 125 and chapter 2, part 3, division 3, subdivision 3A in relation to the vacating tenant applying to the authority for payment of the rental bond for the residential tenancy agreement.

- (3) After the vacating tenant's interest in the residential tenancy agreement ends, the lessor must give each remaining tenant for the agreement a written notice (a *continuing interest notice*) stating—
  - (a) the vacating tenant's interest in the agreement has ended; and
  - (b) the agreement continues for the remaining tenant, and any other remaining tenants, on the same terms; and
  - (c) if the remaining tenants are required to top up the rental bond under section 308F—
    - (i) the remaining tenants are required to top up the rental bond; and
    - (ii) the amount the remaining tenants must pay to top up the rental bond; and
    - (iii) the day by which the top up must be made.
- (4) The day stated in the continuing interest notice under subsection (3)(c)(iii) must not be earlier than 1 month after the notice is given to all of the remaining tenants.
- (5) The lessor must give all of the remaining tenants the continuing interest notice—
  - (a) no later than 14 days after the vacating tenant's interest ends; but
  - (b) not earlier than 7 days after the vacating tenant's interest ends.
- (6) To remove any doubt, it is declared that after the vacating tenant's interest in the residential tenancy agreement ends, the agreement continues on the same terms but with the parties to the agreement being the lessor and the remaining tenants.

### **308F Top ups of rental bond**

- (1) This section applies in relation to a residential tenancy agreement if—

- 
- (a) the amount held by the authority for the rental bond for the agreement is less than the amount of the rental bond required under the agreement; and
  - (b) the shortfall mentioned in paragraph (a) occurred because a tenant's interest in the agreement ended under section 308E(2); and
  - (c) all of the remaining tenants for the agreement have been given a continuing interest notice under section 308E(3).
- (2) The remaining tenants must top up the rental bond within 1 month after the last of the remaining tenants is given the continuing interest notice.
  - (3) The remaining tenants ***top up*** the rental bond by paying an amount to the lessor that restores the rental bond to the full amount required under the residential tenancy agreement.

### **308G Particular costs not recoverable**

- (1) This section applies if—
  - (a) a residential tenancy agreement ends under section 308D(2); or
  - (b) a tenant's interest in a residential tenancy agreement ends under section 308E(2).
- (2) The tenant is not liable for any of the following costs—
  - (a) costs relating to the ending of the residential tenancy agreement or interest;
  - (b) costs relating to goods left at the premises by the tenant;
  - (c) costs relating to reletting the premises.
- (3) This section applies despite any provision of this Act, or any term of the residential tenancy agreement, to the contrary.

### **308H Application to tribunal about notice ending tenancy interest**

- (1) This section applies if a tenant gives, or purports to give, the lessor a notice ending tenancy interest.
- (2) The lessor may, within 7 days after receiving the notice, apply to the tribunal for an order setting aside the notice because it does not comply with section 308B.
- (3) The tribunal may make the order only if satisfied the notice does not comply with section 308B.
- (4) In deciding whether to make the order, the tribunal—
  - (a) must have regard to whether or not the evidence supporting the notice is the evidence required under section 308B(1)(b); but
  - (b) must not examine—
    - (i) whether or not the tenant experienced domestic violence; or
    - (ii) the tenant's belief as to whether or not the tenant could safely continue to occupy the premises.

### **308I Confidentiality**

- (1) This section applies to any of the following persons who have had access to relevant information in relation to a notice ending tenancy interest—
  - (a) the lessor;
  - (b) the lessor's agent;
  - (c) a person (an *employee*) who has access to the relevant information in the course of the person's employment by the lessor or lessor's agent.
- (2) The person must not disclose the relevant information to anyone except in the following circumstances—
  - (a) the lessor disclosing the relevant information to the lessor's agent;

- (b) the lessor's agent disclosing the relevant information to the lessor;
- (c) an employee of the lessor or lessor's agent disclosing the relevant information to the lessor or agent;
- (d) the person disclosing the relevant information to a lawyer while obtaining legal advice;
- (e) the person disclosing the relevant information in a proceeding in a court or tribunal;
- (f) the person disclosing the relevant information as required by a law.

Maximum penalty—100 penalty units.

- (3) In this section—

*relevant information*, for a notice ending tenancy interest, means—

- (a) evidence supporting the notice; or
- (b) personal information about the tenant who gives the notice, including information about the tenant's intention to vacate the premises.

### **Subdivision 3      Applications for termination by tenant**

#### **309      Application for termination for failure of lessor to remedy breach**

- (1) This section applies if the tenant has given the lessor a notice to remedy breach under section 301.
- (2) The tenant may apply to a tribunal for a termination order 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.

- (3) Nothing prevents a tenant who has given a notice of intention to leave from applying to a tribunal for a termination order if the tenant has withdrawn the notice before the handover day.

### **310 Application for termination for excessive hardship**

- (1) The tenant may apply to a tribunal for a termination order because the tenant 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*.

*Note—*

See sections 335(2) and 343 for other provisions about the application.

### **311 Application for termination for damage or injury**

- (1) The tenant may apply to a tribunal for a termination order 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*.

*Note—*

See sections 335(2) and 344 for other provisions about the application.



### **312 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*.
- (3) An application under this section about injury to a person is called an application made because of *injury*.

### **312A Application for termination because of misrepresentation**

- (1) Within the first 3 months on which the tenant occupies the premises under the residential tenancy agreement, the tenant may apply to the tribunal for a termination order because the lessor or lessor's agent gave the tenant false or misleading information about—
  - (a) the condition of the premises or inclusions; or
  - (b) the services provided for the premises; or
  - (c) a matter relating to the premises that is likely to affect the tenant's quiet enjoyment of the premises; or
  - (d) the agreement or any other document the lessor must give the tenant under this Act; or

*Example of document that must be given to tenant—*

body corporate by-laws that apply to the premises

  - (e) the rights and obligations of the tenant or lessor under this Act.

- (2) An application made under subsection (1) is called an application made because of *misrepresentation*.

### **313 Application for termination for lessor's objectionable behaviour**

- (1) The tenant may apply to a tribunal for a termination order 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*.

*Note—*

See sections 335(2) and 345 for other provisions about the application.

### **314 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 order 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*.

*Note—*

See sections 335(2) and 346 for other provisions about the application.

### **315 Application by tenant for termination for repeated breaches by lessor**

- (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; and

- (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 regulation for this section.
- (2) The tenant may apply to a tribunal for a termination order.
- (3) An application under this section is called an application made because of *repeated breaches*.
- (4) In this section—
- provision* means—
- (a) section 183 (Quiet enjoyment); or
  - (b) section 185 (Lessor's obligations generally); or
  - (c) section 186 (Lessor's obligations for facilities in moveable dwelling parks); or
  - (d) section 187 (Lessor's obligations for moveable dwelling site); or
  - (e) section 202 (Unlawful entry of premises); or
  - (f) a provision of a section mentioned in paragraphs (a) to (e); or
  - (g) a provision of an agreement providing for the payment of rent.

*Note—*

See sections 335(2) and 347 for other provisions about the application.

### **316 Application for interim order about damage or injury**

- (1) This section applies if—

[s 317]

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- (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.

## **Division 4                      Action by other persons**

### **Subdivision 1                Mortgagees**

#### **317      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 2 months before obtaining possession, the mortgagee or the appointed person gives the tenant notice in the approved form 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 2 months before obtaining possession, the appointed person or mortgagee gives the

tenant notice in the approved form informing the tenant that possession is to be obtained.

Maximum penalty—50 penalty units.

- (4) In this section—

*obtain* includes take.

### **318 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.

### **319 Tenant not liable for loss if tenant vacates or is removed from premises after receiving notice from mortgagee**

- (1) This section applies if the tenant of premises is given a notice by a mortgagee under section 317 and vacates, or is removed from, the premises.
- (2) The tenant is not liable for rent or for any other loss or expense incurred by the lessor merely because the tenant vacates, or is removed from, the premises.

### **320 Tenant not liable for loss if rent paid to mortgagee**

- (1) This section applies if a mortgagee of premises gives the tenant written notice that the tenant must pay rent for the premises to the mortgagee.
- (2) The tenant is not liable for rent or for any other loss or expense incurred by the lessor merely because the tenant pays rent for the premises to the mortgagee.

## **Subdivision 2 Other persons**

### **321 Application by tenant's domestic associate for termination for damage or injury**

- (1) The domestic associate 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 domestic violence against the domestic associate.
- (2) In this section—

***domestic associate*** means a person in any of the following relationships—

  - (a) an intimate personal relationship;
  - (b) a family relationship;
  - (c) an informal care relationship.
- (3) A term used in subsection (2)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.

### 322 **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.

### 323 **Application for interim order about damage or injury**

- (1) This section applies if—
  - (a) the domestic associate 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.
- (3) In this section—

***domestic associate*** means a person in any of the following relationships—

  - (a) an intimate personal relationship;
  - (b) a family relationship;
  - (c) an informal care relationship.
- (4) A term used in subsection (3)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a

relationship exists includes a reference to the tribunal deciding that issue for this section.

### **324 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*.

## **Division 4A Death of sole tenant**

### **324A Death of sole tenant**

- (1) If a sole tenant dies, the residential tenancy agreement ends on the earliest of the following—
  - (a) 14 days after the tenant's personal representative or relative gives the lessor written notice that the agreement ends because of the tenant's death;
  - (b) 14 days after the lessor gives the tenant's personal representative or relative written notice that the agreement ends because of the tenant's death;
  - (c) the day agreed between the lessor and the tenant's personal representative or relative;
  - (d) the day decided by the tribunal on application by the lessor.
- (2) However, if no notice is given, or agreement or application is made, under subsection (1), the residential tenancy agreement ends—
  - (a) if the agreement is a short tenancy (moveable dwelling)—2 days after the tenant's death; or
  - (b) otherwise—1 month after the tenant's death.



- (3) Nothing prevents the withdrawal of a notice or application under subsection (1) so that a day may be agreed under subsection (1)(c).

## **Division 5                      Procedural requirements for action taken by lessor or tenant**

### **325      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.

### **326      Notice to leave**

- (1) A notice to leave premises must—
- (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 (the ***handover day***); and
  - (e) state the ground on which the notice is given; and
  - (f) give particulars of the ground on which the notice is given; and
  - (g) if the approved form requires information to accompany the form—be accompanied by the information required.
- (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) The handover day stated in the notice to leave must not be before the end of the minimum notice period for the notice.
- (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
  - (b) another day when the tenancy would have ended if this Act had not been enacted.

*Note—*

See also section 349(1).

- (5) A notice to leave given for a fixed term agreement is not ineffective merely because the handover day is earlier than the day the term ends unless the minimum notice period for the notice must not end before the day the term ends.
- (6) Subsection (5) does not prevent a notice to leave being given to a tenant at any time before the end of the term for a fixed term agreement.
- (7) Also, for a notice to leave for end of short tenancy (moveable dwelling), the handover day must be the last day of—
  - (a) the base period; or
  - (b) if a short tenancy (extension) statement has been made—the extended period.
- (8) In this section—

*minimum notice period*, for a notice to leave, means the notice period stated for the notice in schedule 1, part 1.

### **327 Notice of intention to leave**

- (1) A notice of intention to leave premises must—
  - (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 (the *handover day*); 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 handover day stated in the notice of intention to leave must not be before the end of the minimum notice period for the notice.
- (3) Also, for a notice of intention to leave for end of short tenancy (moveable dwelling), the handover day must be the last day of—
  - (a) the base period; or
  - (b) if a short tenancy (extension) statement has been made—the extended period.
- (4) 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.

*Note—*

See also section 349(2).

- (5) 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 unless the minimum notice period for the notice must not end before the day the term ends.
- (6) Subsection (5) does not prevent a notice of intention to leave being given to a lessor at any time before the end of the term of the fixed term agreement.
- (7) In this section—  
*minimum notice period*, for a notice of intention to leave, means the notice period stated for the notice in schedule 1, part 2.

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

### **333 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.

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**334     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.

**335     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—
  - (a) failure to leave as intended;
  - (b) excessive hardship;
  - (c) damage;
  - (d) injury;
  - (e) objectionable behaviour;
  - (f) incompatibility;
  - (g) repeated breaches;
  - (h) serious breach.
- (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—
  - (a) the matter mentioned in section 309;
  - (b) excessive hardship;
  - (c) injury;
  - (d) damage;
  - (e) objectionable behaviour;
  - (f) incompatibility;

- (g) repeated breaches;
- (h) misrepresentation.

### **336 Applications to tribunal**

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

## **Division 6 Orders of tribunal**

### **337 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.

### **338 Failure to leave for noncompliance (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 noncompliance (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.

### **339 Failure to leave for noncompliance (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 noncompliance (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.

### **340 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 of any of the following—
  - (i) non-livability;
  - (ii) compulsory acquisition;
  - (iii) sale contract;
  - (iv) voluntary park closure;
  - (v) compulsory park closure;
  - (vi) employment termination;
  - (vii) ending of accommodation assistance;
  - (viii) ending of housing assistance;
  - (ix) serious breach at public or community housing;
  - (x) State government program;
  - (xi) demolition or redevelopment;
  - (xii) significant repair or renovations;
  - (xiii) change of use;
  - (xiv) ending of entitlement to student accommodation;
  - (xv) owner occupation;
  - (xvi) end of fixed term agreement.
- (2) The tribunal may make the order if it is satisfied the lessor has established the ground of the application and notice to leave.

### **342 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.



### 343 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.

### 344 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 domestic associate of the tenant or a cotenant whose domestic associate 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 domestic associate;
  - (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 domestic associate from entering, or remaining in, the premises.
- (3) Subsection (2) does not limit the issues to which the tribunal may have regard.
- (4) In this section—

*domestic associate* means a person in any of the following relationships—

  - (a) an intimate personal relationship;
  - (b) a family relationship;
  - (c) an informal care relationship.

- (5) A term used in subsection (4)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.

### **345 Objectionable behaviour other than in public or community housing**

- (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.
- (4) In this section—
- applicant*** does not include—
- (a) the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) a community housing provider.

### **345A Objectionable behaviour in public or community housing**

- (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; and
  - (c) for behaviour in the form of intentional or reckless endangerment—its seriousness; and
  - (d) for behaviour in the form of interference with a person's reasonable peace, comfort or privacy—its seriousness.
- (3) Also, in deciding if the behaviour justifies terminating the agreement, the tribunal must have regard to—
- (a) any serious or adverse effects on neighbouring residents or other persons, including whether neighbouring residents or other persons are likely to be subjected to objectionable behaviour if the agreement is not terminated; and
  - (b) any evidence regarding the tenancy history of the tenant; and
  - (c) if the tenant is a tenant under a State tenancy agreement—
    - (i) the department's responsibility to other tenants; and
    - (ii) the needs of persons awaiting housing assistance from the State.
- (4) Subsections (2) and (3) do not limit the issues to which the tribunal may have regard.
- (5) In this section—  
***applicant*** means—

[s 346]

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- (a) the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
- (b) a community housing provider.

***State tenancy agreement*** means a residential tenancy agreement under which the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State.

### **346 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.

### **347 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.

### **347A Serious breach**

- (1) If an application is made to the tribunal for a termination order because of serious breach, the tribunal may make the order if satisfied—
  - (a) the applicant has established the grounds for making the application under section 297B(1); and
  - (b) the relevant action justifies terminating the residential tenancy agreement.
- (2) In deciding if the relevant action justifies terminating the residential tenancy agreement, the tribunal must have regard to the following matters—
  - (a) the damage done to the premises and inclusions by the relevant action, including the likely cost of the damage compared to the rental bond for the premises;
  - (b) whether the relevant action was recurrent and, if it was recurrent, the frequency of the recurrences;
  - (c) the adverse effects the relevant action had on any person, including physical harm and financial loss.
- (3) In deciding the application, the tribunal may have regard to any other matter the tribunal considers relevant.
- (4) In this section—

***relevant action***, for an application to the tribunal for a termination order because of serious breach, means an action of a person constituting the grounds for making the application under section 297B(1).

### **347B Misrepresentation**

- (1) If an application is made to the tribunal for a termination order because of misrepresentation, the tribunal may make the order if satisfied—
  - (a) the applicant has established the grounds for making the application under section 312A(1); and
  - (b) the false or misleading information, that is the subject of the application, justifies terminating the residential tenancy agreement.
- (2) In deciding whether the false or misleading information justifies terminating the residential tenancy agreement, the tribunal must have regard to—
  - (a) the extent to which the false or misleading information did any of the following—
    - (i) induced the tenant to enter into the agreement;
    - (ii) misrepresented the condition of the premises or inclusions;
    - (iii) misrepresented the services provided for the premises;
    - (iv) adversely affected the tenant in exercising a right under this Act;
    - (v) adversely affected the tenant's quiet enjoyment of the premises; and
  - (b) any adverse effects likely to be suffered by the tenant or other persons if the agreement were not terminated.
- (3) In deciding the application, the tribunal may have regard to any other matter the tribunal considers relevant.

### **348 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.

### **349 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 leave 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 notice contains a defect.

*Notes—*

- 1 See section 326 for requirements for the notice.
- 2 See section 327 for requirements for the notice.

### **349A How tribunal must deal with public or community housing tenant**

- (1) This section applies if an application is made to a tribunal for a termination order by—
  - (a) the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) a community housing provider.
- (2) The tribunal must not refuse to terminate the tenancy merely because the tenant is a tenant of the chief executive or a community housing provider.

## **Division 7                      Recovery of possession of premises**

### **350      Issue of warrant of possession**

- (1) The owner of residential premises may apply to the tribunal for the issue of a warrant of possession if—
  - (a) there is no residential tenancy agreement in effect for the premises; and
  - (b) a person is occupying the premises without the consent of the owner, including, for example, a person who was a tenant under a residential tenancy agreement that has ended.
- (2) If a tribunal makes a termination order on an application made other than by a tenant, it also must issue a warrant of possession.
- (3) 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.
- (4) Nothing in this section prevents the owner of a residential premises recovering possession of the premises under any other process or law.

*Note—*

See, however, section 353 in relation to recovering possession of premises in a way authorised under this Act.

### **351      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 owner of the premises or the person in whose favour a 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 person occupying the premises as soon as practicable after the warrant is issued.
- (3) 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.
- (4) 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 (4)(b)—*

- 1 natural disasters, including floods, affecting the area in which the premises are located
  - 2 the remoteness of the premises
- (5) However, the day on which the warrant takes effect must not be later than 3 business days after it is issued.
- (6) If a warrant of possession (the **original warrant**) is lost or destroyed before it ends, the registrar may issue a copy of the warrant.
- (7) A copy of a warrant issued under subsection (6)—
  - (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.

### **352 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.

### **353 Limited ways of recovering possession of premises from tenants**

- (1) This section applies to premises in the possession of a person—
  - (a) who is the tenant under a residential tenancy agreement; or
  - (b) who was the tenant under a residential tenancy agreement and who is 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 for subsection (2)—50 penalty units.

### **354 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.

## **Division 8 Abandonment**

### **355 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 356 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.

### **356 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—

[s 357]

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- (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.

### **357 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.
- (6) In deciding whether to make the order, the tribunal or registrar may have regard to the following—
  - (a) a failure of the tenant to pay rent under the agreement;
  - (b) any presence at the premises of uncollected mail, newspapers or other material;
  - (c) any reports from neighbours of the tenant or from other persons indicating the tenant has abandoned the premises;

- (d) any disconnection of services (including gas, electricity and telephone) to the premises;
- (e) any absence from the premises of household goods;
- (f) a failure of the tenant to respond to an entry notice for the premises;
- (g) anything else the tribunal or registrar considers relevant.

*Note—*

Under section 361 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.

## Division 9                      Compensation

### 357A    Reletting costs

- (1) A residential tenancy agreement may include a term requiring the tenant to pay the costs incurred by the lessor in reletting the premises if—
  - (a) the agreement is for a fixed term; and
  - (b) the tenant is made liable under the term only if the tenant ends the agreement other than in a way permitted under this Act; and
  - (c) the tenant's liability under the term is limited to the reletting costs under this section.
- (2) A term of a residential tenancy agreement requiring the tenant pay the costs incurred by the lessor in reletting the premises—
  - (a) is void if the term does not comply with subsection (1); and
  - (b) does not apply if after experiencing domestic violence, the tenant ended the agreement or the tenant's interest in the agreement under part 1, division 3, subdivision 2A.
- (3) The **reletting costs** payable by the tenant under this section in relation to a fixed term agreement are—

- (a) for a fixed term of not more than 3 years, the lesser of—
    - (i) the amount of the reletting costs mentioned in subsection (4); or
    - (ii) an amount equal to the rent payable for the period between the tenant handing over vacant possession of the premises and the day a new agreement commences after the premises are relet; or
  - (b) for a fixed term of more than 3 years, the lesser of—
    - (i) an amount equal to 1 month's rent for each 12-month period remaining of the term of the agreement, up to a maximum amount equal to 6 months rent; or
    - (ii) an amount equal to the rent that would be payable for the period between the tenant handing over vacant possession of the premises and the day a new agreement commences after the premises are relet.
- (4) For subsection (3)(a)(i), the amount of the reletting costs is—
- (a) if less than 25% of the fixed term had expired when the tenant handed over vacant possession of the premises—the amount equal to 4 weeks rent; or
  - (b) if 25% or more but less than 50% of the fixed term had expired when the tenant handed over vacant possession of the premises—the amount equal to 3 weeks rent; or
  - (c) if 50% or more but less than 75% of the fixed term had expired when the tenant handed over vacant possession of the premises—the amount equal to 2 weeks rent; or
  - (d) if 75% or more of the fixed term had expired when the tenant handed over vacant possession of the premises—the amount equal to 1 week's rent.

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**358 Tenant remaining in possession**

- (1) If a tenant fails to hand over vacant possession of premises after a termination order is made by a tribunal, the lessor is entitled to receive from the tenant—
  - (a) compensation for any loss or expense incurred by the lessor by the failure; and
  - (b) an occupation fee equal to the amount of rent that would have been payable by the tenant for the premises for the period the tenant remains in possession after termination of the agreement.
- (2) If an application is made to a tribunal under this section by the lessor, the tribunal may make an order requiring the tenant to pay to the lessor the following amounts—
  - (a) the amount it considers the lessor is entitled to receive for compensation;
  - (b) the amount it considers the lessor is entitled to receive for the occupation fee.

**359 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.

**360 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.

### **361 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—
  - (a) must exercise its original jurisdiction for the review; and
  - (b) may make an order under this section if it is satisfied the applicant did not abandon the premises or only abandoned the premises on a day after the day stated.
- (5) The order the 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.

### **362 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.

## Division 10                      Goods and documents left behind on premises

### 363      Goods left on premises

- (1) This section applies if—
  - (a) an agreement ends; 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 market value of the goods is less than the amount prescribed under a regulation; 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 the 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 regulation (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.
- (5) For subsection (4)(a), if procedures for selling goods by auction are prescribed under a regulation, 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*.

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- (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).
- (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 buyer 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.

### **364 Documents left on premises**

- (1) This section applies if—
- (a) an agreement ends; 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 ends;
- (b) the person finds the document.

### **365 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 ended.
- (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.

## Division 11                      Offences

### 365A    False or misleading information in notice to leave

- (1) This section applies in relation to the following notices to leave—
- (a) a notice to leave for sale contract;
  - (b) a notice to leave for significant repair or renovations;
  - (c) a notice to leave for demolition or redevelopment;
  - (d) a notice to leave for change of use;
  - (e) a notice to leave for owner occupation.
- (2) A lessor or lessor's agent must not give a tenant a notice to leave containing information the lessor or agent knows is false or misleading in a material particular.
- Maximum penalty—50 penalty units.
- (3) Subsection (2) does not apply if the lessor or lessor's agent, when giving information in a document—
- (a) tells the tenant, to the best of the lessor or agent's ability, how the document is false or misleading; and

- (b) if the lessor or agent has, or can reasonably obtain, the correct information—gives the tenant the correct information.

**365B Lessor must not let premises for 6 months after ending tenancy for premises being sold**

- (1) If a residential tenancy ends because the lessor gives the tenant a notice to leave for sale contract, the lessor must not offer a residential tenancy for the premises for 6 months after the handover day.

Maximum penalty—50 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is a defence for the lessor to prove that—
  - (a) the lessor genuinely made the premises available for sale but no offers, acceptable to the lessor, were received; or

*Example—*

The only offers the lessor received were below the lessor's expected sale price.

- (b) the lessor entered into a contract for the sale of the premises but the contract ended without the premises being sold.

*Example—*

The contract was terminated by the buyer under a term of the contract or a statutory right, including a cooling-off period.

**365C Lessor must not let premises for 6 months after ending tenancy for change of use**

- (1) If a residential tenancy ends because the lessor gives the tenant a notice to leave for change of use, the lessor must not offer a residential tenancy for the premises for 6 months after the handover day.

Maximum penalty—50 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is a defence for the lessor to prove that the change of use did not happen for reasons beyond the lessor's control.

**365D Lessor must not let premises for 6 months after ending tenancy for owner occupation**

- (1) If a residential tenancy ends because the lessor gives the tenant a notice to leave for owner occupation, the lessor must not offer a residential tenancy for the premises for 6 months after the handover day.

Maximum penalty—50 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is a defence for the lessor to prove—
- (a) the intended occupant's need to occupy the premises ended or the intended occupant became unable to occupy the premises; and
  - (b) the lessor did not offer a residential tenancy for the premises until after the intended occupant's need ended or the intended occupant became unable to occupy the premises; and
  - (c) the premises remained vacant between the tenant vacating the premises and the offer mentioned in paragraph (b) being accepted.
- (3) In this section—

***intended occupant***, for premises for which a notice to leave for owner occupation was given, means the lessor or the relative of the lessor whose need to occupy the premises formed the basis for giving the notice to leave.

## **Part 2                      Ending of rooming                                  accommodation agreements**

### **Division 1                General**

#### **366      Ending of rooming accommodation agreements**

A rooming accommodation agreement ends only in 1 of the following ways—

- (a) the provider and resident agree, in a separate written document, to end the rooming accommodation agreement;
- (b) the provider gives the resident a notice under this part requiring the resident to leave the rental premises and the resident leaves the premises;
- (c) the resident or provider gives a notice under this part terminating the agreement on a stated day;
- (d) if there is only 1 resident for the agreement—
  - (i) the resident gives the provider a notice ending residency interest, and vacates the rental premises, in compliance with the requirements under division 3, subdivision 2A; or
  - (ii) the resident dies;

*Note—*

See section 387A in relation to the death of a sole resident.

- (e) the resident vacates, or is removed from, the rental premises after receiving a notice from a mortgagee or appointed person under section 384;
- (f) the resident abandons the resident's room and the period for which the resident has paid rent has ended;

*Note—*

See section 509 for indications a resident has abandoned a room.



- (g) the tribunal makes an order terminating the agreement.

*Note—*

See division 5 for the making of termination orders by the tribunal.

*Note—*

See also the *Body Corporate and Community Management Act 1997* for the termination of a rooming accommodation agreement if a community titles scheme is terminated.

### **367 Purporting to terminate agreement in unauthorised way**

A person must not purport to terminate a rooming accommodation agreement other than in a way the agreement may be terminated under this part.

Maximum penalty—40 penalty units.

## **Division 2 Action by provider**

### **Subdivision 1 Notices to remedy breach given by provider**

#### **368 Notice to remedy resident's breach**

- (1) This section applies if a provider reasonably believes that a resident has breached the rooming accommodation agreement and that the breach has not been remedied.
- (2) The provider may give the resident a notice requiring the resident to remedy the breach.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) give particulars of the breach; and
  - (c) state the day (the *due day*) by which the resident must remedy the breach; and

- (d) be signed by the provider.
- (4) The notice may also state the steps that the provider reasonably believes are necessary to remedy the breach or avoid a further breach of the rooming accommodation agreement.
- (5) The due day must not be earlier than—
  - (a) if the breach is nonpayment of rent and, at the time the rent was due, the resident had been a resident of the rental premises for less than 28 days—2 days after the notice is given; or
  - (b) if the breach is nonpayment of rent and paragraph (a) does not apply—4 days after the notice is given; or
  - (c) otherwise—5 days after the notice is given.
- (6) This section does not apply to a breach comprising nonpayment of rent if—
  - (a) when the rent was due, the resident had been a resident of the rental premises for at least 28 days; and
  - (b) the rent has remained unpaid in breach of the agreement for less than 2 days.

## **Subdivision 2 Notices to leave given by provider**

### **369 Notice to leave because of failure to remedy breach**

- (1) A provider may give to a resident a notice requiring the resident to leave the rental premises if—
  - (a) the provider reasonably believes the resident has breached the rooming accommodation agreement; and
  - (b) the provider has given the resident a notice under section 368 requiring the resident to remedy the breach by a stated due day; and
  - (c) the due day has passed; and
  - (d) the provider reasonably believes that—

- (i) the breach has not been remedied; or
  - (ii) after the notice was given and before the due day, the resident repeated the breach and has not remedied the repeated breach.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the premises; and
  - (c) state the day by which the resident must leave the premises; and
  - (d) be signed by the provider.
- (3) If the breach is nonpayment of rent and, at the time the rent was due, the resident had been a resident of the rental premises for less than 28 days, the resident may be required to leave immediately.
- (4) Otherwise, the day by which the resident is required to leave the premises must not be less than—
  - (a) if the breach is nonpayment of rent—4 days after the notice is given; or
  - (b) otherwise—2 days after the notice is given.
- (5) The provider may withdraw the notice at any time before the resident leaves.

### **370 Notice to leave immediately because of serious breach**

- (1) A provider may give to a resident a written notice requiring the resident to leave the rental premises immediately if the provider reasonably believes—
  - (a) the resident has used the resident's room or common areas for an illegal purpose; or
  - (b) the resident, or a guest of the resident, has intentionally or recklessly—

- (i) destroyed or seriously damaged a part of the rental premises or a facility in the rental premises; or
  - (ii) endangered another person in the rental premises; or
  - (iii) significantly interfered with the reasonable peace, comfort or privacy of another resident or another resident's appropriate use of the other resident's room or common areas.
- (2) The notice must—
  - (a) state why the resident is being required to leave the premises; and
  - (b) be signed by the provider.

### **371 Notice to leave if premises destroyed etc.**

- (1) A provider may give to a resident a notice requiring the resident to leave the rental premises because the premises—
  - (a) have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the rooming accommodation agreement by the provider; or
  - (b) no longer may be used lawfully as a residence; or
  - (c) have been appropriated or acquired compulsorily under a law.
- (2) The notice may only be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the premises; and
  - (c) state the day by which the resident must leave the premises; and
  - (d) be signed by the provider.

- (4) If the notice is given under subsection (1)(a) or (b), the resident may be required to leave immediately.
- (5) If the notice is given under subsection (1)(c), the day by which the resident must leave the premises must not be less than 2 months after the notice is given.

### **371A Notice to leave if rental premises being sold**

- (1) This section applies if—
  - (a) a provider is preparing to sell the rental premises and the preparations require the rental premises to be vacant; or
  - (b) a provider has entered into a contract to sell the rental premises with vacant possession.
- (2) The provider may give a resident a notice requiring the resident to leave the rental premises.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the rental premises; and
  - (c) state the day by which the resident is required to leave the rental premises; and
  - (d) be accompanied by the information required under the approved form for the notice; and
  - (e) be signed by the provider.
- (4) The day by which the resident is required to leave the rental premises must not be earlier than either of the following—
  - (a) 1 month after the notice is given to the resident;
  - (b) if the rooming accommodation agreement is a fixed term agreement—the day the term of the agreement ends.

### **371B Notice to leave for planned demolition or redevelopment**

- (1) A provider may give a resident a notice requiring the resident to leave the rental premises if the provider requires the premises to be vacant for a planned demolition or redevelopment.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the rental premises; and
  - (c) state the day by which the resident is required to leave the rental premises; and
  - (d) be accompanied by the information required under the approved form for the notice; and
  - (e) be signed by the provider.
- (3) The day by which the resident is required to leave the rental premises must not be earlier than either of the following—
  - (a) 2 months after the notice is given to the resident;
  - (b) if the rooming accommodation agreement is a fixed term agreement—the day the term of the agreement ends.

### **371C Notice to leave because of significant repair or renovations**

- (1) A provider may give a resident a notice requiring the resident to leave the rental premises if—
  - (a) the premises requires significant repairs or the provider intends to carry out significant renovations to the premises; and
  - (b) the repairs or renovations cannot be effectively, efficiently or safely carried out while the resident occupies the premises.
- (2) The notice must—

- (a) be in the approved form; and
  - (b) state why the resident is being required to leave the rental premises; and
  - (c) state the day by which the resident is required to leave the rental premises; and
  - (d) be accompanied by the information required under the approved form for the notice; and
  - (e) be signed by the provider.
- (3) The day by which the resident is required to leave the rental premises must not be earlier than either of the following—
- (a) 1 month after the notice is given to the resident;
  - (b) if the rooming accommodation agreement is a fixed term agreement—the day the term of the agreement ends.

### **371D Notice to leave for change of use**

- (1) A provider may give a resident a notice requiring the resident to leave the rental premises if—
- (a) the provider requires the premises for use as holiday accommodation or other short stay service accommodation; or
  - (b) the provider requires the premises for a use that is not a residential use; or
  - (c) the provider proposes to make a change to the premises making it no longer able to be used as a residential dwelling.
- (2) The notice must—
- (a) be in the approved form; and
  - (b) state why the resident is being required to leave the rental premises; and
  - (c) state the day by which the resident is required to leave the rental premises; and

[s 371E]

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- (d) be accompanied by the information required under the approved form for the notice; and
  - (e) be signed by the provider.
- (3) The day by which the resident is required to leave the rental premises must not be earlier than either of the following—
  - (a) the day that is 1 month after the notice is given to the resident;
  - (b) if the rooming accommodation agreement is a fixed term agreement—the day the term of the agreement ends.

### **371E Notice to leave if entitlement to student accommodation ends**

- (1) This section applies if—
  - (a) rental premises are used for student accommodation; and
  - (b) a resident's entitlement to occupy the student accommodation depends on the resident being a student.
- (2) The provider may give the resident a notice requiring the resident to leave the rental premises if the resident stops being a student.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the rental premises; and
  - (c) state the day by which the resident is required to leave the rental premises; and
  - (d) be signed by the provider.
- (4) The day by which the resident is required to leave the rental premises must not be earlier than the day that is 1 month after the notice is given to the resident.
- (5) In this section—



*student* means a person enrolled in a course that, under the *Social Security Act 1991* (Cwlth), section 569B, is an approved course of education or study for section 569A(b) of that Act.

*student accommodation* means premises primarily used to provide accommodation to students.

### **372 Notice to leave for end of fixed term agreement**

- (1) This section applies in relation to a rooming accommodation agreement that is a fixed term agreement.
- (2) The provider may give the resident a notice requiring the resident to leave the rental premises at the end of the rooming accommodation agreement.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the rental premises; and
  - (c) state the day by which the resident is required to leave the rental premises; and
  - (d) be signed by the provider.
- (4) The day by which the resident is required to leave the rental premises must not be earlier than either of the following—
  - (a) 14 days after the notice is given to the resident;
  - (b) the end of the rooming accommodation agreement.

### **374 Notice to leave if resident's employment ends or entitlement to occupy under employment ends**

- (1) A provider may give to a resident a notice requiring the resident to leave the rental premises if—
  - (a) the resident occupies the rental premises under the resident's terms of employment; and
  - (b) either—

- (i) the resident's employment ends; or
  - (ii) the resident's entitlement to occupy the rental premises ends under the resident's terms of employment.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is being required to leave the premises; and
  - (c) state the day by which the resident must leave the premises; and
  - (d) be signed by the provider.
- (3) The day by which the resident must leave the premises must not be less than 1 month after the notice is given.
- (4) This section applies subject to an industrial award or agreement or contract of employment.

### **375 Power to remove resident**

- (1) This section applies if—
  - (a) a provider has given a resident a notice under this part requiring the resident to leave the rental premises and the due day for leaving has passed; or
  - (b) a provider has given a resident a notice under this part terminating the rooming accommodation agreement and the agreement has ended.
- (2) If the resident refuses to leave the premises, it is lawful for the provider and anyone helping the provider to use necessary and reasonable force to remove the resident and the resident's property from the rental premises.
- (3) However, the provider or someone helping the provider may use force under subsection (2) only while a police officer is present.

*Note—*

See the *Police Powers and Responsibilities Act 2000*, section 611.

- (4) For exercising a power under subsection (2), the provider or other person may enter the resident's room.
- (5) The force that may be used under subsection (2) does not include force that is likely to cause bodily harm to the resident or damage the resident's property.
- (6) In this section—

***bodily harm*** means any bodily injury that interferes with health or comfort.

***due day***, for leaving rental premises, means—

- (a) for a notice requiring a resident to leave by a stated day—the stated day; or
- (b) for a notice requiring a resident to leave immediately—the day on which the notice is given.

### **Subdivision 3      Applications for termination by provider**

#### **376      Application by provider for termination for repeated breaches by resident**

- (1) This section applies if—
  - (a) the provider gives 2 notices to remedy breach to the resident 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
  - (c) the resident remedies each breach within the relevant allowed remedy period; and
  - (d) the resident 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 regulation for this section.

[s 377]

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- (2) The provider may apply to a tribunal for a termination order.
- (3) An application under this section is called an application made because of *repeated breaches*.
- (4) In this section—  
*provision* means—
  - (a) a provision of section 253, other than paragraph (i); or
  - (b) a provision of an agreement providing for the payment of rent; or
  - (c) a provision of a body corporate by-law or house rule.

*Note—*

See sections 335(1) and 347 for other provisions about the application.

### **377 Application by provider to terminate fixed term agreement because of excessive hardship**

- (1) The provider under a fixed term agreement may apply to a tribunal for an order terminating the agreement because the applicant would suffer excessive hardship if the agreement were not terminated.
- (2) The tribunal may make the order if it is satisfied the applicant has established the ground of the application.
- (3) If the tribunal makes the order, it may also make any other order it considers appropriate including, for example, an order that the applicant pay compensation to the other party.

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## **Division 3                      Action by resident**

### **Subdivision 1              Notices to remedy breach given by resident**

#### **378      Notice to remedy provider's breach**

- (1) This section applies if a resident reasonably believes that the provider has breached the rooming accommodation agreement and that the breach has not been remedied.
- (2) The resident may give the provider a notice requiring the provider to remedy the breach.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) give particulars of the breach; and
  - (c) state the day (the *due day*), not earlier than 5 days after the notice is given, by which the provider must remedy the breach; and
  - (d) be signed by the resident.

### **Subdivision 2              Notices terminating agreement given by resident**

#### **379      Notice terminating fixed term agreement because of failure to remedy breach**

- (1) A resident under a fixed term agreement may give the provider a notice terminating the agreement before the end of the fixed term if—
  - (a) the resident reasonably believes the provider has breached the agreement; and

- (b) the resident has given the provider a notice under section 378 requiring the provider to remedy the breach by a stated due day; and
  - (c) the due day has passed; and
  - (d) the resident reasonably believes that—
    - (i) the breach has not been remedied; or
    - (ii) after the notice was given and before the due day, the provider repeated the breach and has not remedied the repeated breach.
- (2) The notice must—
- (a) be in the approved form; and
  - (b) state why the resident is terminating the agreement; and
  - (c) state the day, not earlier than 7 days after the notice is given, on which the resident is terminating the agreement; and
  - (d) be signed by the resident.

### **380 Notice terminating agreement if premises destroyed etc.**

- (1) A resident may give the provider a notice terminating the rooming accommodation agreement because the resident's room or common areas have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the rooming accommodation agreement by the resident.
- (2) The notice may only be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is terminating the agreement; and
  - (c) state the day on which the agreement is ended; and
  - (d) be signed by the resident.

- (4) The notice may end the agreement immediately.

**380A Notice terminating agreement because of condition of rental premises**

- (1) Within the first 7 days on which the resident occupies the room under the rooming accommodation agreement, the resident may give the provider a notice terminating the agreement if—
- (a) the provider is in breach of a law dealing with issues about the health or safety of persons using or entering the resident's room or common areas; or
  - (b) the resident's room or common areas are not fit for the resident to live in; or
  - (c) the resident's room or common areas, or the facilities provided in the room or common areas, are not safe or in good repair; or
  - (d) the rental premises or inclusions do not comply with the prescribed minimum housing standards.
- (2) However, the resident may not give the provider a notice under subsection (1) if the circumstances mentioned in that subsection were caused by an action or failure of the resident.
- (3) The notice must—
- (a) be in the approved form; and
  - (b) state why the resident is terminating the agreement; and
  - (c) state the day on which the resident is terminating the agreement; and
  - (d) be signed by the resident.
- (4) The day stated in the notice must not be earlier than 2 days after the notice is given to the provider.

**380B Notice terminating agreement because of death of coresident**

- (1) The resident may give the provider a notice terminating a rooming accommodation agreement if a coresident dies.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is terminating the agreement; and
  - (c) state the day on which the resident is terminating the agreement; and
  - (d) be signed by the resident.
- (3) The day stated in the notice must not be earlier than 7 days after the notice is given to the provider.

**380C Notice terminating agreement if entitlement to student accommodation ends**

- (1) This section applies if—
  - (a) rental premises are used for student accommodation; and
  - (b) a resident's entitlement to occupy the student accommodation depends on the resident being a student.
- (2) The resident may give the provider a notice terminating the rooming accommodation agreement if the resident stops being a student.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state why the resident is terminating the agreement; and
  - (c) state the day on which the resident is terminating the agreement; and
  - (d) be signed by the resident.
- (4) The day stated in the notice must not be earlier than 1 month after the notice is given to the provider.



- (5) This section does not apply to moveable dwelling premises in a moveable dwelling park.

- (6) In this section—

*student* means a person enrolled in a course that, under the *Social Security Act 1991* (Cwlth), section 569B, is an approved course of education or study for section 569A(b) of that Act.

*student accommodation* means premises primarily used to provide accommodation to students.

### **381 Notice terminating agreement by resident without ground**

- (1) A resident may terminate a periodic agreement by giving at least 7 days written notice to the provider.
- (2) A resident may terminate a fixed term agreement by giving the provider a written notice stating the day, not before the end of the term and not less than 7 days after the notice is given, on which the agreement ends.

## **Subdivision 2A Domestic violence**

### **381A Victim's right to leave**

- (1) This section applies if a resident believes the resident can no longer safely continue to occupy rental premises because of domestic violence experienced by the resident.
- (2) The resident may end the resident's interest in the rooming accommodation agreement by giving the provider a notice ending residency interest.

### **381B Notice ending residency interest**

- (1) A notice given by a resident exercising the right under section 381A to end the resident's interest in a rooming accommodation agreement must—

- (a) be in the approved form; and
  - (b) be supported by the evidence prescribed by regulation.
- (2) For subsection (1)(b), the notice is supported by the evidence prescribed for the subsection if—
  - (a) a copy of the evidence accompanies the notice; or
  - (b) the resident allows the provider or provider's agent to inspect the evidence.
- (3) A notice that complies with this section is a *notice ending residency interest*.

### **381C Provider's response to notice ending residency interest**

- (1) This section applies if a resident (the *vacating resident*) gives the provider a notice ending residency interest.
- (2) The provider must, within 7 days after receiving the notice ending residency interest, inform the vacating resident whether the provider proposes to apply to the tribunal under section 381H to have the notice set aside because it does not comply with section 381B.
- (3) Also, if there are other residents for the rooming accommodation agreement, the provider must inform the vacating resident—
  - (a) that the other residents will be informed that the resident is vacating the rental premises; and
  - (b) when the other residents will be informed that the resident is vacating the rental premises; and
  - (c) that the rooming accommodation agreement continues for the other residents.

### **381D Effect of notice ending residency interest if sole resident**

- (1) This section applies if—
  - (a) a resident gives the provider a notice ending residency interest; and

- (b) the resident is the sole resident for the rooming accommodation agreement.
- (2) The rooming accommodation agreement ends on the later of the following days—
  - (a) the day that is 7 days after the notice ending residency interest is given to the provider;
  - (b) the day the resident vacates the rental premises.

*Note—*

See section 125 and chapter 2, part 3, division 3, subdivision 3A in relation to the resident applying to the authority for payment of the rental bond for the rooming accommodation agreement.

### **381E Effect of notice ending residency interest if more than 1 resident**

- (1) This section applies if—
  - (a) a resident (the *vacating resident*) gives the provider a notice ending residency interest; and
  - (b) the vacating resident is not the sole resident for the rooming accommodation agreement.
- (2) The vacating resident's interest in the rooming accommodation agreement ends on the later of the following days—
  - (a) the day that is 7 days after the notice ending residency interest is given to the provider;
  - (b) the day the resident vacates the rental premises.

*Note—*

See section 125 and chapter 2, part 3, division 3, subdivision 3A in relation to the vacating resident applying to the authority for payment of the rental bond for the rooming accommodation agreement.

- (3) After the vacating resident's interest in the rooming accommodation agreement ends, the provider must give each remaining resident for the agreement a written notice (a *continuing interest notice*) stating—

- (a) the vacating resident's interest in the agreement has ended; and
- (b) the agreement continues for all of the remaining residents on the same terms; and
- (c) if the remaining residents are required to top up the rental bond under section 381F—
  - (i) the remaining residents are required to top up the rental bond; and
  - (ii) the amount the remaining residents must pay to top up the rental bond; and
  - (iii) the day by which the top up must be made.
- (4) The day stated in the continuing interest notice under subsection (3)(c)(iii) must not be earlier than 1 month after the notice is given to all of the remaining residents.
- (5) The provider must give all of the remaining residents the continuing interest notice—
  - (a) no later than 14 days after the vacating resident's interest ends; but
  - (b) not earlier than 7 days after the vacating resident's interest ends.
- (6) To remove any doubt, it is declared that after the vacating resident's interest in the rooming accommodation agreement ends, the agreement continues on the same terms but with the parties to the agreement being the provider and the remaining residents.

### **381F Top ups of rental bond**

- (1) This section applies in relation to a rooming accommodation agreement if—
  - (a) the amount held by the authority for the rental bond for the agreement is less than the amount of the rental bond required under the agreement; and

- (b) the shortfall mentioned in paragraph (a) occurred because a resident's interest in the agreement ended under section 381E(2); and
  - (c) all of the remaining residents for the agreement have been given a continuing interest notice under section 381E(3).
- (2) The remaining residents must top up the rental bond within 1 month after the last of the remaining residents is given the continuing interest notice.
- (3) The remaining residents **top up** the rental bond by paying an amount to the provider that restores the rental bond to the full amount required under the rooming accommodation agreement.

### **381G Particular costs not recoverable**

- (1) This section applies if—
  - (a) a rooming accommodation agreement ends under section 381D(2); or
  - (b) a resident's interest in a rooming accommodation agreement ends under section 381E(2).
- (2) The resident is not liable for any of the following costs—
  - (a) costs relating to the ending of the rooming accommodation agreement or interest;
  - (b) costs relating to goods left at the rental premises by the resident;
  - (c) costs relating to reletting the resident's room.
- (3) This section applies despite any provision of this Act, or any term of the rooming accommodation agreement, to the contrary.

### **381H Application to tribunal about notice ending residency interest**

- (1) This section applies if a resident gives, or purports to give, the provider a notice ending residency interest.
- (2) The provider may, within 7 days after receiving the notice, apply to the tribunal for an order setting aside the notice because it does not comply with section 381B.
- (3) The tribunal may make the order only if satisfied the notice does not comply with section 381B.
- (4) In deciding whether to make the order, the tribunal—
  - (a) must have regard to whether or not the evidence supporting the notice is the evidence required under section 381B(1)(b); but
  - (b) must not examine—
    - (i) whether or not the resident experienced domestic violence; or
    - (ii) the resident's belief as to whether or not the resident could safely continue to occupy the rental premises.

### **381I Confidentiality**

- (1) This section applies to any of the following persons who have had access to relevant information in relation to a notice ending residency interest—
  - (a) the provider;
  - (b) the provider's agent;
  - (c) a person (an *employee*) who has access to the relevant information in the course of the person's employment by the provider or the provider's agent.
- (2) The person must not disclose the relevant information to anyone except in the following circumstances—
  - (a) the provider disclosing the relevant information to the provider's agent;

- (b) the provider's agent disclosing the relevant information to the provider;
- (c) an employee of the provider or provider's agent disclosing the relevant information to the provider or agent;
- (d) the person disclosing the relevant information to a lawyer while obtaining legal advice;
- (e) the person disclosing the relevant information in a proceeding in a court or tribunal;
- (f) the person disclosing the relevant information as required by a law.

Maximum penalty—100 penalty units.

- (3) In this section—

*relevant information*, for a notice ending residency interest, means—

- (a) evidence supporting the notice; or
- (b) personal information about the resident who gives the notice, including information about the resident's intention to leave the rental premises.

### **Subdivision 3      Applications for termination by resident**

#### **381J    Application by resident for termination because of misrepresentation**

- (1) Within the first 3 months on which the resident occupies the room under the rooming accommodation agreement, the resident may apply to the tribunal for a termination order because the provider or provider's agent gave the resident false or misleading information about—
  - (a) the condition of the rental premises, the resident's room or inclusions; or

- (b) the services provided for the resident's room; or
  - (c) a matter relating to the rental premises or the resident's room that is likely to affect the resident's quiet enjoyment of the room; or
  - (d) the agreement or any other document the provider must give the resident under this Act; or
- Example of document that must be given to resident—*
- body corporate by-laws that apply to the rental premises
- (e) the rights and obligations of the resident or provider under this Act.
- (2) An application made under subsection (1) is called an application made because of ***misrepresentation***.

### **382 Application by resident for termination for repeated breaches by provider**

- (1) This section applies if—
- (a) the resident gives 2 notices to remedy breach to the provider 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
  - (c) the provider remedies each breach within the relevant allowed remedy period; and
  - (d) the provider 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 regulation for this section.
- (2) The resident may apply to a tribunal for a termination order.
- (3) An application under this section is called an application made because of ***repeated breaches***.
- (4) In this section—



*provision* means—

- (a) section 247 (Provider’s obligations generally); or
- (b) section 249 (Quiet enjoyment); or
- (c) section 265 (Unlawful entry of resident’s room); or
- (d) a provision of a section mentioned in paragraphs (a) to (c); or
- (e) a provision of an agreement providing for the payment of rent.

*Note—*

See sections 335(2) and 347 for other provisions about the application.

### **383 Application by resident to terminate fixed term agreement because of excessive hardship**

- (1) The resident under a fixed term agreement may apply to a tribunal for an order terminating the agreement because the applicant would suffer excessive hardship if the agreement were not terminated.
- (2) The tribunal may make the order if it is satisfied the applicant has established the ground of the application.
- (3) If the tribunal makes the order, it may also make any other order it considers appropriate including, for example, an order that the applicant pay compensation to the other party.

## **Division 4 Action by mortgagees**

### **384 Notice about proposed action of mortgagee**

- (1) This section applies if—
  - (a) rental premises are subject to a mortgage; and
  - (b) after the rental premises become subject to the mortgage, a rooming accommodation agreement is entered into for a room in the rental premises; and

[s 385]

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- (c) the mortgagee under the mortgage does not consent to the rooming accommodation agreement; and
  - (d) the mortgagee, or another person appointed under the mortgage (the *appointed person*), has become entitled to obtain possession of the rental premises.
- (2) The mortgagee must not obtain possession of the rental premises unless, at least 30 days before obtaining possession, the mortgagee or the appointed person gives the resident notice in the approved form informing the resident that possession is to be obtained.

Maximum penalty—50 penalty units.

- (3) The appointed person must not obtain possession of the rental premises unless, at least 30 days before obtaining possession, the appointed person or mortgagee gives the resident notice in the approved form informing the resident that possession is to be obtained.

Maximum penalty—50 penalty units.

- (4) In this section—  
*obtain* includes take.

### **385 Acceptance of rent does not operate as consent**

- (1) This section applies if—
  - (a) rental premises are subject to a mortgage; and
  - (b) after the rental premises become subject to the mortgage, a rooming accommodation agreement is entered into for the rental premises; and
  - (c) the mortgagee under the mortgage does not consent to the rooming accommodation agreement.
- (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 rooming accommodation agreement, the mortgagee's or person's action does not operate as a consent to the agreement.

**386 Resident not liable for loss if resident vacates or is removed from premises after receiving notice under s 384**

- (1) This section applies if the resident of rental premises is given a notice by a mortgagee under section 384 and vacates, or is removed from, the premises.
- (2) The resident is not liable for rent or for any other loss or expense incurred by the provider merely because the resident vacates, or is removed from, the rental premises.

**387 Resident not liable for loss if rent paid to mortgagee**

- (1) This section applies if a mortgagee of rental premises gives the resident written notice that the resident must pay rent to the mortgagee.
- (2) The resident is not liable for rent or for any other loss or expense incurred by the provider merely because the resident pays rent to the mortgagee.

**Division 4A Death of sole resident**

**387A Death of sole resident**

- (1) If a sole resident dies, the rooming accommodation agreement ends on the earliest of the following—
  - (a) 7 days after the resident's personal representative or relative gives the provider written notice that the agreement ends because of the resident's death;
  - (b) 7 days after the provider gives the resident's personal representative or relative written notice that the agreement ends because of the resident's death;
  - (c) the day agreed between the provider and the resident's personal representative or relative;
  - (d) the day decided by the tribunal on application by the provider.

- (2) However, if no notice is given, or agreement or application is made, under subsection (1), the rooming accommodation agreement ends 14 days after the resident's death.
- (3) Nothing prevents the withdrawal of a notice or application under subsection (1) so that a day may be agreed under subsection (1)(c).

## **Division 5                      Procedural requirements and orders of tribunal**

### **388      Applications for termination orders**

- (1) An application may be made to a tribunal for a termination order by the provider without giving a notice to leave the rental premises to the resident if the application is made because of—
  - (a) excessive hardship; or
  - (b) repeated breaches.
- (2) An application may be made to a tribunal for a termination order by the resident without giving a notice terminating the agreement to the provider for the rental premises if the application is made because of—
  - (a) excessive hardship; or
  - (b) repeated breaches; or
  - (c) misrepresentation.

### **389      Orders relating to repeated breaches**

- (1) If an application is made to a tribunal by the provider or resident for an order to terminate a fixed term agreement 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

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- (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 agreement has been in existence;
  - (c) the period in which the breaches were committed;
  - (d) the remaining period of the agreement;
  - (e) anything else the tribunal considers relevant.

### **389A Orders relating to misrepresentation**

- (1) If an application is made to the tribunal for a termination order because of misrepresentation, the tribunal may make the order if satisfied—
- (a) the applicant has established the grounds for making the application under section 381J(1); and
  - (b) the false or misleading information, that is the subject of the application, justifies terminating the rooming accommodation agreement.
- (2) In deciding whether the false or misleading information justifies terminating the rooming accommodation agreement, the tribunal must have regard to—
- (a) the extent to which the false or misleading information did any of the following—
    - (i) induced the resident to enter into the agreement;
    - (ii) misrepresented the condition of the rental premises, the resident's room or inclusions;
    - (iii) misrepresented the services provided for the room;

- (iv) adversely affected the resident in exercising a right under this Act;
  - (v) adversely affected the resident's quiet enjoyment of the resident's room; and
- (b) any adverse effects likely to be suffered by the resident or other persons if the agreement were not terminated.
- (3) In deciding the application, the tribunal may have regard to any other matter the tribunal considers relevant.

## **Division 6                      Goods or money left behind in premises**

### **390      Application of div 6**

This division applies if—

- (a) a rooming accommodation agreement ends; and
- (b) money, a personal document or another item belonging, or apparently belonging, to the former resident (the *lost property*) is left at the rental premises.

### **391      Unauthorised dealing with lost property**

The provider or provider's agent must not dispose of, or otherwise deal with, the lost property other than under this division, unless the provider or agent has a reasonable excuse.

Maximum penalty—40 penalty units.

### **392      Personal document or money**

- (1) This section applies if the lost property is a personal document or money.
- (2) The provider must—
  - (a) make reasonable efforts to contact the former resident about the property; and

- (b) store the property safely for at least 28 days, unless it is reclaimed before that time.
- (3) If, at the end of 28 days, the property has not been reclaimed, the provider must give it to the public trustee.
- (4) However, if the lost property is money and has not been reclaimed after 28 days, the provider may deduct any outstanding amount owed by the former resident under the rooming accommodation agreement before giving the remainder to the public trustee.

### **393 Item other than personal document or money**

- (1) This section applies if the lost property is not a personal document or money.
- (2) The provider may sell the property, or dispose of it in another way, if the provider reasonably believes—
  - (a) it is perishable; or
  - (b) its market value is less than the amount prescribed under a regulation for this subsection; or
  - (c) storage of the goods would be unhealthy or unsafe.
- (3) Otherwise, the provider must—
  - (a) make reasonable efforts to contact the former resident about the property; and
  - (b) store the property safely for at least 28 days, unless it is reclaimed within that time.
- (4) Without limiting subsection (3)(a), reasonable efforts to contact the former resident include the following—
  - (a) attempting to contact the former resident by telephone, including text message, email or private message on a social media platform;
  - (b) attempting to contact an emergency contact listed in the rooming accommodation agreement;
  - (c) publishing a notice in an online newspaper for the city or State in which the former resident is or was residing.

- (5) If, at the end of 28 days, the property has not been reclaimed, the provider must—
  - (a) continue to store the property for the former resident; or
  - (b) sell or dispose of the property.
- (6) However, if the provider reasonably believes the market value of the property is less than the amount prescribed under a regulation for this subsection, the provider may donate the property to charity instead of selling it under subsection (5)(b).
- (7) If the person entitled to the property claims it before it is disposed of under this section, and pays the reasonable costs incurred by the provider under this section, the provider must give the property to the person.
- (8) If the provider sells the property under this section, the proceeds must be applied—
  - (a) in payment of the reasonable costs incurred by the provider under this section; and
  - (b) in payment of any outstanding amount owed by the former resident under the rooming accommodation agreement; and
  - (c) in payment of any balance—
    - (i) if the person entitled to the property has been located by the time of the sale—to the person; or
    - (ii) otherwise—to the public trustee.

### **394 Personal document given to public trustee**

- (1) This section applies if a provider gives a personal document to the public trustee under section 392.
- (2) The public trustee must keep the document for at least 6 months, unless it is reclaimed within that time.
- (3) If, at the end of the 6 months, the document has not been reclaimed, the public trustee may deal with it in any way the public trustee considers appropriate.



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**395 Money given to public trustee**

- (1) This section applies if a provider gives an amount to the public trustee under section 392 or 393.
- (2) The public trustee must pay the amount into the unclaimed moneys fund kept under the *Public Trustee Act 1978*.
- (3) The public trustee may, on application by the provider, pay an amount to the provider from the fund—
  - (a) in payment of the reasonable expenses incurred by the provider under this division relating to the lost property; or
  - (b) in payment of any outstanding amount owed by the former resident under the rooming accommodation agreement.
- (4) On application made to a tribunal by the provider, the tribunal may make an order conferring on the provider an entitlement to receive, from the fund, an amount mentioned in subsection (3)(a) or (b).
- (5) An amount paid by the public trustee under subsection (3) or an amount to which an order relates under subsection (4) may not be more than the amount given to the public trustee under section 392 or 393.

**396 Application to tribunal about lost property**

- (1) This section applies if the person entitled to the lost property is dissatisfied with the way the provider has dealt with it or is dealing with it.
- (2) The 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 provider to pay to the person an amount it considers appropriate as compensation for any loss or expense incurred by the person because of the provider's action in dealing with the property; or

- (b) make any other order it considers appropriate.

## Division 7                      Compensation

### 396A    Reletting costs

- (1) A rooming accommodation agreement may include a term requiring the resident to pay the costs incurred by the provider in reletting the resident's room if—
  - (a) the agreement is for a fixed term; and
  - (b) the resident is made liable under the term only if the resident ends the agreement other than in a way permitted under this Act; and
  - (c) the resident's liability under the term is limited to the reletting costs under this section.
- (2) A term of a rooming accommodation agreement requiring the resident pay the costs incurred by the provider in reletting the premises—
  - (a) is void if the term does not comply with subsection (1); and
  - (b) does not apply if after experiencing domestic violence, the resident ended the agreement or the resident's interest in the agreement under part 2, division 3, subdivision 2A.
- (3) The **reletting costs** payable by the resident under this section in relation to a fixed term agreement are—
  - (a) for a fixed term of not more than 3 years, the lesser of—
    - (i) the amount of the reletting costs mentioned in subsection (4); or
    - (ii) an amount equal to the rent payable for the period between the resident leaving the rental premises and the day a new agreement commences after the rental premises are relet; or

- (b) for a fixed term of more than 3 years, the lesser of—
  - (i) an amount equal to 1 month's rent for each 12-month period remaining of the term of the agreement, up to a maximum amount equal to 6 months rent; or
  - (ii) an amount equal to the rent payable for the period between the resident leaving the rental premises and the day a new agreement commences after the rental premises are relet.
- (4) For subsection (3)(a)(i), the amount of the reletting costs is—
  - (a) if less than 25% of the fixed term had expired when the resident left the rental premises—the amount equal to 4 weeks rent; or
  - (b) if 25% or more but less than 50% of the fixed term had expired when the resident left the rental premises—the amount equal to 3 weeks rent; or
  - (c) if 50% or more but less than 75% of the fixed term had expired when the resident left the rental premises—the amount equal to 2 weeks rent; or
  - (d) if 75% or more of the fixed term had expired when the resident left the rental premises—the amount equal to 1 week's rent.

## Division 8                      Offences

### **396AA False or misleading information in notice requiring resident to leave rental premises**

- (1) This section applies in relation to the following notices—
  - (a) a notice to leave if rental premises being sold given under section 371A;
  - (b) a notice to leave for planned demolition or redevelopment given under section 371B;

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- (c) a notice to leave because of significant repair or renovations given under section 371C;
  - (d) a notice to leave for change of use given under section 371D.
- (2) A provider or provider's agent must not give a resident a notice containing information the provider or agent knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (3) Subsection (2) does not apply if the provider or provider's agent, when giving information in a document—
- (a) tells the resident, to the best of the provider or agent's ability, how the document is false or misleading; and
  - (b) if the provider or agent has, or can reasonably obtain, the correct information—gives the resident the correct information.

**396B Provider must not let rental premises for 6 months after ending rooming accommodation for premises being sold**

- (1) If a rooming accommodation agreement ends because the provider gives the resident a notice requiring the resident to leave the rental premises under section 371A, the provider must not offer rooming accommodation at the premises for 6 months after the day the agreement ends.

Maximum penalty—50 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is a defence for the provider to prove that—
- (a) the provider genuinely made the rental premises available for sale but no offers, acceptable to the provider, were received; or

*Example—*

The only offers the provider received were below the provider's expected sale price.

- (b) the provider entered into a contract for the sale of the rental premises but the contract ended without the premises being sold.

*Example—*

The contract was terminated by the buyer under a term of the contract or a statutory right, including a cooling-off period.

**396C Provider must not let rental premises for 6 months after ending rooming accommodation for change of use**

- (1) If a rooming accommodation agreement ends because the provider gives the resident a notice requiring the resident to leave the rental premises under section 371D, the provider must not offer rooming accommodation at the premises for 6 months after the day the agreement ends.

Maximum penalty—50 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is a defence for the provider to prove that the change of use did not happen for reasons beyond the provider's control.

## Chapter 6 Dispute resolution

### Part 1 Conciliation process for residential tenancy disputes and rooming accommodation disputes

#### Division 1 Preliminary

##### 397 Application of pt 1

- (1) This part applies if there is an issue in dispute relating to a residential tenancy agreement (a ***tenancy dispute***) and the lessor and tenant have been unable to resolve the dispute through negotiation.
- (2) This part also applies if there is an issue in dispute relating to a rooming accommodation agreement (a ***rooming accommodation dispute***) and the provider and resident have been unable to resolve the dispute—
  - (a) through negotiation; or
  - (b) if there is a dispute resolution process operating for the rooming accommodation, by using that process.

#### Division 2 Conciliation

##### 398 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) For division 6, 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.

### **399 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.

*Example of a dispute that may be unsuitable for conciliation—*

a rooming accommodation dispute about the provision of a food service or a personal care service to the resident under a rooming accommodation agreement

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

### **400 Appointment of conciliators**

- (1) The chief executive officer may appoint conciliators for this 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.

### **401 Functions of conciliators**

The functions of a conciliator under this Act are—

- (a) to encourage the settlement of a 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 3                      Starting the conciliation process**

### **402      Making dispute resolution request**

- (1) A lessor or tenant may make a request (a ***dispute resolution request***) to the authority asking it to try to resolve a tenancy dispute.
- (2) Also, a provider or resident may make a request (also a ***dispute resolution request***) to the authority asking it to try to resolve a rooming accommodation dispute.
- (3) The dispute resolution request must be in the approved form.

### **403      Action to be taken on dispute resolution request**

- (1) As soon as practicable after receiving a dispute resolution request, the authority must start a conciliation process for the parties to the dispute.
- (2) However, if the authority considers the dispute is not suitable for conciliation, it may give written notice to the parties that the dispute is not suitable for conciliation.



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## **Division 4                      Conduct of conciliation process**

### **404      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.

### **405      Limited right of representation**

- (1) During the conciliation process, each party to the dispute must conduct the party's own case.
- (2) However, a party may be represented by a person if—
  - (a) the party is a corporation or the conciliator is satisfied, and continues to be satisfied, a person should be allowed to represent the party; and
  - (b) the representative is approved by the conciliator.

### **406      Parties' participation in conciliation process not compellable**

- (1) A party to the dispute can not be compelled to participate in the conciliation process.
- (2) A party may withdraw from the conciliation process at any time.
- (3) The conciliation process may be ended at any time by the conciliator.

#### **407 Parties to conciliation process**

- (1) A person who is not a party to the 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.

#### **408 Conciliation agreements**

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

*Note—*

See also section 52(4) which provides that the terms of the conciliation agreement are taken to be included as terms of the residential tenancy agreement.

#### **409 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.

### **Division 5 Withdrawal of disputes**

#### **410 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 dispute.

## **Division 6                      Confidentiality, privilege and immunity**

### **411      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 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.

### **412      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 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.

### **413 Admissions made in conciliation process**

- (1) Evidence of anything said or an admission made during the conciliation process for a 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 Application to tribunals**

### **Division 1 Application of part**

#### **414 Application of pt 2**

This part applies to applications to the tribunal by the following—

- (a) lessors and tenants under residential tenancy agreements;
- (b) providers and residents under rooming accommodation agreements;
- (c) the authority;
- (d) another person entitled to apply to the tribunal under this Act.

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## Division 2                      Preliminary

### 414A    Applications to the tribunal

An application to the tribunal under this Act must be made in the way provided under the QCAT Act.

### 415      Meaning of *urgent application*

- (1) An application to the 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; or
  - (h) failure to enter into acceptable behaviour agreement; or
  - (i) serious or persistent breach of acceptable behaviour agreement.
- (2) An application to the 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.

*Note—*

See sections 47 and 48 for provisions about short tenancies.

- (3) An application to the tribunal is an ***urgent application*** if—
  - (a) it is an application made under section 227; and
  - (b) the notice to relocate on which the application is based was given because of an emergency or for health or safety reasons.

- (4) An application to the 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 the tribunal is an ***urgent application*** if it is made under any of the following sections—
  - (a) section 60 (Orders of tribunal relating to noncompliance with s 58 or 59);
  - (b) section 191 (Orders of tribunal);
  - (c) section 201 (Entry by lessor or lessor’s agent under order of tribunal);
  - (d) section 220 (Orders of tribunal about reimbursement or payment for emergency repairs);
  - (e) section 221 (Application for repair order), if the application is about emergency repairs;
  - (ea) section 221B (Extension of time to comply with repair order);
  - (f) section 233 (Application to tribunal about proposal);
  - (g) section 245 (Injury to domestic associate);
  - (h) section 246 (Injury or damage affecting occupants);
  - (ha) section 246A (Retaliatory action taken against tenant);
  - (i) section 264 (Entry by provider or provider’s agent under order of tribunal);
  - (j) section 273 (Application to tribunal about proposed rule change);
  - (ja) section 276A (Retaliatory action taken against resident);
  - (la) section 308H (Application to tribunal about notice ending tenancy interest);
  - (m) section 309 (Application for termination for failure of lessor to remedy breach);

- (ma) section 324A(1)(d) (Death of sole tenant);
  - (mb) section 350 (Issue of warrant of possession);
  - (n) section 356 (Dispute about abandonment termination notice);
  - (o) section 357 (Order about abandonment);
  - (p) section 358 (Tenant remaining in possession);
  - (q) section 359 (Compensation on abandonment termination notice);
  - (r) section 361 (Review of abandonment order);
  - (s) section 363 (Goods left on premises);
  - (t) section 365 (Application about goods left on premises);
  - (va) section 381H (Application to tribunal about notice ending residency interest);
  - (vb) section 387A(1)(d) (Death of sole resident);
  - (w) section 395(4) (Money given to public trustee);
  - (x) section 418 (Application of Act to agreements);
  - (y) section 455 (Application to tribunal for order to exclude person from park).
- (6) An application to the tribunal is an ***urgent application*** if it is made under chapter 9, part 3.

#### **416 Dispute resolution request required before applying to tribunal**

- (1) The lessor or tenant under a residential tenancy agreement, or provider or resident under a rooming accommodation agreement, may apply under this Act to a tribunal about an issue only if the applicant has first made a dispute resolution request about the issue and—
- (a) the conciliation process has ended without a conciliated resolution having been reached, because—

[s 417]

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- (i) the authority refuses to provide a conciliation service about the issue; or
    - (ii) a party refuses to participate, or continue to participate, in the conciliation process; or
    - (iii) the parties participate in the conciliation process but do not reach an agreement on resolving the dispute; or
  - (b) a conciliated resolution is reached but the applicant reasonably believes the other party has breached the conciliation agreement.
- (2) This section does not apply to an urgent application.

*Notes—*

- 1 See section 399.
- 2 See section 406.

#### **417 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—
    - (i) the lessor or tenant under a residential tenancy agreement; or
    - (ii) a provider or resident under a rooming accommodation 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 request to the authority about the dispute issue.

*Note—*

Section 419 provides for the time in which the lessor or tenant, or provider or resident, may apply to the tribunal for an order about a breach of the agreement.



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## **Division 3                      General powers of tribunals**

### **418      Application of Act to agreements**

- (1) A person or the authority 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) a residential tenancy agreement to which this Act applies; or
  - (b) a rooming accommodation agreement to which this Act applies.
- (2) The tribunal may allow the authority to intervene in, or support, an application by a person under subsection (1).

### **419      Applications about breach of agreements**

- (1) This section applies if any of the following claim there has been a breach of a term of a residential tenancy agreement or a rooming accommodation agreement—
  - (a) a lessor or tenant under the residential tenancy agreement;
  - (b) a provider or resident under the rooming accommodation agreement.
- (2) The lessor or tenant, or provider or resident, may apply to a tribunal for an order about the breach.
- (3) The application must be made within 6 months after the lessor or tenant, or provider or resident, becomes aware of the breach.
- (4) For a residential tenancy, the application may be made—
  - (a) during the term, or after the end, 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.
- (5) For rooming accommodation, the application may be made—
  - (a) during the term of the agreement or after the agreement ends; and
  - (b) whether or not a rental bond for the agreement is held by the authority when the application is made.

## **420 Orders about breach of agreements**

- (1) If an application about a breach of a residential tenancy agreement or a rooming accommodation agreement 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—
    - (i) the cost of remedying a breach of the agreement; or
    - (ii) an amount for compensation.

- (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) An order under subsection (1)(e) in favour of a lessor in relation to the reletting of premises must not be made for an amount that is more than the reletting costs.

#### **421 Matters to which tribunal must have regard for orders for compensation**

Without limiting section 420(1)—

- (a) in making an order for compensation in favour of a lessor, a tribunal must have regard to whether the lessor has complied with the lessor's duty under section 362 to mitigate loss or expense; and
- (b) in making an order for compensation in favour of a provider, a tribunal must have regard to whether the provider has taken all reasonable steps to mitigate the loss or expense.

#### **422 Application of Aboriginal tradition**

- (1) This section applies if—
  - (a) the lessor is—
    - (i) an indigenous local government, including an indigenous regional council, under the *Local Government Act 2009*; or
    - (ii) Aurukun Shire Council; or
    - (iii) Mornington Shire Council; or
    - (iv) an entity prescribed under a regulation; 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.

## **423 Application of Island custom**

- (1) This section applies if—
  - (a) the lessor is—
    - (i) an indigenous regional council under the *Local Government Act 2009*; or
    - (ii) an entity prescribed under a regulation; 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.

#### **424 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.

#### **425 Dispute about residents' notices**

- (1) This section applies if a resident gives to the provider—
  - (a) a notice under section 378 requiring the provider to remedy a breach; or
  - (b) a notice under this Act terminating the rooming accommodation agreement, other than a notice under section 381.
- (2) If the provider disputes the ground stated in the notice, the provider may apply to a tribunal for an order about the notice.

- (3) If the tribunal is satisfied the resident was not entitled to give the notice on the ground stated, it may make an order under this section.
- (4) If the tribunal decides the application before the agreement ends, it may make any order it considers appropriate.
- (5) If the tribunal decides the application after the agreement is ended because of the resident's action, it may make an order requiring the resident to pay to the provider an amount it considers appropriate as compensation for any loss (including loss of rent) or expense incurred by the provider by the resident terminating the agreement.

#### **426 Disputes about lessors' notices**

- (1) If a tenant disputes the ground stated in any of the following notices given to the tenant by the lessor, the tenant may apply to the tribunal for an order about the notice—
  - (a) a notice to remedy breach;
  - (b) a notice to leave;
  - (c) a notice informing the tenant of the lessor's refusal to approve the tenant keeping a pet at the premises.

*Note—*

See section 184D for the requirements of a notice informing the tenant of the lessor's refusal to approve the tenant keeping a pet at the premises.

- (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.

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## **427 Dispute about providers' notices**

- (1) This section applies if a provider gives to a resident—
- (a) a notice under section 368 requiring the resident to remedy a breach; or
  - (b) a notice requiring the resident to leave the rental premises; or
  - (c) a notice informing the resident of the provider's refusal to approve the resident keeping a pet in the resident's room.

*Note—*

See section 256D for the requirements of a notice informing the resident of the provider's refusal to approve the resident keeping a pet in the resident's room.

- (2) If the resident disputes the ground stated in the notice, the resident may apply to a tribunal for an order about the notice.
- (3) If the tribunal is satisfied the provider was not entitled to give the notice on the ground stated, it may make an order under this section.
- (4) If the tribunal decides the application before the agreement ends, it may make any order it considers appropriate.
- (5) If the tribunal decides the application after the agreement is ended because of the provider's action, it may make an order requiring the provider to pay to the resident an amount it considers appropriate as compensation for any loss or expense incurred by the resident for having to leave the rental premises.

## **428 Dispute about entry to resident's room or removal of resident**

- (1) This section applies if a resident claims the provider or someone helping the provider has—
- (a) unlawfully entered the resident's room; or
  - (b) unlawfully removed the resident or the resident's property from the rental premises.

- (2) The resident may apply to a tribunal for an order.
- (3) The application may only be made within 6 months after the happening of the event mentioned in subsection (1).
- (4) The application may be made during the term of the agreement or after the agreement has ended.
- (5) The tribunal may make any order it considers appropriate, including an order for compensation.

**429 General disputes between lessors and tenants or providers and residents**

- (1) If there is a dispute between the lessor and tenant, or provider and resident, 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.

**430 Disputes between cotenants or coresidents about rental bonds**

- (1) If there is a dispute between cotenants or coresidents about a rental bond for an agreement, any cotenant or coresident 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 or provider an opportunity to be heard on the application.

**431 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.



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**432 Joining applications**

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

**433 Relevant matters for deciding whether a person is a boarder or lodger**

- (1) Subsection (2) applies if, in relation to an application for an order under this Act, the tribunal is required to decide whether a person is a boarder or a lodger.
- (2) The tribunal must have regard to the following—
  - (a) the extent to which the person has control over premises;
  - (b) the extent to which another person, receiving an amount from the person for the right to reside at the premises, has control of the premises;
  - (c) whether another person, receiving an amount from the person for the right to reside at the premises, also resides at the premises;
  - (d) the provision of services to the person;
  - (e) whether the person shares facilities, including the bathroom and kitchen facilities;
  - (f) anything else the tribunal considers relevant.

**433A Particular applications to be heard in private**

- (1) A proceeding before the tribunal about an application made to the tribunal must be held in private if—
  - (a) the application is made under section 245 or 321; or
  - (b) the application is made under section 312 and the applicant is the domestic associate of the other cotenant or another cotenant; or
  - (c) the application is made under section 323 and the applicant is the domestic associate of the tenant.

(2) In this section—

*domestic associate* means a person in any of the following relationships—

- (a) an intimate personal relationship;
- (b) a family relationship;
- (c) an informal care relationship.

(3) A term used in subsection (2)(a) to (c) has the same meaning as in the *Domestic and Family Violence Protection Act 2012* and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.

## Chapter 7      Enforcement

### Part 1              Authorised persons

#### 434      **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.

#### 435      **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 a regulation.
- (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.

#### **436 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.

#### **437 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.

#### **438 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.
- (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—20 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.

#### **439 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**

### **440      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.

### **441      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; 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.

#### **442 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.

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- (4) After issuing a warrant, the magistrate must immediately fax a copy (the *facsimile warrant*) 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
      - (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.

#### **443 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
  - (d) seize a document at the place if the authorised person reasonably believes the document is evidence of an offence against this 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
  - (e) take into the place any persons, equipment and materials the authorised person reasonably requires for exercising a power in relation to the place; or
  - (f) 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 (e).
- (2) A person who is required by an authorised person under subsection (1)(f) 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

### 444 Procedure after document seized

- (1) As soon as practicable after a document is seized by an authorised person under section 443, 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.

#### **445 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 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.

#### **446 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.

#### **447 False or misleading documents**

- (1) A person must not give an authorised person or the authority a document containing information the person knows is false or misleading 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 or the authority, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the authorised person or 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 or misleading to the person's knowledge.

#### **448 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.

#### **449 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 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.

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**450 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 acknowledgement of the occupier's agreement.
- (4) The acknowledgement 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 acknowledgement of agreement, the authorised person must immediately give a copy to the occupier.

**451 Evidence of agreement**

- (1) This section applies to a proceeding if—

[s 452]

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- (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 acknowledgement 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.

#### **452 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.

#### **453 Impersonation of authorised person**

A person must not pretend to be an authorised person.

Maximum penalty—80 penalty units.

## **Chapter 8      Causing nuisance in moveable dwelling parks**

#### **454 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.

*Note—*

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 19, part 4.

*Examples 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.

#### **455 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.

#### **456 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.
- (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 9 Information about tenants

### Part 1 Preliminary

#### 457 Definition for chapter

In this chapter—

***personal information***—

- (a) means information or an opinion about an identified individual, or an individual who is reasonably identifiable—
  - (i) whether the information or opinion is true or not; and
  - (ii) whether the information or opinion is recorded in a material form or not; and
- (b) includes photographs or images of individuals' personal possessions or standard of living.

### **457A References to lessors and tenants in ch 9**

Without limiting sections 8, 13 and 20, in this chapter, a reference to a lessor, lessor's agent or tenant includes a reference to the lessor, lessor's agent or tenant under a residential tenancy agreement that has ended.

### **457B Extra-territorial application of particular provisions of ch 9**

- (1) This section applies if—
  - (a) a person does an act, or makes an omission, outside the State in relation to—
    - (i) the personal information of another person who resides in the State; or
    - (ii) premises located within the State; and
  - (b) the act or omission would constitute an offence against a provision of this chapter if it were done or made by the person within the State.
- (2) The person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the act or omission had happened in the State.
- (3) This section does not limit the Criminal Code, sections 12 to 14.

## **Part 2                      Protection of personal information**

### **457C Definition for part**

In this part—

*applicant* means—

- (a) a person who applies to a lessor or a lessor's agent to enter into a residential tenancy agreement; or

- (b) a person who applies to a provider or a provider's agent to enter into a rooming accommodation agreement.

#### **457D Requirements about collecting personal information**

- (1) This section applies to a person collecting personal information about an applicant, tenant or resident in relation to a residential tenancy agreement or rooming accommodation agreement.
- (2) The person may collect the personal information—
  - (a) in relation to an applicant—only for the purposes of assessing the suitability of the applicant as a tenant or resident for the premises; or
  - (b) in relation to a tenant or resident—only if the information relates to the management of the agreement.

Maximum penalty—20 penalty units.

- (3) For subsection (2)(b), photographs taken of the rental property during inspections are information relating to the management of the agreement.

#### **457E Requirements about collected information**

- (1) A lessor, lessor's agent, provider or provider's agent (the *relevant person*) must ensure that personal information about an applicant is—
  - (a) stored in a secure way; and
  - (b) accessed only by the relevant person for the purposes of assessing the suitability of the applicant as a tenant or resident for the premises; and
  - (c) if the applicant does not become a tenant or resident—destroyed in a secure way within—
    - (i) 3 months after a residential tenancy agreement or a rooming accommodation agreement for the tenancy or accommodation for which the applicant applied commences; or

- (ii) a longer period agreed to by the applicant.

Maximum penalty—20 penalty units.

- (2) The relevant person must ensure that personal information about a tenant or resident is—
  - (a) stored in a secure way; and
  - (b) accessed only for the purposes of managing the premises or rental premises; and
  - (c) destroyed in a secure way within 7 years after the end of the residential tenancy agreement or rooming accommodation agreement to which the information relates.

Maximum penalty—20 penalty units.

## Part 3 Tenancy databases

### 457F Definitions for part

In this part—

***database operator*** means an entity that operates a tenancy database.

***inaccurate***, in relation to personal information listed in a tenancy database, includes that the information is inaccurate because of the following—

- (a) the information indicates the individual owes an amount;
- (b) the amount was paid more than 3 months after it became payable.

***list***, in relation to personal information—

- (a) means—
  - (i) enter the personal information into a tenancy database; or

- (ii) give the personal information to a database operator or someone else for entry into a tenancy database; and
- (b) for personal information already stored in a tenancy database—includes amend the personal information to include additional personal information whether by entering it in the database or giving it to the database operator or someone else for entry.

**out of date**, in relation to personal information listed in a tenancy database, means that the information is out of date because—

- (a) the information indicates an individual owes a lessor an amount, but the amount was paid within 3 months after it became payable; or
- (b) the information is listed on the basis that the tribunal has made a termination order but the proceeding for the termination order was reopened or appealed under the QCAT Act, and the termination order was set aside.

**social housing database** means a database kept for the purpose of providing housing services under the *Housing Act 2003*.

**tenancy database** means a database containing information that—

- (a) is personal information relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or
- (b) is used for a purpose relating to a past, current or future occupation of residential premises under a residential tenancy agreement.

## **458 Non-application to internal databases**

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

- (b) a social housing database.
- (2) In this section—  
*entity* includes a department.

#### **458A Notice of usual use of database**

- (1) This section applies if—
  - (a) a person (the *applicant*) applies to a lessor, whether or not through the lessor's agent, to enter into a residential tenancy agreement; and
  - (b) the lessor or lessor's agent usually uses 1 or more tenancy databases for deciding whether a residential tenancy agreement should be entered into with a person.

*Example for subsection (1)(b)—*

A lessor or agent under an agreement with a database operator accesses the database operator's tenancy database to check a prospective tenant's tenancy history.

- (2) The lessor or agent must, when the application is made, give the applicant written notice of the following—
  - (a) the name of all the tenancy databases the lessor or agent usually uses;
  - (b) that the reason the lessor or agent uses the relevant databases is for checking a person's tenancy history;
  - (c) for each relevant database, how a person may contact the database operator and obtain information from the operator.

Maximum penalty—20 penalty units.

- (3) Subsection (2) applies to a tenancy database whether or not the lessor or agent intends to use the database for deciding whether a residential tenancy agreement should be entered into with the applicant.
- (4) The lessor or agent is not required to give a notice under subsection (2) if—

- (a) an earlier notice was given to the applicant under the subsection not more than 7 days before the application was made; and
  - (b) the details contained in the notice, if it were given, would be the same as the details contained in the earlier notice.
- (5) A notice under subsection (2) may be combined with another document that the lessor or agent gives the tenant.

*Example for subsection (5)—*

A notice may be combined with a written tenancy application form.

#### **458B Notice of listing if database used**

- (1) This section applies if—
- (a) a person (the *applicant*) applies to a lessor, whether or not through the lessor's agent, to enter into a residential tenancy agreement; and
  - (b) the lessor or the lessor's agent uses a tenancy database for checking whether personal information about the applicant is in the database; and
  - (c) personal information about the applicant is in the database.
- (2) The lessor or agent must, within 7 days after using the tenancy database, give the applicant written notice of the following—
- (a) the name of the database;
  - (b) that personal information about the applicant is in the database;
  - (c) details of the listing entity for the personal information;
  - (d) how and in what circumstances—
    - (i) the applicant can have the personal information removed or amended under this part; and
    - (ii) the applicant can obtain a copy of the personal information.

Maximum penalty—20 penalty units.

*Note—*

Section 459C provides for when a lessor, lessor's agent or database operator must provide the applicant's listed personal information to the applicant.

- (3) However, the requirement to state details of the listing entity applies only if the listing entity's details are contained in the tenancy database.
- (4) In this section—

*listing entity*, for personal information, means the lessor or agent who listed the personal information in a tenancy database.

## **459 Restriction on listing**

- (1) A person must not list personal information about another person in 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 information; and
  - (d) the tribunal has not made an order under section 245(6) prohibiting the listing of the information.
- (2) Without limiting subsection (1), the person must not list personal information about the other person on a tenancy database unless—
  - (a) the person has without charging a fee, given the other person a copy of the personal information or taken other reasonable steps to disclose the personal information to the person; and
  - (b) the person has given the other person at least 14 days to review the personal information and make submissions objecting to its entry into the database or about its accuracy, completeness or clarity; and



- (c) the person has considered any submissions made.

Maximum penalty—20 penalty units.

- (3) The person does not commit an offence under subsection (2) if the person cannot locate the other person after making reasonable enquiries.
- (4) The person is not required to give an opportunity to review or consider submissions made under subsection (2) if—
  - (a) the personal information, at the time of the listing, is contained in publicly available court or tribunal records; or
  - (b) the listing involves only an amendment of the personal information under section 461.
- (5) A person must not list personal information about another person if the person is aware that the personal information is inaccurate, incomplete, ambiguous or out of date.

Maximum penalty—20 penalty units.

#### **459A Ensuring quality of listing—lessors and lessors agents**

- (1) This section applies if—
  - (a) a lessor or lessor’s agent lists personal information about a person; and
  - (b) the lessor or agent becomes aware that the personal information is inaccurate, incomplete, ambiguous or out of date.
- (2) The lessor or agent must, within the relevant notice period, give the database operator written notice—
  - (a) for information that is inaccurate, incomplete or ambiguous—
    - (i) that the information is inaccurate, incomplete or ambiguous; and
    - (ii) of how the information must be amended so that it is no longer inaccurate, incomplete or ambiguous; and

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- (b) for information that is out of date—that the information is out of date and must be removed; and
- (c) in either case—that the database operator must comply with section 459B.

Maximum penalty—20 penalty units.

- (3) However, in either of the following circumstances, the lessor or agent is not required to give the notice—
  - (a) the personal information is inaccurate, incomplete or ambiguous but not out of date, and the lessor or agent amends the information in the tenancy database within the relevant notice period so that it is no longer inaccurate, incomplete or ambiguous;
  - (b) the personal information is out of date, and the lessor or agent removes the information from the tenancy database within the relevant notice period.
- (4) If the lessor or agent gives a notice under this section, the lessor or agent must keep a copy of the notice for 1 year after it is given to the database operator.

Maximum penalty—20 penalty units.

- (5) In this section—

***relevant notice period*** means 7 days from the day the lessor or agent becomes aware that the person’s personal information is inaccurate, incomplete, ambiguous or out of date.

## **459B Ensuring quality of listing—database operators**

- (1) This section applies if a lessor or lessor’s agent gives a database operator notice under section 459A for personal information in the database operator’s tenancy database.
- (2) If the notice states that the information is inaccurate, incomplete or ambiguous but not out of date, the database operator must, within 14 days from the day the notice is given, amend the information in the way stated in the notice.

Maximum penalty—40 penalty units.

- (3) If the notice states that the information is out of date, the database operator must, within 14 days from the day the notice is given, remove the information from the tenancy database.

Maximum penalty—40 penalty units.

#### **459C Providing copy of personal information listed**

- (1) A lessor or lessor's agent who lists personal information about a person must, if asked in writing by the person, give the person a copy of the personal information listed within 14 days after the request is made and any fee for giving the information has been paid.

Maximum penalty—20 penalty units.

- (2) A database operator must, if asked in writing by a person whose personal information is in the database operator's tenancy database, give the person a copy of the information within 14 days after the request is made and any fee for giving the information has been paid.

Maximum penalty—20 penalty units.

- (3) If a fee is charged by a lessor or lessor's agent for giving personal information under subsection (1), or by a database operator for giving personal information under subsection (2), the fee—

- (a) must not be excessive; and
- (b) must not apply to lodging a request for accessing the information.

#### **459D Keeping personal information listed**

A database operator must not keep personal information about a person in the tenancy database for longer than 3 years.

Maximum penalty—40 penalty units.

*Note—*

Under section 459B(3) a database operator must remove out of date information from a tenancy database within 14 days.

#### **460 Application to tribunal about breach**

- (1) A person (the *tenant*) who claims there has been a breach of section 459(1), relating to the listing of personal information about 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.

#### **461 Application to tribunal about personal information listed**

- (1) A person (the *tenant*) whose personal information 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 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 inaccurate, incomplete, ambiguous or out of date; or

*Example for paragraph (a)—*

Personal information about 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 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 Personal information about Y is listed on a tenancy database for a reason relating to damage caused to premises by a domestic associate of Y in the course of an incident of domestic violence. Because of the listing, Y can not obtain appropriate and affordable accommodation.
  - 2 Personal information about 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.
- (4) To remove doubt, a tribunal may make an order under this section against any person including the following—
    - (a) a person who owns or operates a tenancy database;
    - (b) a person who lists personal information about another person on a tenancy database.

## **462 Application to tribunal about proposed listing**

- (1) A person (the *tenant*) who is aware of a proposed listing of personal information about 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 460 or 461.

#### **463 Offence of contravening tribunal order**

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

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.

#### **464 Order for compensation**

- (1) This section applies if a court convicts a person of an offence against section 463.
- (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 10      Residential Tenancies                          Authority**

### **Part 1                      Establishment of authority**

#### **465      Establishment of authority**

The Residential Tenancies Authority is established.

#### **466      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.

#### **467      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**

#### **468      Authority's functions**

The authority's functions are—

- (a) to ensure the proper administration and enforcement of this Act; and
- (b) to receive, hold and pay rental bonds under this Act; and
- (c) to give advice to the Minister about—

- (i) residential tenancy issues and rooming accommodation issues generally; and
  - (ii) the operation of this Act in particular; and
- (d) without limiting paragraph (c), to give advice to the Minister about—
  - (i) the application of this Act to residential tenancy agreements, premises or entities; and
  - (ii) the application of this Act to rooming accommodation agreements, rental premises or entities; and
- (e) to provide information, educational and advisory services about the operation of this Act; and
- (f) to collect and analyse information about residential tenancy issues and rooming accommodation issues; and
- (g) to provide a conciliation service to parties to disputes about residential tenancy agreements and rooming accommodation agreements; and
- (h) to intervene in, or support, proceedings about the application of this Act to residential tenancy agreements and rooming accommodation 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.

#### **469 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.

**470 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**

**471 The board**

The authority has a board of directors.

**472 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.

#### **473 Composition of board**

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

#### **474 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—
    - (i) an employee of the employing office or of another government entity performing work for the authority under a work performance arrangement; or
    - (ii) an employee or 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.

#### **475 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.

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## Part 4 Proceedings of the board

### 476 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.

### 477 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.

#### **478 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 a regulation, 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 a regulation, 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.
- (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.

#### **479 Minutes**

The board must keep minutes of its proceedings.

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## Part 5 Financial matters

### 480 Application of Financial Accountability Act 2009

The authority is a statutory body within the meaning of the *Financial Accountability Act 2009*.

### 481 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 2B sets out the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### 482 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.
- (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.

### 482A Banking arrangements for rental bond account

- (1) The Treasurer may give the authority a direction about the banking arrangements for the rental bond account.
- (2) A direction must be consistent with requirements applying to the authority under this or another Act.

- (3) A direction may require or authorise the keeping of a rental bond account that is comprised of 2 or more bank accounts.
- (4) The authority must comply with a direction under this section.

## **Part 6**

### **Other things about the authority**

#### **483 Authority may enter into work performance arrangements**

- (1) The authority may enter into, and give effect to, a work performance arrangement with—
  - (a) the employing office; or
  - (b) the appropriate authority of another government entity.
- (2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (3) For example, a work performance arrangement may provide for—
  - (a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and
  - (b) the authorising of a person to exercise powers for the arrangement; and
  - (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.
- (4) A person performing work for the authority under a work performance arrangement entered into under subsection (1)—
  - (a) is not employed by the authority; and
  - (b) remains an employee of the employing office, or an employee of the other government entity whose appropriate authority is a party to the arrangement.
- (5) To remove any doubt, it is declared that the authority does not have power to employ a person performing work for the

authority under a work performance arrangement entered into under subsection (1).

**484 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.

**485 Application of certain Acts**

The authority is—

- (a) a unit of public administration under the *Crime and Corruption Act 2001*; and
- (b) a prescribed entity for the *Public Sector Act 2022*, section 25, definition *prescribed entity*, paragraph (c).

**486 Delegation**

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

## **Part 7 Chief executive officer**

**487 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 Sector Act 2022*.
- (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.

#### **488 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.

#### **489 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 can not, for another reason, perform the duties of the office.

#### **490 Delegation by chief executive officer**

- (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.

## **Chapter 11      Residential Tenancies Employing Office**

### **Part 1              Establishment and functions of employing office**

#### **491      Establishment of employing office**

- (1) The Residential Tenancies Employing Office is established.
- (2) The employing office consists of—
  - (a) the executive officer; and
  - (b) the employees of the employing office.
- (3) The employing office is a separate entity from the authority.

#### **492      Employing office represents the State**

- (1) The employing office represents the State.
- (2) Without limiting subsection (1), the employing office has the status, privileges and immunities of the State.

#### **493      Functions of employing office**

- (1) The main functions of the employing office are—
  - (a) entering into, for the State, a work performance arrangement with the authority under which employees of the employing office perform work for the authority; and

- (b) employing, for the State, staff to perform work for the authority under the work performance arrangement; and
  - (c) doing anything incidental to the discharge of the functions mentioned in paragraphs (a) and (b).
- (2) Also, the employing office has any other function conferred on the employing office under this or another Act.
- (3) This section does not limit the employing office's power to enter into and give effect to a work performance arrangement under section 498 with a government entity other than the authority.

## **Part 2                      Executive officer**

### **494      Appointment of executive officer**

- (1) There is to be an executive officer of the employing office.
- (2) The executive officer is to be appointed by the Governor in Council.
- (3) The executive officer is appointed under this Act and not under the *Public Sector Act 2022*.

### **495      Executive officer acting for employing office**

- (1) The employing office acts through the executive officer.
- (2) Anything done by the executive officer in the name of, or for, the employing office is taken to have been done by the employing office.

### **496      Delegation by executive officer**

- (1) The executive officer may delegate the executive officer's powers under this Act to another appropriately qualified officer of the employing office.
- (2) In this section—

*appropriately qualified*, for a power, means having qualifications, experience or standing appropriate to exercise the power.

## Part 3                      Staff of employing office

### 497      **Employing office may employ staff**

- (1) The employing office may, for the State, employ staff.
- (2) A person employed under subsection (1) is an *employee of the employing office*.
- (3) The employing office may decide the terms of employment of the employees of the employing office.
- (4) Subsection (3) applies subject to any relevant industrial instrument.
- (5) Employees of the employing office are employed under this Act and not under the *Public Sector Act 2022*.

### 498      **Employing office may enter into work performance arrangements**

- (1) The employing office may, for the State, enter into and give effect to a work performance arrangement with—
  - (a) the authority; or
  - (b) the appropriate authority of another government entity.
- (2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (3) For example, a work performance arrangement may provide for—
  - (a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and
  - (b) the authorising of a person to exercise powers for the arrangement; and

- (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.
- (4) A person performing work for the authority or other government entity under a work performance arrangement entered into under subsection (1)—
  - (a) is not employed by the authority or other government entity; and
  - (b) remains an employee of the employing office.
- (5) To remove any doubt, it is declared that the authority or another government entity does not have power to employ a person performing work for the authority or other government entity under a work performance arrangement entered into under subsection (1).

## Part 4 Other provisions

### 499 Employing office is statutory body

- (1) The employing office is a statutory body under—
  - (a) the *Financial Accountability Act 2009*; and
  - (b) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) For applying the *Financial Accountability Act 2009* to the employing office as a statutory body—
  - (a) the executive officer is taken to be the chairperson of the employing office; and
  - (b) the *Financial Accountability Act 2009* is taken to require the executive officer to consider the annual financial statements and the auditor-general's report as soon as practicable after they are received by the employing office; and
  - (c) the *Financial Accountability Act 2009* is taken to require the executive officer to consider any observations, suggestions or comments given to the executive officer

as soon as practicable after the executive officer receives them.

**500 Application of Crime and Corruption Act 2001**

The employing office is a unit of public administration under the *Crime and Corruption Act 2001*.

## **Chapter 12 Legal proceedings**

### **Part 1 Application**

**501 Application of ch 12**

This chapter applies to a proceeding under this Act.

### **Part 2 Evidence**

**502 Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive officer's appointment;
- (b) an authorised person's appointment;
- (c) the chairperson's appointment;
- (d) the authority of the chief executive officer, an authorised person or the chairperson, to do anything under this Act.

### **503 Signatures**

A signature purporting to be the signature of the chief executive officer, the chairperson or an authorised person is evidence of the signature it purports to be.

### **504 Other evidentiary aids**

A certificate signed by the chief executive officer, the chairperson or an authorised person, 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.

### **505 Statement of complainant's knowledge**

In a complaint starting a proceeding, a statement that the matter of complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

### **506 Condition reports for residential tenancy**

- (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.

### **507 Condition report for rooming accommodation**

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

### **508 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 residential tenancy agreement or rooming accommodation agreement is evidence of the matter stated.

## **509 Indications a resident has abandoned a room**

- (1) A tribunal may have regard to the matters stated in subsection (2) in—
  - (a) deciding under section 260(b) whether, at a particular time, a provider held a reasonable belief that a resident had abandoned the resident's room; or
  - (b) deciding under section 366(f) whether, at a particular time, a resident had abandoned the resident's room.
- (2) Indications that a resident has abandoned the resident's room include the following—
  - (a) a failure of the resident to pay rent under the rooming accommodation agreement;
  - (b) the presence at the rental premises of uncollected mail, newspapers or other material for the resident;
  - (c) reports from other residents or other persons indicating the resident has abandoned the room;
  - (d) the absence of household goods in the room;
  - (e) a failure of the resident to respond to a notice given to the resident under chapter 4, part 2 about a proposed entry to the room.

## **Part 3 Proceedings**

### **510 Summary offences**

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start within the later of the following periods to end—
  - (a) 1 year after the commission of the offence;
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.



## **511 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 Code applies to the attempt.

## **512 Responsibility for act or omission of representative**

- (1) This section applies in a proceeding for an offence against this Act.

- (2) If 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 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.

- (3) An act 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 to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

- (4) In this section—

***representative*** means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or

- (b) for an individual—an employee or agent of the individual.

***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.

## **Part 4                      Offence about giving false or misleading document to authority**

### **514      False or misleading documents**

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

Maximum penalty—20 penalty units.

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

## **Chapter 13      Miscellaneous**

### **515      Authority may provide addresses to tribunal**

- (1) This section applies if—
  - (a) an application is made to the tribunal; and

- (b) the address of a party to the application is not provided or the tribunal is satisfied the address provided for the party is not the party's current address.
- (2) The tribunal may request the authority to provide the tribunal with the address for the party held by the authority.
- (3) The authority may provide the address requested to the tribunal.

## **516 Applications for more than prescribed amount**

- (1) This section applies if—
  - (a) a provision of this Act provides that an application may be made to a tribunal about a matter; and
  - (b) a person seeks the payment of an amount or other relief of a value greater than the prescribed amount under the QCAT Act in relation to the matter.
- (2) A provision of this Act about the matter applies—
  - (a) as if a reference to a tribunal were a reference to a court with jurisdiction for the amount or value of relief sought; and
  - (b) with all other necessary changes to give effect to paragraph (a).

## **517 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 employing office or of another government entity who performs work for the authority under a work performance arrangement; and
  - (d) an employee of the authority; and

- (e) 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.
- (3) A liability that would, apart from this section, attach to an official attaches instead to the State.

## **518 Disclosure of interests**

- (1) This section applies to a relevant employee if—
  - (a) the employee, or a person who, under a regulation, 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.
- (3) In this section—

***relevant employee*** means—

  - (a) an employee of the employing office or of another government entity who performs work for the authority under a work performance arrangement; or
  - (b) an employee of the authority.

## **519 Approved forms**

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

### **519A Code of conduct**

- (1) A regulation may prescribe a code of conduct.
- (2) A provision of a code of conduct is a ***conduct provision***.
- (3) A conduct provision may apply to the conduct of agents, lessors, providers, tenants or residents.
- (4) A conduct provision must not be inconsistent with a provision of—
  - (a) the *Agents Financial Administration Act 2014*; or
  - (b) the *Property Occupations Act 2014*.
- (5) Despite section 520(2)(b), a regulation may impose a penalty of not more than 50 penalty units for contravention of a conduct provision.

### **520 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
  - (a) impose a fee; or
  - (b) impose a penalty of not more than 20 penalty units for a contravention of a regulation.

### **521 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 99 years.

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

## **522 Non-application of Act to long-term leases for Hayman Island**

- (1) From the commencement day, this Act does not apply to a long-term lease entered into in relation to premises on Hayman 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 99 years.

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

## **523 Non-application of Act to long-term leases for Pacific Mirage**

- (1) From the commencement day, this Act does not apply to a long-term lease entered into in relation to premises within Pacific Mirage land 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 99 years.

*Pacific Mirage* means Perpetual Suburban Lease No. 06/2508 N. C. L. Part A situated in the County of Ward, Parish of Gilston, District of Brisbane, described at Lot 286 on Plan Wd 6317, containing 7,796m<sup>2</sup> more or less.

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

## **524 Non-application of Act to long-term leases within prescribed land**

- (1) This Act does not apply to a long-term lease entered into in relation to premises within prescribed land 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 entered into in relation to premises within prescribed land if the sublease is not a long-term lease.
- (3) This section applies to a long-term lease entered into in relation to premises within prescribed land even if the lease was entered into before the commencement of the regulation under which the land became prescribed land.
- (4) In this section—

*long-term lease* means a lease or sublease for a term, including renewal options, of at least 99 years.

*prescribed land* means land prescribed under a regulation.

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

**525 Giving notice to resident with impaired or limited capacity**

- (1) This section applies if—
  - (a) the provider for rooming accommodation knows that 1 or more administrators for a financial matter have been appointed under the *Guardianship and Administration Act 2000* for a resident of the rooming accommodation; or
  - (b) the provider for rooming accommodation—
    - (i) reasonably considers a resident of the rooming accommodation is a person with impaired capacity for a financial matter; and
    - (ii) knows that 1 or more attorneys for a financial matter have been appointed by the resident under an enduring power of attorney under the *Powers of Attorney Act 1998*; or
  - (c) a resident, or a person acting for a resident, gives the provider for rooming accommodation written notice—
    - (i) that the resident has limited capacity to manage the resident's affairs because of language, literacy or other factors; and
    - (ii) in that notice appoints a person to act for the resident in matters arising under the agreement.
- (2) If subsection (1)(a) or (b) applies and a provision of this Act requires the provider to give a notice to the resident—
  - (a) the provider must instead give the notice to the person appointed or, if more than 1 person has been appointed, to any 1 of the persons appointed; and
  - (b) the giving of a notice under paragraph (a) is sufficient compliance with the provision.
- (3) If subsection (1)(c) applies and a provision of this Act requires the provider to give a notice to the resident—



- (a) the provider must give the notice to both the resident and the person appointed; and
  - (b) notice under paragraph (a) must be given for compliance with the provision to be sufficient.
- (4) In this section—
- financial matters* see the *Guardianship and Administration Act 2000*, schedule 2, section 1.
- person with impaired capacity*, for a financial matter, means a person who is incapable of—
- (a) understanding the nature and effect of decisions about the matter; or
  - (b) freely and voluntarily making decisions about the matter; or
  - (c) communicating the decisions in some way.

## **526 Reporting a matter relating to the Residential Services (Accreditation) Act**

- (1) This section applies to a person if—
- (a) the person is an authorised person, a public service officer in the department or an officer of the authority; and
  - (b) in the course of carrying out a function or exercising a power under this Act, the person becomes aware of a matter that the person reasonably believes is a contravention of the *Residential Services (Accreditation) Act 2002* or is relevant to a decision under that Act about the registration or accreditation of a residential service.
- (2) The person must report the matter to the chief executive of the department within which that Act is administered, unless—
- (a) the person knows, or reasonably supposes, that the chief executive of that department is aware of the matter; or

- (b) the person reasonably believes the matter is a trivial contravention of the *Residential Services (Accreditation) Act 2002* or of minor relevance to a decision under that Act about the registration or accreditation of a residential service.

## 527 Confidentiality

- (1) This section applies to a person—
  - (a) who is, or has been, the chief executive officer, a member of the authority's board of directors, an employee of the authority or the employing office, or an authorised person; and
  - (b) who, in the course of administering this Act or because of opportunity provided by involvement in administering this Act—
    - (i) acquired confidential information about someone else; or
    - (ii) gained access to a document containing confidential information about someone else.
- (2) The person must not make a record of the information, disclose the information to anyone else or give access to the document containing the information to anyone else, other than—
  - (a) for a purpose of this Act; or
  - (b) for the administration or enforcement of this Act; or
  - (c) with the consent of the person to whom the information relates; or
  - (d) as required by a court, tribunal, authority or person with lawful authority to require the production of documents or the answering of questions; or
  - (e) if the information is required to support the administration of—
    - (i) the *Agents Financial Administration Act 2014*; or

- (ii) the *Property Occupations Act 2014*; or
- (f) if the information is required for administering, receiving, holding or paying rental bonds; or
- (g) as required or authorised under a law; or
- (h) if the person reasonably considers it is necessary to prevent a serious risk to public safety.

Maximum penalty—50 penalty units.

- (3) In this section—

***confidential information***—

- (a) means any information that—
  - (i) could identify an individual; or
  - (ii) is about a person's criminal history; but
- (b) does not include—
  - (i) information that is publicly available; or
  - (ii) statistical or other information that could not reasonably be expected to result in the identification of the person to whom it relates.

## Chapter 13A Matters relating to particular leases by the State and community housing providers

### 527A Definitions for ch 13A

In this chapter—

***antisocial behaviour*** includes making excessive noise, dumping cars or excessive rubbish, vandalism and defacing property.

***community housing provider***, for a tenancy, see section 527B.

***community housing provider tenancy agreement*** see section 527C.

***community housing service*** is a social housing service that is not public housing.

***existing State tenancy agreement***, for a residential tenancy, means a residential tenancy agreement under which the State is the lessor.

***existing State tenancy agreement*** see section 527C.

***public housing*** is a social housing service provided directly by the State.

***replacement lessor*** means a funded provider that has entered a funding agreement under the *Housing Act 2003* if, under the funding agreement, the funded provider may enter into a lease with the State for residential premises that are the subject of an existing State tenancy agreement.

***replacement terms*** see section 527C.

***social housing service*** is a service for providing housing to an individual for residential use, other than housing provided to an individual under NRAS.

## **527B What is a *community housing provider***

An entity is a ***community housing provider*** for a particular tenancy only if the entity—

- (a) has received, or is receiving, funding under the *Housing Act 2003* to provide a community housing service for that tenancy; and
- (b) is providing a community housing service for that tenancy.

*Example—*

An entity is lessor of 1 Smith Street and has received funding under the *Housing Act 2003* to provide a community housing service for that tenancy. The entity is also lessor for 2 Smith Street but has not received

funding under the *Housing Act 2003* to provide a community housing service for that tenancy. The entity is not a community housing provider for 2 Smith Street but is a community housing provider for 1 Smith Street while it is providing a community housing service with funding received under the *Housing Act 2003*.

## **527C Existing State tenancy agreements and community housing provider tenancy agreements**

- (1) This section applies if a replacement lessor gives a notice to the State for residential premises that are the subject of an existing State tenancy agreement stating a day, at least 14 days after the notice is given, for termination and replacement of the existing State tenancy agreement.
- (2) On the day stated in the notice—
  - (a) the existing State tenancy agreement for the residential premises is terminated; and
  - (b) a new residential tenancy agreement (a ***community housing provider tenancy agreement***) for the residential premises is taken to have been entered into between the replacement lessor and the tenant.
- (3) The terms (the ***replacement terms***) of the community housing provider tenancy agreement are the terms prescribed under a regulation for this section.
- (4) Without limiting subsection (3), the replacement terms may provide that the replacement lessor has a right to do any of the following—
  - (a) require the tenant to pay a rental bond;
  - (b) state the way in which the bond must be paid by the tenant;
  - (c) require the tenant to pay stated service charges;
  - (d) state the apportionment of the cost for the service charges payable by the tenant (where the premises are not individually metered for a service);
  - (e) state the way in which service charges must be paid by the tenant.

- (5) As soon as practicable after a community housing provider tenancy agreement is taken to have been entered under subsection (2), the replacement lessor must give to the tenant under the agreement—
- (a) a notice stating—
    - (i) the existing State tenancy agreement is terminated; and
    - (ii) a community housing provider tenancy agreement is taken to have been entered into by the tenant; and
    - (iii) the replacement lessor is the lessor under the community housing provider tenancy agreement; and
    - (iv) that rent under the community housing provider tenancy agreement must be paid to the replacement lessor; and
    - (v) the way in which the rent is to be paid; and
    - (vi) if the amount of the rent payable has changed—the new amount payable; and
  - (b) a copy of the replacement terms.
- (6) The State does not incur any liability for an existing State tenancy agreement terminated under this section.
- (7) In this section—

*funding agreement* see the *Housing Act 2003*, section 25.

## **527D Acceptable behaviour agreements for tenants**

- (1) The lessor may, by written notice given to the tenant, require the tenant to give a written undertaking (an ***acceptable behaviour agreement***), in the terms stated in the notice, not to engage in stated antisocial behaviour on any of the following—
- (a) the premises to which the agreement relates;

- (b) any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others).
- (2) The operation of an acceptable behaviour agreement extends to the behaviour of an occupant, a guest of the tenant or a person allowed on the premises by the tenant (each a *person allowed on the premises*).
- (3) If the tenant or a person allowed on the premises engages in any antisocial behaviour stated in the agreement, the tenant is taken to have breached the agreement.
- (4) The lessor may require a tenant to enter into an acceptable behaviour agreement for premises only if the lessor is of the opinion that the tenant or a person allowed on the premises has engaged, or is likely to engage, in antisocial behaviour on the premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others).
- (5) The lessor's opinion under subsection (4) must be based on—
  - (a) the history of the tenancy concerned; or
  - (b) the history of any prior tenancy entered into by the tenant and the lessor.
- (6) A notice under subsection (1) must inform the tenant of the lessor's right to apply to the tribunal under section 527E.
- (7) An acceptable behaviour agreement is of no effect unless the lessor has given the tenant the information required under subsection (6).
- (8) In this section—

*lessor* means—

  - (a) the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) a community housing provider.

**527E Application for termination relating to acceptable behaviour agreement**

- (1) The lessor may apply to the tribunal for a termination order if—
  - (a) the tenant fails or refuses to enter into an acceptable behaviour agreement as required; or
  - (b) the tenant, after entering into an acceptable behaviour agreement, seriously or persistently breaches the terms of the agreement.
- (2) An application under this section about the failure or refusal to enter into an acceptable behaviour agreement is called an application made because of *failure to enter into acceptable behaviour agreement*.
- (3) An application under this section about seriously or persistently breaching the terms of an agreement is called an application made because of *serious or persistent breach of acceptable behaviour agreement*.
- (4) The tribunal may make the order if it is satisfied the lessor has established the ground of the application.
- (5) In this section—

*lessor* means—

  - (a) the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
  - (b) a community housing provider.

**527F State may charge bonds and service charges under existing State tenancy agreements**

- (1) This section applies to a residential tenancy agreement for which the lessor is the State.
- (2) The agreement may be changed in the way decided by the chief executive so that the State has a right to do any of the following—



- (a) require the tenant to pay a rental bond;
  - (b) require the bond to be paid by the tenant in a particular way;
  - (c) require the tenant to pay stated service charges;
  - (d) decide the apportionment of the cost for the service charges payable by the tenant (where the premises are not individually metered for a service);
  - (e) require the service charges to be paid by the tenant in a particular way.
- (3) The chief executive must give a tenant required to pay a bond or service charge written notice of the changes to the agreement.
- (4) A change takes effect on the date stated in the written notice of the change given to the tenant.
- (5) In this section—
- chief executive* means the chief executive of the department in which the *Housing Act 2003* is administered.

## Chapter 14      **Repeal, savings and transitional provisions**

### Part 1              **Repeal provisions**

#### **528      Repeal of Residential Tenancies Act 1994**

The Residential Tenancies Act 1994 No. 86 is repealed.

**529      Repeal of Residential Services (Accommodation) Act 2002**

The Residential Services (Accommodation) Act 2002 No. 19 is repealed.

**Part 2                      Savings and transitional provisions for Act No. 73 of 2008**

**Division 1                  Interpretation**

**530      Definitions for pt 2**

In this part—

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

*corresponding provision*, for a previous provision, means a provision of this Act that is substantially the same as the previous provision.

*existing agreement* means—

- (a) a residential tenancy agreement under the *Residential Tenancies Act 1994*, in force at the commencement, that is a residential tenancy agreement under this Act; or
- (b) a residential service agreement under the *Residential Services (Accommodation) Act 2002*, in force at the commencement, that is either of the following under this Act—
  - (i) a rooming accommodation agreement;
  - (ii) a residential tenancy agreement.

*previous provision* means a provision of either of the following as in force immediately before the commencement—

- (a) the *Residential Tenancies Act 1994*;
  - (b) the *Residential Services (Accommodation) Act 2002*.
- repealed Act*** means either of the following in force immediately before the commencement—
- (a) the *Residential Tenancies Act 1994*;
  - (b) the *Residential Services (Accommodation) Act 2002*.

## **Division 2                      Transitional references**

### **531      Application of div 2**

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

### **532      References to Residential Tenancies Act 1994**

In an Act or document, a reference to the *Residential Tenancies Act 1994* may, if the context permits, be taken as a reference to this Act.

### **533      References to Residential Services (Accommodation) Act 2002**

In an Act or document, a reference to the *Residential Services (Accommodation) Act 2002* may, if the context permits, be taken as a reference to this Act.

## **Division 3                      The authority**

### **534      Authority continues under this Act**

The Residential Tenancies Authority established under the *Residential Tenancies Act 1994* continues under this Act.

**535 Continuation of appointment of chief executive officer**

- (1) The chief executive officer of the authority immediately before the commencement continues as the chief executive officer of the authority for the balance of the chief executive officer's term of appointment by the Governor in Council.
- (2) The chief executive officer continues to hold office on the conditions fixed by the authority.
- (3) The chief executive officer continues to be appointed under this Act and not under the *Public Service Act 2008*.

**536 Existing employees of authority**

- (1) An employee of the authority immediately before the commencement continues as an employee of the authority.
- (2) The employee remains entitled to all existing and accruing rights of employment.
- (3) The employee continues to be appointed under this Act and not under the *Public Service Act 2008*.

**Division 4 The authority's board**

**537 The board**

- (1) The chairperson and directors of the authority's board immediately before the commencement continue as chairperson and directors of the board after the commencement.
- (2) The chairperson and directors continue for the balance of the term of each member's appointment on the conditions applying to appointment.

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## **Division 5                      Employing office**

### **538      Employing office continues under this Act**

The employing office established under the *Residential Tenancies Act 1994* continues under this Act.

### **539      Continuation of appointment of executive officer**

- (1) The executive officer of the employing office immediately before the commencement continues as the executive officer of the employing office for the balance of the executive officer's term of appointment by the Governor in Council.
- (2) The executive officer continues to be appointed under this Act and not under the *Public Service Act 2008*.

### **540      Existing employees of employing office**

- (1) An employee of the employing office immediately before the commencement continues as an employee of the employing office.
- (2) The employee remains entitled to all existing and accruing rights of employment.
- (3) The employee continues to be appointed under this Act and not under the *Public Service Act 2008*.

## **Division 6                      Authorised persons and conciliators**

### **541      Authorised persons**

A person who held an appointment as an authorised person under the *Residential Tenancies Act 1994* immediately before the commencement is taken to hold the appointment under this Act.

## **542 Conciliators**

A person who held an appointment as a conciliator under the *Residential Tenancies Act 1994* immediately before the commencement is taken to hold the appointment under this Act.

## **Division 7 Existing agreements**

### **543 Existing agreements continue under this Act**

- (1) This section applies to an existing agreement if the existing agreement continues after the commencement.
- (2) The existing agreement is taken to continue under this Act and the provisions of this Act apply to the agreement—
  - (a) for a residential tenancy agreement under the *Residential Tenancies Act 1994* that is a residential tenancy agreement under this Act—as a residential tenancy agreement under this Act; or
  - (b) for a residential service agreement under the *Residential Services (Accommodation) Act 2002* that is a rooming accommodation agreement under this Act—as a rooming accommodation agreement under this Act; or
  - (c) for a residential service agreement under the *Residential Services (Accommodation) Act 2002* that is a residential tenancy agreement under this Act—as a residential tenancy agreement under this Act.

*Example for subsection (2)—*

An existing agreement is taken to include the standard terms prescribed after commencement and the duties and obligations imposed, or entitlements given, under this Act.

- (3) Despite subsection (2), parties to the existing agreement do not have to enter into a new written agreement under this Act for the existing agreement.

- (4) Also despite subsection (2), the provisions of this Act do not apply to a process started by notice, application or request under a repealed Act.

*Note—*

Section 550 states that a process started by a person by giving a notice or making an application or request under a repealed Act before the commencement must be completed or continued under the repealed Act.

## **Division 8                      Agreements to which repealed Acts would not have applied**

### **544      Agreements to which repealed Acts did not apply or would not have applied**

- (1) This section applies to an agreement, whether entered into before or after the commencement (a *prescribed agreement*), if—
- (a) a repealed Act did not apply, or would not have applied, to the agreement; and
  - (b) the agreement is an agreement to which this Act would apply except for this section.
- (2) The provisions of this Act do not apply to the prescribed agreement until a day prescribed by regulation.
- (3) Despite subsection (2), the provisions of this Act apply to a prescribed agreement if—
- (a) the agreement is entered into between the commencement and the day prescribed under subsection (2); and
  - (b) the agreement states that it is made under this Act.

### **545      Contracts of sale—s 30**

This Act does not apply to an agreement for a tenancy of residential premises if the tenancy—

[s 546]

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- (a) was created or arose before the commencement of section 30; and
- (b) is between the parties to a contract of sale of the premises under a term of the contract.

## **Division 9                      Rental bonds**

### **546      Existing rental bonds**

An amount that was a rental bond under the *Residential Tenancies Act 1994* or *Residential Services (Accommodation) Act 2002* immediately before the commencement is taken to be a rental bond under this Act.

### **547      Rental bond held for agreements to which repealed Acts did not apply or would not have applied**

- (1) This section applies to a person who holds a rental bond for an agreement on the day prescribed by regulation if—
  - (a) a repealed Act did not apply, or would not have applied, to the agreement; and
  - (b) the agreement is an agreement to which this Act would apply but for section 544(2).
- (2) For section 116, the person is taken to have received the rental bond on the day prescribed under subsection (1).
- (3) This section does not apply to an agreement mentioned in section 548.

### **548      Rental bonds held for premises or rooming accommodation on university campus**

- (1) This section applies to the following agreements (each a *prescribed agreement*)—
  - (a) a residential tenancy agreement for premises within the external boundary of a university's campus mentioned in section 33(1)(b);



- (b) a rooming accommodation agreement for a room in rental premises within the external boundary of a university's campus mentioned in section 44(1)(f).
- (2) The provisions of this Act that apply to a prescribed agreement do not apply until a day prescribed by regulation.
- (3) If a person holds a rental bond for a prescribed agreement on the day prescribed under subsection (2), the person is taken, for section 116, to have received the rental bond on that day.

**549 Payment of rental bond held when agreement under s 544(3) entered into**

- (1) Subsection (2) applies if a person holds a rental bond when an agreement mentioned in section 544(3) is entered into.
- (2) For section 116, the person is taken to have received the rental bond on the day the agreement is entered into.

**Division 10 Notices given, or applications or requests made, by parties to agreements**

**550 Notices given, or applications or requests made, under repealed Act continue under that Act**

- (1) This section applies to a process started by a person by giving a notice or making an application or request under a repealed Act before the commencement.
- (2) If the person decides to continue the process it must be continued and completed under the repealed Act despite its repeal.
- (3) Without limiting subsection (1), a notice, application or request includes the following—
  - (a) an entry notice;
  - (b) a dispute resolution request given to the authority;

- (c) a notice to remedy breach;
- (d) a notice to leave;
- (e) a notice of intention to leave;
- (f) a notice given by a party to a rooming accommodation agreement terminating the agreement;
- (g) a notice by a mortgagee informing a tenant or resident that possession is to be obtained;
- (h) an abandonment termination notice;
- (i) an application to a tribunal;
- (j) an application for payment of a rental bond.

*Examples for this section—*

- 1 A lessor gives a tenant a notice to remedy breach under the *Residential Tenancies Act 1994* before the commencement and the period under the notice to remedy breach expires after the commencement. If the tenant does not remedy the breach, the lessor may give the tenant a notice to leave under the *Residential Tenancies Act 1994*. If the tenant does not hand over possession, the lessor may apply to the tribunal for a termination order under the *Residential Tenancies Act 1994* despite its repeal.
- 2 A party to an agreement makes a dispute resolution request before the commencement but conciliation does not take place before the commencement. Any conciliation process for the dispute and any subsequent application to the tribunal after the commencement continues under the *Residential Tenancies Act 1994* despite its repeal.
- 3 A lessor gives an entry notice to a tenant under section 109(a) of the *Residential Tenancies Act 1994* before the commencement. The entry notice specifies the minimum notice period of 7 days under section 110 of the *Residential Tenancies Act 1994*. The entry and any application to the tribunal relating to the entry continues under the *Residential Tenancies Act 1994* despite its repeal.

## **551 Notices given, or applications or requests made, under this Act for matters happening before commencement**

Nothing prevents a person giving a notice, or making an application or request under this Act, for a matter that happened before the commencement.

*Example—*

A lessor or tenant gives the other a notice to remedy breach after the commencement under this Act for damage to premises that happened before the commencement.

## **Division 11                      Other transitional provisions**

### **552      Period stated in previous provision**

- (1) This section applies if, in a previous provision, there is a period for doing something, and the period for doing the thing started before the commencement.
- (2) If there is a corresponding provision to the previous provision and both the corresponding provision and the previous provision state the same period, the period for the thing continues under the corresponding provision and is taken to have started from when the period started under the previous provision.

*Example—*

Section 59 of the *Residential Tenancies Act 1994* and section 116 of this Act each state that a person who receives a rental bond must pay it to the authority within 10 days of receiving it. If a person receives a rental bond less than 10 days before the commencement of this Act the time for paying the rental bond to the authority continues to run after the commencement of this Act.

- (3) However, this section does not apply to a process mentioned in section 550.

*Note—*

Section 550 states that a process started by a person by giving a notice, or making an application or request, under a repealed Act before commencement must be completed or continued under the repealed Act.

## **Part 3**

# **Savings and transitional provisions for Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013**

### **554 Notices given, and proceedings started, by the State**

- (1) This section applies if—
  - (a) the State gives a tenant a notice or starts a proceeding under this Act in relation to an existing State tenancy agreement; and
  - (b) the existing State tenancy agreement is terminated under section 527C(2)(a); and
  - (c) at the time the existing State tenancy agreement is terminated, an action is pending under the notice or proceeding.
- (2) The replacement lessor—
  - (a) is taken to have given the notice or started the proceeding; and
  - (b) may continue action under this Act against the tenant in relation to the notice or proceeding in place of the State.
- (3) The action continues in relation to the existing State tenancy agreement despite its termination under section 527C(2)(a).

### **555 Notices given, and proceedings started, by the tenant**

- (1) This section applies if—
  - (a) a tenant gives a notice or starts a proceeding under this Act in relation to an existing State tenancy agreement; and

- (b) the existing State tenancy agreement is terminated under section 527C(2)(a); and
  - (c) at the time the existing State tenancy agreement is terminated, an action is pending under the notice or proceeding.
- (2) The replacement lessor is taken to have received the notice or to be a party to the proceeding in place of the State.
  - (3) The tenant may continue action under this Act against the replacement lessor in relation to the notice or proceeding.
  - (4) The action continues in relation to the existing State tenancy agreement despite its termination under section 527C(2)(a).

**556 Applications by the State or community housing providers for particular termination orders**

- (1) This section applies if the State or a community housing provider applies to a tribunal for a termination order because of objectionable behaviour under section 345—
  - (a) for the State—before the commencement of section 345(4); or
  - (b) for a community housing provider—before section 345(4) applies to a community housing provider.
- (2) The application must be decided under section 345 despite section 345(4).

*Note—*

See section 553 regarding the time from which section 345(4) applies to a community housing provider.

## **Part 4**

# **Transitional provisions for Plumbing and Drainage and Other Legislation Amendment Act 2016**

### **558 Definitions for pt 4**

In this part—

*existing database* means a tenancy database under former chapter 9.

*existing listing* means personal information in an existing database immediately before the commencement.

*former*, in relation to a provision, means the provision as in force immediately before the amendment of the provision under the *Plumbing and Drainage and Other Legislation Amendment Act 2016*.

*new*, in relation to a provision, means the provision as in force after the insertion or amendment of the provision under the *Plumbing and Drainage and Other Legislation Amendment Act 2016*.

### **559 Meaning of particular terms**

If the context permits, a term used in this part and defined in new section 457 has the same meaning in this part as it has under that section.

### **560 Use of tenancy databases before commencement**

New section 458B does not apply to a lessor or lessor's agent in relation to an application to enter into a residential tenancy agreement if the application was made before the commencement.

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**561 Listings proposed to be made before commencement**

- (1) This section applies if—
  - (a) before the commencement, a person (the *listing person*) proposing to list personal information about a tenant in an existing database gave, under former section 459, the tenant written notice about the personal information; and
  - (b) at the commencement, the listing person had not listed the personal information about the tenant in the tenancy database (with or without variation).
- (2) New section 459 applies to the proposed listing as if the notice given to the tenant was personal information given under new section 459(2)(a).

**562 Ensuring quality of existing listings**

New sections 459A and 459B apply to an existing listing as well as to personal information included in a tenancy database after the commencement.

**563 Providing copy of personal information for existing listings**

New section 459C applies to an existing listing as well as to personal information included in a tenancy database after the commencement.

**564 Keeping existing listings in tenancy databases**

- (1) New section 459D applies to an existing listing as well as to personal information included in a tenancy database after the commencement, subject to subsection (2).
- (2) Section 459D applies to an old listing as if the reference to keeping the information for longer than 3 years were a reference to keeping the information after the day that is 6 months after the commencement.
- (3) In this section—

*old listing* means an existing listing that, at the commencement, had been kept in a tenancy database for at least 2 years and 6 months.

## **565 Applications to tribunal about breach**

- (1) This section applies to an existing listing, or a listing to which section 561 applies, about a tenant if the tenant claims that, before the commencement, there had been a breach of former section 459.
- (2) New chapter 9 applies for the purpose of an application to the tribunal about the breach.

## **566 Applications to tribunal about personal information listed**

To avoid any doubt, it is declared that new chapter 9 applies for the purpose of an application to the tribunal about personal information included in—

- (a) an existing listing; or
- (b) a listing to which section 561 applies.

## **567 Applications to tribunal about proposed listings**

- (1) This section applies if—
  - (a) a tenant became aware of a proposed listing by a lessor or lessor's agent of personal information about the tenant on an existing database before the commencement; and
  - (b) at the commencement, the tenant had not made an application under former section 462.
- (2) New chapter 9 applies for the purpose of an application to the tribunal about the proposed listing.



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**568 Existing applications to tribunal**

- (1) This section applies to an application to the tribunal under former section 460, 461 or 462 if—
  - (a) the application was started before the commencement; and
  - (b) at the commencement, the application had not been finally dealt with.
- (2) The tribunal must hear, or continue to hear, and decide the application under former chapter 9 as if the *Plumbing and Drainage and Other Legislation Amendment Act 2016* had not been enacted.

## **Part 5 Transitional provisions for Housing Legislation Amendment Act 2021**

**569 Changes in processes not limited to relevant circumstances happening after the commencement**

- (1) This section applies if, after the amendment of this Act by a 2021 amendment, a person may take any of the following actions under this Act because of an act, omission or other circumstance (the *relevant circumstances*)—
  - (a) give a notice;
  - (b) make an application;
  - (c) make a request.
- (2) The person may take the action under this Act whether the relevant circumstances happened before or after the 2021 amendment commenced.
- (3) Unless section 570 applies in relation to the action, the action must be dealt with under this Act as in force from the commencement.
- (4) In this section—

**2021 amendment** means an amendment of this Act by the *Housing Legislation Amendment Act 2021*, chapter 2, part 3 or schedule 1, part 2.

## **570 Incomplete processes to be completed under pre-amended Act**

- (1) This section applies if—
  - (a) before the commencement of a 2021 amendment, a person gave a notice or made an application under this Act (the **initiating action**); and
  - (b) under the pre-amended Act, a person (the **responder**) may or must take particular action because of the initiating action; and
  - (c) the responder did not take or complete the action before the commencement of the 2021 amendment.
- (2) Despite the commencement of the 2021 amendment—
  - (a) the right or obligation mentioned in subsection (1)(b) continues under the pre-amended Act; and
  - (b) the pre-amended Act applies for the purpose of taking the action mentioned in subsection (1)(b).
- (3) In this section—

**2021 amendment** means an amendment of this Act by the *Housing Legislation Amendment Act 2021*, chapter 2, part 3 or schedule 1, part 2.

**pre-amended Act**, in relation to a 2021 amendment, means this Act as in force immediately before its amendment by the 2021 amendment.

## **571 Pets previously approved for premises**

- (1) This section applies if, before the commencement—
  - (a) a lessor approved a pet being kept at premises; or

- (b) a provider approved a pet being kept in a resident's room at rental premises.
- (2) The approval continues in effect for the pet and premises or resident's room until ended by agreement of—
  - (a) for an approval mentioned in subsection (1)(a)—the lessor and tenant; or
  - (b) for an approval mentioned in subsection (1)(b)—the provider and resident.
- (3) A condition of the approval is of no effect to the extent it is inconsistent with this Act, as in force from the commencement.

## Part 6

# Transitional provisions for State Penalties Enforcement (Modernisation) Amendment Act 2022

### 572 Former rental bond interest account

- (1) This section applies to the account that, until the commencement, was kept by the authority under former section 149(1)(b).
- (2) From the commencement, the account continues as an account that the authority is permitted to keep under this Act.
- (3) In this section—  
*former section 149(1)(b)* means section 149(1)(b) as in force from time to time before the commencement.

### 573 Transfer of value of current investments into rental bond account

- (1) As soon as practicable after the commencement, the authority must transfer, into the rental bond account, an amount equal to the market value of its current investments.

- (2) In this section—

***agreed valuation time*** means the time, on 30 June 2022, agreed between the Treasurer and the authority for the purpose of making a valuation under this section.

***current investments*** means the investments, held by the authority at the agreed valuation time, that were made from the rental bond account.

***investment*** means an amount invested under the *Statutory Bodies Financial Arrangements Act 1982*.

***market value***, of the current investments, means the value of the investments, as at the agreed valuation time, determined in a way agreed between the Treasurer and the authority.

## **574 Balancing of rental bond account**

- (1) After complying with section 573, the authority must notify the Treasurer of the amount by which the balance of the rental bond account (the ***starting balance***) is more or less than the amount of the rental bonds held by the authority at that time (the ***rental bond liability***).
- (2) If the amount of the starting balance is less than the amount of the rental bond liability, the Treasurer must pay into the rental bond account an amount equal to the difference.
- (3) Any payment required under subsection (2) is to be made from the consolidated fund, which is appropriated accordingly.
- (4) If the amount of the starting balance is more than the amount of the rental bond liability, the authority must pay an amount equal to the difference from the rental bond account into another account kept by the authority.

## Part 7

# Transitional provisions for Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2023

### 575 Limit on frequency of rental increases applies to all agreements from 1 July 2023

- (1) Sections 91 and 93 as amended by the 2023 amendment Act apply to all residential tenancy agreements in effect after 30 June 2023 regardless of when the agreements started.

*Note—*

If a term of a residential tenancy agreement is inconsistent with section 91 or 93, as amended, the section prevails and the term is void to the extent of the inconsistency. See section 54.

- (2) Section 105 as amended by the 2023 amendment Act, and section 105B inserted by the 2023 amendment Act, apply to all rooming accommodation agreements in effect after 30 June 2023 regardless of when the agreement started.

*Note—*

If a term of a rooming accommodation agreement is inconsistent with section 105 or 105B, as amended, the section prevails and the term is void to the extent of the inconsistency. See section 76.

- (3) In this section—

**2023 amendment Act** means the *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2023*.

### 576 Amendment of section 277

- (1) The replacement of section 277 by the 2021 amendment Act, and the amendment of section 277 by the 2023 amendment Act, are taken to have not affected the ending of a residential tenancy agreement on a day before 1 July 2023 if—

- (a) the lessor or lessor's agent gave the tenant a notice to leave under section 326 and the tenant handed over vacant possession of the premises; or
  - (b) the tenant gave the lessor or lessor's agent a notice of intention to leave under section 327 and the tenant handed over vacant possession of the premises.
- (2) In this section—

**2021 amendment Act** means the *Housing Legislation Amendment Act 2021*.

**2023 amendment Act** means the *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2023*.

## Part 8

# Transitional provisions for Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2024

### Division 1 Preliminary

#### 577 Definitions for part

In this part—

**amending Act** means the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2024*.

**former**, for a provision of this Act, means the provision as in force immediately before the commencement of the provision in which the term is used.

**new**, for a provision of this Act, means the provision as in force from the commencement of the provision in which the term is used.

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## **Division 2                      Provisions commencing on assent**

### **578      Existing agreements not required to include date of last rent increase**

- (1) Despite new section 61(2)(c), a written agreement for a residential tenancy agreement entered into before the commencement is not required to include the day the rent was last increased for the residential premises.
- (2) Despite new section 77(2)(c), a written agreement for a rooming accommodation agreement entered into before the commencement is not required to include the day the rent was last increased for the rental premises.

### **579      Rent increases before the commencement relevant to working out 12-month period—s 93**

For working out the 12-month period under new section 93(1), a reference in new section 93 to a rent increase for the residential premises includes a reference to an increase that happened before the commencement.

### **579A   Requirement for lessor to give evidence of rent increase if premises purchased within 12 months of commencement**

- (1) This section applies if—
  - (a) premises the subject of a residential tenancy agreement are purchased by the lessor within 12 months after the commencement; and
  - (b) the lessor does not hold information about the day of the last rent increase for the premises.
- (2) New section 93A(2) does not apply to the lessor or lessor's agent in relation to the premises.
- (3) For subsection (1)(b), the lessor holds information if the lessor, or an agent of the lessor, is in possession or control of the information.

**579B Requirement for provider to give evidence of rent increase if rental premises purchased within 12 months of commencement**

- (1) This section applies if—
  - (a) rental premises the subject of a rooming accommodation agreement are purchased by the provider within 12 months after the commencement; and
  - (b) the provider does not hold information about the day of the last rent increase for the resident's room.
- (2) New section 105C(2) does not apply to the provider or provider's agent in relation to the resident's room.
- (3) For subsection (1)(b), the provider holds information if the provider, or an agent of the provider, is in possession or control of the information.

**580 Rent increases before the commencement relevant to working out 12-month period—s 105B**

For working out the 12-month period under new section 105B(1), a reference in new section 105B to a rent increase for the resident's room includes a reference to an increase that happened before the commencement.

**581 Payment of rental bond after dispute resolution process and application dismissed by tribunal**

- (1) This section applies if, before the commencement—
  - (a) the authority received an application for payment of a rental bond under section 125; and
  - (b) under chapter 2, part 3, division 3, subdivision 2, 3 or 3A, there were 1 or more interested persons for the payment directed to be made under the application; and
  - (c) 1 or more dispute resolution requests were made about the payment under section 136A; and



- (d) the conciliation process for each dispute resolution request ended without a conciliated resolution; and
  - (e) 1 or more of the interested persons, given notice about the ending of the conciliation process, applied to the tribunal for an order about the payment under section 136B but all of the applications were dismissed; and
  - (f) the rental bond had not been paid.
- (2) New section 136E applies in relation to the payment of the rental bond.

### **Division 3                      Provisions commencing by proclamation**

#### **582      Existing applications for residential tenancies and rooming accommodation**

- (1) New sections 57B to 57D do not apply to an application for a residential tenancy made but not decided before the commencement.
- (2) New sections 76C to 76E do not apply to an application for rooming accommodation made but not decided before the commencement.

#### **583      Application of amendments about payment of rent—existing residential tenancy agreements**

- (1) New sections 83 and 84B do not apply in relation to a residential tenancy agreement entered into before the commencement.
- (2) However, new section 84B applies in relation to an agreement entered into before the commencement if the lessor, lessor's agent or tenant proposes to change the way the tenant is paying rent under the agreement.

**584 Application of changes about payment of rent—existing rooming accommodation agreements**

- (1) New sections 98 and 99B do not apply in relation to a rooming accommodation agreement entered into before the commencement.
- (2) However, new section 99B applies in relation to an agreement entered into before the commencement if the provider, provider's agent or resident proposes to change the way the resident is paying rent under the agreement.

**585 Evidence supporting claim on rental bond not required for certain rental bonds**

- (1) New section 136AA does not apply in relation to—
  - (a) an application for payment of a rental bond under section 125 made during the transition period if the rental bond was paid to the authority before the commencement; or
  - (b) a dispute resolution request about the payment of a rental bond made during the transition period if the rental bond was paid to the authority before the commencement.

- (2) In this section—

*transition period* means the period starting on the commencement and ending 12 months after the commencement.

**585A Maximum amount of rental bond—provision for existing rental bonds**

- (1) This section applies if—
  - (a) before the commencement, a rental bond was paid for a residential tenancy agreement or rooming accommodation agreement; and
  - (b) under section 122 of the Act, the rental bond is taken to be a rental bond for a renewal agreement; and

- (c) after the commencement, the amount of the rental bond is more than the amount that may be required or accepted under new section 146 for the renewal agreement.
- (2) The tenant or resident may make an application to the authority for payment of the part of the rental bond that is equivalent to the difference between the amount held by the authority and the amount that may be required or accepted under new section 146 (the *excess amount*).
- (3) The application—
  - (a) must be made in the approved form; and
  - (b) may only direct a payment of the excess amount to be made to the contributor for the bond.
- (4) Despite section 124, the authority may pay the excess amount—
  - (a) if there is only 1 contributor—to the contributor; or
  - (b) if there is more than 1 contributor and all contributors have made the application—to each contributor in the way directed in the application.
- (5) The authority must give the lessor, provider or agent notice of the amount of the rental bond held by the authority for the renewal agreement after the excess amount has been refunded to the tenant or resident.
- (6) Chapter 2, part 3, division 3 does not apply to an application made under this section.
- (7) For this section, section 150(4) is taken to include a reference to amounts payable under this section.
- (8) To remove any doubt, it is declared that a person does not commit an offence under new section 146(1) in relation to a rental bond to which this section applies.
- (9) In this section—  
*renewal agreement* see section 122.

**586 Existing residential tenancy agreements including term about paying reletting costs**

- (1) This section applies if—
  - (a) a residential tenancy agreement entered into before the commencement includes a term requiring a tenant to pay the reasonable costs incurred by the lessor in reletting the premises; and
  - (b) the requirements under former section 357A(1) were otherwise met in relation to the term.
- (2) The term is taken to comply with new section 357A(1).

**587 Existing rooming accommodation agreements including term about paying reasonable costs**

- (1) This section applies if—
  - (a) a rooming accommodation agreement entered into before the commencement includes a term requiring a resident to pay the reasonable costs incurred by the provider in reletting the resident's room; and
  - (b) the requirements under former section 396A(1) were otherwise met in relation to the term.
- (2) The term is taken to comply with new section 396A(1).

**588 Transitional regulation making power**

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature about any matter for which—
  - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as in force before its amendment by the amending Act to the operation of this Act as in force from the commencement; and
  - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences.

- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 2 years after this section commences.

**Schedule 1      Notice periods**

sections 326 and 327

**Part 1                      Notices to leave****Division 1                      Notices to leave for premises other than moveable dwelling premises**

<b>Notice to leave</b>	<b>Notice period</b>
notice to leave for an unremedied breach that is a failure to pay rent (s 281)	7 days after the notice is given to the tenant
notice to leave for an unremedied breach that is any failure other than a failure to pay rent (s 281)	14 days after the notice is given to the tenant
notice to leave for noncompliance (tribunal order) (s 282)	7 days after the notice is given to the tenant
notice to leave for non-livability (s 284(3))	the day the notice is given to the tenant
notice to leave for compulsory acquisition (s 284(4))	2 months after the notice is given to the tenant
notice to leave for a sale contract (s 286)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for ending of entitlement under employment (s 288)	4 weeks after the notice is given to the tenant
notice to leave for ending of accommodation assistance (s 289)	4 weeks after the notice is given to the tenant

<b>Notice to leave</b>	<b>Notice period</b>
notice to leave for ending of housing assistance (s 290)	4 weeks after the notice is given to the tenant
notice to leave for serious breach at public or community housing (s 290A)	7 days after the notice is given to the tenant
notice to leave for State government program (s 290B)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for demolition or redevelopment (s 290C)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for significant repair or renovations (s 290D)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for change of use (s 290E)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for ending of entitlement to student accommodation (s 290F)	1 month after the notice is given to the tenant
notice to leave for owner occupation (s 290G)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for end of fixed term agreement (s 291)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement

## Division 2                      Notices to leave for long tenancies (moveable dwelling)

Notice to leave	Notice period
notice to leave for an unremedied breach (s 281)	2 days after the notice is given to the tenant
notice to leave for noncompliance (tribunal order) (s 282)	7 days after the notice is given to the tenant
notice to leave for noncompliance (moveable dwelling relocation) (s 283)	2 days after the notice is given to the tenant
notice to leave for non-livability (ss 284(3) and 285)	the day the notice is given to the tenant
notice to leave for compulsory acquisition (s 284(4))	2 months after the notice is given to the tenant
notice to leave for a sale contract (s 286)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for voluntary park closure (s 287(2))	3 months after the notice is given to the tenant
notice to leave for compulsory park closure (s 287(3))	the day the notice is given to the tenant
notice to leave for ending of entitlement under employment (s 288)	4 weeks after the notice is given to the tenant
notice to leave for ending of accommodation assistance (s 289)	4 weeks after the notice is given to the tenant
notice to leave for ending of housing assistance (s 290)	2 months after the notice is given to the tenant



<b>Notice to leave</b>	<b>Notice period</b>
notice to leave for State government program (s 290B)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for demolition or redevelopment (s 290C)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for significant repair or renovations (s 290D)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for change of use (s 290E)	3 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for owner occupation (s 290G)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement
notice to leave for end of fixed term agreement (s 291)	2 months after the notice is given to the tenant and not before the end of a fixed term agreement

### **Division 3                      Notices to leave for short tenancies (moveable dwelling)**

<b>Notice to leave</b>	<b>Notice period</b>
notice to leave for noncompliance (tribunal order) (s 282)	2 days after the notice is given to the tenant
notice to leave for noncompliance (moveable dwelling relocation) (s 283)	2 days after the notice is given to the tenant
notice to leave for non-livability (ss 284(3) and 285)	the day the notice is given to the tenant

## Schedule 1

<b>Notice to leave</b>	<b>Notice period</b>
notice to leave for compulsory acquisition (s 284(4))	the day the notice is given to the tenant
notice to leave for voluntary park closure (s 287(2))	2 days after the notice is given to the tenant
notice to leave for compulsory park closure (s 287(3))	the day the notice is given to the tenant
notice to leave for ending of entitlement under employment (s 288)	2 days after the notice is given to the tenant
notice to leave for ending of accommodation assistance (s 289)	2 days after the notice is given to the tenant
notice to leave for ending of housing assistance (s 290)	2 days after the notice is given to the tenant
notice to leave for end of short tenancy (moveable dwelling) (s 292)	2 days after the notice is given to the tenant

## Part 2 Notices of intention to leave

### Division 1 Notices of intention to leave for premises other than moveable dwelling premises

<b>Notice of intention to leave</b>	<b>Notice period</b>
notice of intention to leave for an unremedied breach (s 302)	7 days after the notice is given to the lessor
notice of intention to leave for noncompliance (tribunal order) (s 304)	7 days after the notice is given to the lessor

<b>Notice of intention to leave</b>	<b>Notice period</b>
notice of intention to leave for non-livability (s 305(3))	the day the notice is given to the lessor
notice of intention to leave for compulsory acquisition (s 305(4))	14 days after the notice is given to the lessor
notice of intention to leave for intention to sell (s 307)	14 days after the notice is given to the lessor
notice of intention to leave because of condition of premises (s 307A)	14 days after the notice is given to the lessor
notice of intention to leave because of death of cotenant (s 307B)	14 days after the notice is given to the lessor
notice of intention to leave for ending of entitlement to student accommodation (s 307C)	1 month after the notice is given to the lessor
notice of intention to leave because of failure to comply with repair order (s 307D)	14 days after the notice is given to the lessor
notice of intention to leave without ground (s 308)	14 days after the notice is given to the lessor and not before the end of a fixed term agreement

## **Division 2                      Notices of intention to leave for long tenancies (moveable dwelling)**

<b>Notice of intention to leave</b>	<b>Notice period</b>
notice of intention to leave for an unremedied breach (s 302)	2 days after the notice is given to the lessor
notice of intention to leave for noncompliance (tribunal order) (s 304)	7 days after the notice is given to the lessor

## Schedule 1

Notice of intention to leave	Notice period
notice of intention to leave for non-livability (s 305(3))	the day the notice is given to the lessor
notice of intention to leave for compulsory acquisition (s 305(4))	14 days after the notice is given to the lessor
notice of intention to leave for non-livability (s 306)	the day the notice is given to the lessor
notice of intention to leave for intention to sell (s 307)	14 days after the notice is given to the lessor
notice of intention to leave because of condition of premises (s 307A)	14 days after the notice is given to the lessor
notice of intention to leave because of death of cotenant (s 307B)	7 days after the notice is given to the lessor
notice of intention to leave because of failure to comply with repair order (s 307D)	14 days after the notice is given to the lessor
notice of intention to leave without ground (s 308)	14 days after the notice is given to the lessor and not before the end of a fixed term agreement

### Division 3                      Notices of intention to leave for short tenancies (moveable dwelling)

Notice of intention to leave	Notice period
notice of intention to leave for an unremedied breach (s 302)	1 day after the notice is given to the lessor
notice of intention to leave for noncompliance (tribunal order) (s 304)	1 day after the notice is given to the lessor

<b>Notice of intention to leave</b>	<b>Notice period</b>
notice of intention to leave for non-livability (s 305(3))	the day the notice is given to the lessor
notice of intention to leave for compulsory acquisition (s 305(4))	1 day after the notice is given to the lessor
notice of intention to leave for non-livability (s 306)	the day the notice is given to the lessor
notice of intention to leave for intention to sell (s 307)	1 day after the notice is given to the lessor
notice of intention to leave because of failure to comply with repair order (s 307D)	the day the notice is given to the lessor
notice of intention to leave for end of short tenancy (moveable dwelling) (s 307E)	1 day after the notice is given to the lessor
notice of intention to leave without ground (s 308)	1 day after the notice is given to the lessor

## Schedule 2 Dictionary

### section 6

***abandonment termination notice*** see section 355(1).

***affordable housing scheme*** means NRAS or 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 38.

***agent***—

- (a) of a lessor, means a person employed, or otherwise authorised, by the lessor to act as the lessor's agent; or
- (b) of a provider, means a person employed, or otherwise authorised, by the provider to act as the provider's agent.

***agreement*** see section 19.

***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.

***antisocial behaviour***, for chapter 13A, see section 527A.

***applicant***, for chapter 9, part 2, see section 457C.

***approved form*** see section 519.

***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.

**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 47(1).

**board** means the authority’s board of directors.

**body corporate by-law** means a by-law under the *Body Corporate and Community Management Act 1997* or the *Building Units and Group Titles Act 1980*.

**body corporate law** means—

- (a) the *Body Corporate and Community Management Act 1997*; or
- (b) the *Building Units and Group Titles Act 1980*.

**body corporate scheme** means—

- (a) a community titles scheme; or
- (b) a plan under the *Building Units and Group Titles Act 1980*.

**bond loan contributor** see section 114.

**caravan** see section 7.

**chairperson** means the chairperson of the board.

**change of use**, for a notice to leave, see section 290E(2).

**chief executive officer** means the authority’s chief executive officer.

**common areas**, for a resident of rental premises, means the parts of the rental premises other than the resident’s room that

the resident may use under the rooming accommodation agreement.

**community housing provider**, for a tenancy, see section 527B.

**community housing provider tenancy agreement** see section 527A.

**community housing service**, for chapter 13A, see section 527A.

**community titles scheme** see the *Body Corporate and Community Management Act 1997*, section 10.

**compulsory acquisition**—

- (a) for a notice to leave, see section 284(4); or
- (b) for a notice of intention to leave, see section 305(4).

**compulsory park closure**, for a notice to leave, see section 287(5).

**conciliation agreement** means an agreement mentioned in section 408.

**conciliation process** see section 398.

**conciliator** means a person appointed as a conciliator under section 400.

**condition of premises**, for a notice of intention to leave, see section 307A(4).

**condition report**—

- (a) for residential premises and inclusions, means a report describing the physical condition of the premises and inclusions; or
- (b) for a room in rental premises and the facilities in the room, means a report describing the physical condition of the room and facilities.

**contributor**, for a rental bond, see section 113.

**coresident** means 1 of 2 or more residents who occupy the same room or rooms in the rental premises under the same rooming accommodation agreement.



**damage**, for an application for a termination order, see sections 296(3), 311(2) and 312(2).

**database operator**, for chapter 9, part 3, see section 457F.

**death of cotenant**, for a notice of intention to leave, see section 307B(2).

**demolition or redevelopment**, for a notice to leave, see section 290C(2).

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

**dispute**, for chapter 6, part 1, means a tenancy dispute or a rooming accommodation dispute.

**dispute resolution request** see section 402.

**domestic violence** has the meaning given by the *Domestic and Family Violence Protection Act 2012*.

**domestic violence issues** see sections 245(4) and 344(2).

**domestic violence order** has the meaning given by the *Domestic and Family Violence Protection Act 2012*.

**education department** means the department in which the *Education (General Provisions) Act 2006* is administered.

**emergency repairs** see section 214.

**employee of the employing office** see section 497(2).

**employing office** means the Residential Tenancies Employing Office established under section 491.

**ending of accommodation assistance**, for a notice to leave, see section 289(3).

**ending of entitlement to student accommodation—**

- (a) for a notice to leave—see section 290F(3); or
- (b) for a notice of intention to leave—see section 307C(3).

**ending of entitlement under employment**, for a notice to leave, see section 288(2).

**ending of housing assistance**, for a notice to leave, see section 290(3).

***end of fixed term agreement***, for a notice to leave, see section 291(4).

***end of short tenancy (moveable dwelling)***—

- (a) for a notice to leave, see section 292(4); or
- (b) for a notice of intention to leave, see section 307E(4).

***enforcement warrant*** means an enforcement warrant under the *Civil Proceedings Act 2011*.

***entry notice*** see section 193(1)(a).

***excessive hardship***, for an application for a termination order, see sections 295(2), 310(2), 377 and 383.

***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 concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***executive officer***, of the employing office, means the executive officer appointed under section 494.

***exempt lessor*** see section 82A.

***exempt provider*** see section 97A.

***existing database***, for chapter 14, part 4, see section 558.

***existing listing***, for chapter 14, part 4, see section 558.

***existing State tenancy agreement***, for chapter 13A, see section 527A.

***existing State tenancy agreement*** see section 527C.

***extended period*** see section 48(1).

***facilities***, for rooming accommodation, includes furniture and equipment.

***failure to comply with repair order***, for a notice of intention to leave, see section 307D(2).

***failure to enter into acceptable behaviour agreement***, for an application for a termination order, see section 527E.

***failure to leave***, for an application for a termination order, see section 293(3).

***failure to leave as intended***, for an application for a termination order, see section 294(3).

***final nuisance direction*** see the *Police Powers and Responsibilities Act 2000*.

***fixed term agreement***—

- (a) for a residential tenancy, means a residential tenancy agreement for a residential tenancy for a fixed term; or
- (b) for rooming accommodation, means a rooming accommodation agreement under which accommodation is provided to a resident for a fixed term.

***food service*** means a service of regularly providing meals to a resident.

***former***, for chapter 14, part 4, see section 558.

***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.

***government entity*** see the *Public Sector Act 2022*, section 276.

**guest**, of a resident, means a person who enters the resident's room or common areas with the resident's consent.

**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.

*Note—*

See sections 326(3) and 327(2) for limitations on handover days.

**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.

**house rules**, for rental premises, means the rules in force for the premises under chapter 4, part 3.

**housing department** means the department in which the *Housing Act 2003* is administered.

**inaccurate**, for chapter 9, part 3, see section 457F.

**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 298(3) and 314(3).

**individually metered**, for premises, means there is, for the premises, a meter that—

- (a) has been installed or approved by a supply authority; and
- (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.

**industrial instrument** see the *Industrial Relations Act 2016*, schedule 5.

**initial nuisance direction** see the *Police Powers and Responsibilities Act 2000*.

***injury***, for an application for a termination order, see sections 296(4), 311(3) and 312(3).

***intention to sell***, for a notice of intention to leave, see section 307(4).

***interested person***, for a payment mentioned in any of the following provisions, means a person stated in the provision to be an interested person for the payment—

- (a) section 128(3);
- (b) section 129(3);
- (c) section 132(5);
- (d) section 133(3);
- (e) section 134(3);
- (f) section 135(2) or (3);
- (g) section 135C(3);
- (h) section 135D(3).

*Note—*

See also section 143.

***key***, of a lock, means a device or information normally used to operate the lock.

***key deposit*** see section 156.

***lessor*** see—

- (a) generally—sections 8 and 20; and
- (b) for chapter 9—section 457A.

***list***, for chapter 9, part 3, see section 457F.

***lock*** means a device for securing a door, gate, window or another part of premises.

***long tenancy (moveable dwelling)*** see section 51.

***lost property***, for chapter 5, part 2, division 6, see section 390.

***manufactured home*** see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

***maximum rental bond***—

- (a) for a residential tenancy agreement, see section 112(1); or
- (b) for a rooming accommodation agreement, see section 112(2).

***misrepresentation***, for an application for a termination order—

- (a) for a residential tenancy agreement—see section 312A(2); or
- (b) for a rooming accommodation agreement—see section 381J(2).

***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.

***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.

***new***, for chapter 14, part 4, see section 558.

***nominated repairer*** see section 216(1).

***noncompliance (moveable dwelling relocation)***, for a notice to leave, see section 283(3).

***noncompliance (tribunal order)***—

- (a) for a notice to leave, see section 282(2); or
- (b) for a notice of intention to leave, see section 304(2).

***non-livability***—

- (a) for a notice to leave, see sections 284(3) and 285(5); or
- (b) for a notice of intention to leave, see sections 305(3) and 306(5).

***non-profit 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 231(6).

***notice ending residency interest*** see section 381B(3).

***notice ending tenancy interest*** see section 308B(3).

***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 223(1).

***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.

***NRAS*** means the National Rental Affordability Scheme or a similar scheme by whatever name called.

***nuisance direction*** means an initial or final nuisance direction.

***objectionable behaviour***, for an application for a termination order, see sections 297(2) and 313(2).

***objection closing day***, for park rules for a moveable dwelling park, see section 229(1)(a).

***objector***, for park rules for a moveable dwelling park, see section 231(2).

***obstruct*** includes hinder, resist and attempt to obstruct.

***occupant***, of premises, means a person who resides at the premises.

***officer***, of the authority, means any of the following—

- (a) the chief executive officer;
- (b) an employee of the employing office or of another government entity performing work for the authority under a work performance arrangement;
- (c) an employee of the authority, whether or not there is a written contract of employment between the authority and the employee;
- (d) an individual performing 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, other than a work performance arrangement, between the authority and a person other than the individual.

***option period***, for chapter 2, part 4, division 2, see section 159(3).

***out of date***, for chapter 9, part 3, see section 457F.

***owner occupation***, for a notice to leave, see section 290G(2).

***park liaison committee***, for a moveable dwelling park, see section 231(2).

***park rules*** means rules made by the owner of a moveable dwelling park about the use, enjoyment, control and management of the park.

***party***, to a dispute, for chapter 6, part 1, means—

- (a) for a tenancy dispute—the lessor or tenant; or
- (b) for a rooming accommodation dispute—the provider or resident.

***periodic agreement***—

- (a) for a residential tenancy—means a residential tenancy agreement that is not a fixed term agreement; or



- (b) for rooming accommodation—means a rooming accommodation agreement that is not a fixed term agreement.

***personal care service*** means a service of regularly providing a resident with—

- (a) help in—
- (i) bathing, toileting or another activity related to personal hygiene; or
  - (ii) dressing or undressing; or
  - (iii) consuming a meal; or
  - (iv) meeting a mobility problem of the resident; or
  - (v) taking medication; or
- (b) help in managing the resident's financial affairs.

***personal document***, of a person, means a document it would be reasonable to expect the person would want to keep.

*Examples—*

passport, birth certificate, marriage certificate, photograph

***personal information*** see section 457.

***pet***—

- (a) for a residential tenancy agreement—see section 184A;  
or
- (b) for a rooming accommodation agreement—see section 256A.

***premises*** see sections 9 and 22.

***prescribed minimum housing standards*** see section 17A(1).

***prescribed rules*** see section 267.

***proposal***, for park rules for a moveable dwelling park, see section 229(1)(a).

***proposed commencement day***, for a rule change, see section 270(1)(b).

**protection order** means an order under the *Domestic and Family Violence Protection Act 2012*, section 37.

**provider** see sections 17 and 21.

**public housing**, for chapter 13A, see section 527A.

**real estate agent** see the *Property Occupations Act 2014*, section 16.

**registered higher education provider** see the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth), section 5.

**registrar** means the principal registrar under the QCAT Act.

**registry** means the registry under the QCAT Act.

**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
- (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.

**reletting costs**—

- (a) for a residential tenancy agreement—see section 357A(3); or
- (b) for a rooming accommodation agreement—see section 396A(3).

**rent** means—

- (a) an amount payable by a tenant under a residential tenancy agreement for the right to occupy residential premises as a residence; or

- (b) an amount payable by a resident under a rooming accommodation agreement for the provision of accommodation and any other service provided under the agreement.

***rental bond*** see section 111.

***rental bond account*** means the account by that name kept under section 150.

***rental bond instalments***—

- (a) for a residential tenancy agreement, see section 117(1)(c); or
- (b) for a rooming accommodation agreement, see section 118(1).

***rental bond notice*** means a notice about a rental bond given to the authority under section 116.

***rental premises*** means the premises in which rooming accommodation is provided.

***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.

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

***rent payment record***—

- (a) for a residential tenancy agreement, see section 88(5)(a); or
- (b) for a rooming accommodation agreement, see section 102(5)(a).

***repair order*** see section 221(1).

***repeated breaches***, for an application for a termination order, see sections 299(3), 315(3), 376(3) and 382(3).

***replacement lessor*** see section 527A.

***replacement terms***, for chapter 13A, see section 527C.

***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.

***representative entity*** means an entity that has the purpose of providing advice or support to tenants.

***resident***, in rooming accommodation, see sections 14 and 21.

***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 10.

***residential tenancy*** see section 11.

***residential tenancy agreement*** see section 12.

***resident's room***, for a resident of rental premises, means a room in the premises that the resident occupies as his or her residence under the rooming accommodation agreement.

***retirement village*** has the meaning given by the *Retirement Villages Act 1999*.

***rooming accommodation*** see section 15.

***rooming accommodation agreement*** see section 16.

***rooming accommodation dispute*** see section 397(2).

***routine repairs*** see section 215.

***rule change***, in relation to the house rules for rental premises, see section 269.

***rules of entry***—

- (a) for a residential tenancy agreement, see section 200; or
- (b) for a rooming accommodation agreement, see section 263.

***sale contract***, for a notice to leave, see section 286(2).

***school*** means—

- (a) a State school within the meaning of the *Education (General Provisions) Act 2006*; or
- (b) an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*.

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

***self-contained unit*** means a part of a building, forming a self-contained residence, that is under the exclusive possession of the occupier and includes kitchen, bathroom and toilet facilities.

***selling agent*** means—

- (a) for a lessor—the agent appointed to sell the lessor's premises; or
- (b) for a provider—the agent appointed to sell the provider's premises.

***serious breach***, for an application for a termination order, see section 297B(2).

***serious breach at public or community housing***, for a notice to leave, see section 290A(3).

***serious or persistent breach of acceptable behaviour agreement***, for an application for a termination order, see section 527E.

***service charge*** see section 164.

***share***, of a rental bond, see section 115.

***short tenancy (extension) statement*** see section 48(1).

***short tenancy (moveable dwelling)*** see section 50.

***short tenancy statement*** see section 47(1).

***significant repair or renovations***, for a notice to leave, see section 290D(2).

***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.

***social housing database***, for chapter 9, part 3, see section 457F.

***social housing service***, for chapter 13A, see section 527A.

***special terms***—

- (a) of a residential tenancy agreement, see section 56; or
- (b) of a rooming accommodation agreement, see section 74.

***standard terms***—

- (a) of a residential tenancy agreement, see section 55(2); or
- (b) of a rooming accommodation agreement, see section 73(2).

***State government program***, for a notice to leave, see section 290B(2).

***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 or rental premises means any renovation, alteration or addition to the premises or rental premises.

***tenancy database***, for chapter 9, part 3, see section 457F.

***tenancy dispute*** see section 397(1).

***tenant*** see—

- (a) generally—sections 13 and 20; and
- (b) for chapter 9—section 457A.

***termination order*** means an order of a tribunal terminating a residential tenancy agreement or rooming accommodation agreement.

***tribunal*** means QCAT.

***unremedied breach***—

- (a) for a notice to leave, see section 281(2); or
- (b) for a notice of intention to leave, see section 302(2).

***urgent application*** see section 415.

***voluntary park closure***, for a notice to leave, see section 287(4).

***water service charge***, for premises, means a service charge for water supplied to the premises.

***without ground***, for a notice of intention to leave, see section 308(2).

***working dog***—

- (a) for a residential tenancy agreement—see section 184A; or
- (b) for a rooming accommodation agreement—see section 256A.

***work performance arrangement*** means an arrangement under which an employee of a government entity performs work for another government entity.