

South Australia

# Residential Tenancies Act 1995

An Act to regulate the relationship of landlord and tenant under residential tenancy agreements; and for other purposes.

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Legislative history

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Residential Tenancies Act 1995*.

**3—Interpretation**

- (1) In this Act, unless the contrary intention appears—

***ancillary property*** means property (not forming part of premises subject to a residential tenancy agreement) that is provided by the landlord, either under the residential tenancy agreement or independently of the agreement, for use by the tenant;

***bond*** means an amount a tenant is required to pay under a residential tenancy agreement, or an agreement collateral to a residential tenancy agreement, as security for the performance of obligations under a residential tenancy agreement;

***Commissioner*** means the Commissioner for Consumer Affairs;

***domestic facility requiring instructions*** means an appliance or device provided by a landlord for the use of a tenant for which it would be reasonable to expect the tenant to require instructions;

***Fund*** means the Residential Tenancies Fund;

***housing improvement notice*** means a notice of intention to declare premises substandard, a notice declaring premises to be substandard, or a notice fixing the maximum rent payable for premises, under Part 7 of the *Housing Improvement Act 1940*;

***landlord*** means—

- (a) the person who grants the right of occupancy under a residential tenancy agreement; or
- (b) a successor in title to the tenanted premises whose title is subject to the tenant's interest,

and includes a prospective landlord and a former landlord;

**lawyer** means a person entitled to practise the profession of the law under the *Legal Practitioners Act 1981*;

**personal documents** means official documents, photographs, correspondence or other documents that it would be reasonable to expect a person might wish to keep;

**premises** includes a part of premises;

**registered community housing provider** means a community housing provider registered under the *Community Housing Providers National Law*;

**rent** means an amount payable under a residential tenancy agreement for the right to occupy premises for a period of the tenancy;

**residential premises** means premises for occupation as a place of residence;

**residential tenancy agreement** means an agreement (other than a rooming house agreement) under which a person grants another person, for valuable consideration, a right (which may, but need not, be an exclusive right<sup>1</sup>) to occupy premises for the purpose of residence;

**rooming house** means residential premises in which—

- (a) rooms are available, on a commercial basis, for residential occupation; and
- (b) accommodation is available for at least three persons on a commercial basis;

**rooming house agreement** means an agreement under which accommodation is provided (with or without meals, or other facilities or services) in a rooming house;

**rooming house proprietor** means a person who carries on a business involving the provision of accommodation under rooming house agreements;

**rooming house resident** means a person who boards or lodges in a rooming house;

**Rules** means the rules of the Tribunal;

**statutory charges** means—

- (a) rates or charges imposed under the *Local Government Act 1999*; and
- (b) rates or charges imposed under the *Water Industry Act 2012*; and
- (c) land tax under the *Land Tax Act 1936*; and
- (d) levies under the *Emergency Services Funding Act 1998*; and
- (e) levies under the *Natural Resources Management Act 2004*; and
- (f) any charges of a kind imposed under an Act and declared by regulation to be statutory charges;

**tenancy dispute** means—

- (a) a claim under a residential tenancy agreement, a rooming house agreement, or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or
- (b) a dispute between parties or former parties to a residential tenancy agreement, a rooming house agreement, or an agreement collateral to a residential tenancy agreement or a rooming house agreement, about matters arising under the agreement or this Act; or



- (c) any matter that may be the subject of an application under this Act to the Tribunal;

**tenant** means the person who is granted a right of occupancy under a residential tenancy agreement or a person to whom the right passes by assignment or operation of law and includes a prospective tenant or a former tenant;

**Tribunal** means the Residential Tenancies Tribunal.

- (2) If this Act provides for something to be done within a specified period from a particular day, the period will be taken not to include the particular day.
- (3) If this Act provides that action may be taken after the expiration of a specified period of days, the period will be taken to be a period of clear days.
- (4) For the purposes of this Act, a residential tenancy agreement includes an agreement granting a corporation the right to occupy premises that are occupied, or that are intended to be occupied, as a place of residence by a natural person.

**Note—**

- 1 However, it should be noted that the Act confers certain protections against intrusion on the premises by the landlord. Hence, even if the agreement does not, in its terms, confer an exclusive right to occupation, the Act will (at least in some respects) assimilate the right of occupation to the exclusive right conferred by a lease.

#### **4—Presumption of periodicity in case of short fixed terms**

- (1) If a residential tenancy agreement is entered into for a short fixed term, the agreement is taken to be an agreement for a periodic tenancy with a period equivalent to the length of the fixed term unless the landlord establishes that—
- (a) the tenant genuinely wanted a tenancy ending at the end of the short fixed term and the term was fixed at the tenant's request; or
- (b) before the residential tenancy agreement was entered into—
- (i) the landlord gave the tenant a notice containing a warning in the form required by regulation; and
- (ii) the tenant signed a statement in the form required by regulation acknowledging that the tenant did not expect to continue in possession of the premises after the end of the term stated in the agreement.
- (2) A *short fixed term* is a term of 90 days or less.

#### **5—Application of Act**

- (1) This Act does not apply to—
- (a) an agreement giving a right of occupancy in—
- (i) a hotel or motel; or
- (ii) an educational institution, college, hospital or nursing home; or

**Example—**

An agreement under which a right of occupancy is given to a student in accommodation provided within an educational institution or college would not be an agreement to which this Act applies (but this Act would apply, subject to this Act, to an agreement under which a right of occupancy is given to a student in accommodation that is not within an educational institution or college).

- (iii) club premises; or
- (iv) a home for aged or disabled persons administered by an eligible organisation under the *Aged or Disabled Persons Care Act 1954* of the Commonwealth; or
- (v) a retirement village within the meaning of the *Retirement Villages Act 1987*; or
- (vi) a supported residential facility within the meaning of the *Supported Residential Facilities Act 1992*; or
- (vii) prescribed premises, or premises of a prescribed class; or
- (ab) an agreement to which the *Residential Parks Act 2007* applies; or
- (b) an agreement (other than a rooming house agreement) under which a person boards or lodges with another; or
- (c) an agreement genuinely entered into for the purpose of conferring on a person a right to occupy premises for a holiday; or
- (d) an agreement conferring a right to occupy premises for the purpose of residence but under which no rent is payable; or

**Example—**

An agreement under which families exchange houses for an agreed period would not be a residential tenancy agreement if no rent were payable under the agreement.

- (e) an agreement for the sale of land that confers a right to occupy premises for a period of 28 days or less on a party to the agreement; or
  - (f) a mortgage; or
  - (g) an agreement arising under a scheme in which—
    - (i) a complex of adjacent premises is owned by a company; and
    - (ii) the premises are let by the company to persons who jointly have a controlling interest in the company; or
  - (h) a prescribed agreement or an agreement of a prescribed class.
- (1a) The regulations may exclude prescribed classes of agreements that relate to land owned (wholly or in part) by the South Australian Housing Trust, or by a subsidiary of the South Australian Housing Trust, from the operation of subsection (1)(e).
- (1b) For the purposes of this Act, an agreement conferring a right to occupy premises for a fixed term of 60 days or longer is to be taken, in the absence of proof to the contrary, not to be an agreement referred to in subsection (1)(c).

- (2) The following provisions of this Act (and only those provisions) apply to residential tenancy agreements under which the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust is the landlord, to residential tenancies arising under those agreements and to related disputes—
- (a) Part 3 (*Residential Tenancies Tribunal*);
  - (ab) Section 65 (*Quiet enjoyment*);
  - (b) Section 66 (*Security of premises*);
  - (c) Section 71 (*Tenant's conduct*);
  - (ca) section 87 (*Termination on application by landlord*);
  - (d) Section 90 (*Tribunal may terminate tenancy where tenant's conduct unacceptable*);
  - (e) Section 93 (*Order for possession*);
  - (f) Section 99 (*Enforcement orders for possession*);
  - (g) Division 3 of Part 8 (*Powers of the tribunal*);
  - (h) Division 4 of Part 8 (*Representation*).

## **Part 2—Administration**

### **6—Administration of this Act**

The Commissioner is responsible for the administration of this Act.

### **7—Ministerial control of administration**

The Commissioner is, in the administration of this Act, subject to control and direction by the Minister.

### **8—The Commissioner's functions**

The Commissioner has the following functions:

- (a) investigating and researching matters affecting the interests of parties to residential tenancy agreements and rooming house agreements; and
- (b) publishing reports and information on subjects of interest to the parties to residential tenancy agreements and rooming house agreements; and
- (c) giving advice (to an appropriate extent) on the provisions of this Act and other subjects of interest to the parties to residential tenancy agreements and rooming house agreements; and
- (d) investigating suspected infringements of this Act and taking appropriate action to enforce the Act; and
- (e) making reports to the Minister on questions referred to the Commissioner by the Minister and other questions of importance affecting the administration of this Act; and
- (f) administering the Fund.

## **10—Annual report**

- (1) The Commissioner must, on or before 31 October in each year, prepare and forward to the Minister a report on the administration of this Act for the year ending on the preceding 30 June.
- (2) The report must include a report on the administration of the Fund.
- (3) The Minister must, within six sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## **Part 3—Residential Tenancies Tribunal**

### **Division 1—The Tribunal and its membership**

#### **11—Continuation of Tribunal**

*The Residential Tenancies Tribunal continues in existence.*

#### **12—Membership of the Tribunal**

- (1) Members of the Tribunal are appointed by the Governor.
- (2) A member of the Tribunal is appointed for a term (not exceeding five years) specified in the instrument of appointment and, at the end of a term of appointment, is eligible for reappointment.
- (3) A member of the Tribunal is appointed on conditions specified in the instrument of appointment.
- (4) The office of member of the Tribunal may be held in conjunction with an office or position in the public service of the State.
- (5) The Governor may remove a member of the Tribunal from office for—
  - (a) breach of, or non-compliance with, a condition of appointment; or
  - (b) misconduct; or
  - (c) failure or incapacity to carry out official duties satisfactorily.
- (6) The office of a member of the Tribunal becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is convicted of an offence punishable by imprisonment; or
  - (e) is removed from office under subsection (5).

#### **13—Presiding and Deputy Presiding Members**

- (1) The Governor may appoint a member of the Tribunal to be the Presiding Member or a Deputy Presiding Member of the Tribunal.

- (1a) Before a member of the Tribunal is appointed (or reappointed) as the Presiding Member or a Deputy Presiding Member of the Tribunal, the Minister must consult confidentially about the proposed appointment with the Law Society of South Australia.
- (2) A person may only be appointed as the Presiding Member or a Deputy Presiding Member of the Tribunal if the person is legally qualified.
- (3) A Deputy Presiding Member may exercise powers and functions of the Presiding Member by delegation from the Presiding Member.
- (4) If the Presiding Member is absent, or there is a temporary vacancy in the office of the Presiding Member, the powers, functions and duties of the Presiding Member devolve on a Deputy Presiding Member appointed by the Governor to act in the absence of the Presiding Member or, if no such appointment has been made, on the most senior Deputy Presiding Member of the Tribunal.
- (5) A member who holds office as the Presiding Member or a Deputy Presiding Member of the Tribunal continues in that office until the term of office as member falls due for renewal and, if the member's term of office is renewed, the appointment as Presiding Member or Deputy Presiding Member may (but need not be) renewed also.

#### **14—Remuneration**

A member of the Tribunal is entitled to remuneration, allowances and expenses determined by the Governor.

#### **15—Registrars**

- (1) There is to be a registrar and 1 or more deputy registrars of the Tribunal.
- (2) The registrar and deputy registrars are to be Public Service employees.
- (3) The registrar is the Tribunal's principal administrative officer and reports to the Commissioner.
- (4) In directing the registrar in relation to the administration of the Tribunal, the Commissioner must consult with the Presiding Member of the Tribunal.

#### **16—Registrar may exercise jurisdiction in certain cases**

- (1) The registrar or a deputy registrar may—
  - (a) exercise the jurisdiction of the Tribunal if specifically authorised to do so by or under this Act; and
  - (b) subject to direction by the Presiding Member of the Tribunal—exercise the jurisdiction of the Tribunal in respect of classes of matters, or in circumstances, specified by the regulations.
- (2) The Registrar may make an order in relation to a tenancy dispute with the written consent of the parties to the dispute (and such an order operates as an order of the Tribunal).

#### **17—Magistrates may exercise jurisdiction in certain cases**

- (1) A magistrate may exercise the jurisdiction of the Tribunal.
- (2) The regulations may prescribe a scheme for the listing of matters before magistrates.

- (3) A regulation cannot be made for the purposes of subsection (2) except after the Minister has consulted with the Presiding Member of the Tribunal and the Chief Magistrate.
- (4) A magistrate exercising the jurisdiction of the Tribunal is taken to be a member of the Tribunal.

## **18—Immunities**

A member or officer of the Tribunal incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

## **Division 2—Proceedings before the Tribunal**

### **19—Constitution**

- (1) The Tribunal is constituted for the purpose of hearing proceedings of a single member of the Tribunal.
- (2) The Tribunal may, at any one time, be separately constituted for the hearing and determination of a number of separate matters.

### **20—Times and places of sittings**

- (1) The Tribunal may sit at any time (including a Sunday).
- (2) The Tribunal may sit at any place.

### **21—Duty to act expeditiously**

The Tribunal must, where practicable, determine proceedings within 14 days after the proceedings are commenced and, if that is not practicable, as expeditiously as possible.

### **22—Sittings generally to be in public**

- (1) Subject to any contrary provision of an Act or regulation, the Tribunal's proceedings must be open to the public.
- (2) However, the Tribunal may, in an appropriate case, order that proceedings be held in private.

### **23—Offices of the Tribunal**

Offices of the Tribunal will be maintained at such places as the Minister may determine.

## **Division 3—The Tribunal's jurisdiction**

### **24—Jurisdiction of Tribunal**

- (1) The Tribunal has—
  - (a) exclusive jurisdiction to hear and determine a tenancy dispute;

- (b) subject to the regulations—jurisdiction to hear and determine claims or disputes arising from tenancies granted for residential purposes by the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust, or arising under agreements collateral to such tenancies (including such agreements that may involve a third party);
  - (c) the other jurisdictions conferred on the Tribunal by statute.
- (2) However, the Tribunal does not have jurisdiction to hear and determine a monetary claim if the amount claimed exceeds \$40 000 unless the parties to the proceedings consent in writing to the claim being heard and determined by the Tribunal (and if consent is given, it is irrevocable).
- (3) If a monetary claim is above the Tribunal's jurisdictional limit, the claim and any other claims related to the same tenancy may be brought in a court competent to hear and determine a claim founded on contract for the amount of the claim.
- (4) A court in which proceedings are brought under subsection (3) may exercise the powers of the Tribunal under this Act.
- (5) If the plaintiff in proceedings brought in a court under this section recovers less than \$40 000, the plaintiff is not entitled to costs unless the court is satisfied that there were reasonable grounds for the plaintiff to believe that the plaintiff was entitled to \$40 000 or more.

## **25—Application to Tribunal**

- (1) An application under this Act to the Tribunal must—
  - (a) be made in writing; and
  - (b) contain the prescribed particulars.
- (2) Before the Tribunal proceeds to hear an application it must—
  - (a) give the applicant notice in writing setting out the time and place at which it will hear the application; and
  - (b) give to any other party—
    - (i) notice in writing setting out the time and place at which it will hear the application; and
    - (ii) notice of the nature of the application as it thinks fit.
- (3) A notice under subsection (2) directed to an occupier or subtenant of premises need not address the occupier or subtenant by name.

## **Division 5—Evidentiary and procedural powers**

### **31—Tribunal's powers to gather evidence**

- (1) For the purpose of proceedings, the Tribunal may—
  - (a) by summons signed by a member, registrar or deputy registrar of the Tribunal, require a person to attend before the Tribunal;
  - (b) by summons signed by a member, registrar or deputy registrar of the Tribunal, require the production of books, papers or documents;

- (c) inspect books, papers or documents produced before it, retain them for a reasonable period, and make copies of them, or of their contents;
  - (d) require a person appearing before the Tribunal to make an oath or affirmation that the person will truly answer relevant questions put by the Tribunal or a person appearing before the Tribunal;
  - (e) require a person appearing before the Tribunal (whether summoned to appear or not) to answer any relevant questions put by the Tribunal or a person appearing before the Tribunal.
- (2) If a person—
- (a) fails without reasonable excuse to comply with a summons under subsection (1); or
  - (b) refuses or fails to comply with a requirement of the Tribunal under subsection (1); or
  - (c) misbehaves before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,
- the person is guilty of an offence.  
Maximum penalty: \$2 500.
- (3) Evidence before the Tribunal cannot be used in criminal proceedings except proceedings for an offence against this Act or for perjury.

### **32—Procedural powers of Tribunal**

- (1) In proceedings the Tribunal may—
- (a) hear an application in the way the Tribunal considers most appropriate;
  - (b) decline to entertain an application, or adjourn a hearing, until the fulfilment of conditions fixed by the Tribunal with a view to promoting the settlement of matters in dispute between the parties;
  - (c) decline to entertain an application if it considers that the application is vexatious or frivolous or involves a trivial matter or amount;
  - (d) proceed to determine an application in the absence of a party;
  - (e) extend a period prescribed by or under this Act within which an application or other step in respect of proceedings must be made or taken (even if the period had expired);
  - (f) vary or set aside an order if the Tribunal considers there are proper grounds for doing so;
  - (g) adjourn a hearing to a time or place or to a time and place to be fixed;
  - (h) allow the amendment of an application;
  - (i) hear an application jointly with another application;
  - (j) receive in evidence a transcript of evidence in proceedings before a court and draw conclusions of fact from that evidence;
  - (k) adopt, as in its discretion it considers proper, the findings, decision or judgment of a court that may be relevant to the proceedings;



- (l) generally give directions and do all things that it thinks necessary or expedient in the proceedings.
- (1a) The Tribunal may determine an application without proceeding to a hearing if the Tribunal is satisfied that the issues for determination can be adequately determined in the absence of the parties by consideration of the application and other documents or materials lodged with or produced before the Tribunal.
- (2) The Tribunal's proceedings must be conducted with the minimum of formality, and in the exercise of its jurisdiction the Tribunal—
  - (a) is not bound by evidentiary rules but may inform itself as it thinks appropriate; and
  - (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (3) The Tribunal may, on the application of a designated housing agency, allow the designated housing agency to intervene in proceedings before the Tribunal when a registered community housing provider is a party to the proceedings.
- (4) If a designated housing agency is allowed to intervene in proceedings, it may intervene in the manner and to the extent directed by the Tribunal, and on other conditions determined by the Tribunal.
- (5) In this section—
 

*designated housing agency* means—

  - (a) the Minister responsible for the administration of the *Community Housing Providers (National Law) (South Australia) Act 2013*; or
  - (b) the South Australian Housing Trust.

### **33—General powers of the Tribunal to cure irregularities**

- (1) The Tribunal may, if satisfied that it would be just and equitable to do so, excuse a failure to comply with a provision of this Act on terms and conditions the Tribunal considers appropriate.
- (2) The Tribunal may amend proceedings if satisfied that the amendment will contribute to the expeditious and just resolution of the questions in issue between the parties.

## **Division 7—Judgments and orders**

### **35—Special powers to make orders and give relief**

- (1) The Tribunal may make an order in the nature of an injunction (including an interim injunction) or an order for specific performance.
- (2) However, a member of the Tribunal who is not legally qualified cannot make an order under subsection (1) without the approval of the Presiding Member of the Tribunal.
- (3) Although a particular form of relief is sought by a party to proceedings before the Tribunal, the Tribunal may grant any other form of relief that it considers more appropriate to the circumstances of the case.
- (4) The Tribunal may make interlocutory orders on matters within its jurisdiction.

- (5) The Tribunal may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.
- (6) The Tribunal may, in the exercise of its jurisdiction, make ancillary or incidental orders.

### **36—Enforcement of orders**

- (1) An order of the Tribunal may be registered in the appropriate court and enforced as an order of that court.
- (2) A person who contravenes an order of the Tribunal (other than an order for the payment of money) is guilty of an offence.  
Maximum penalty: \$10 000.
- (3) In this section—

*appropriate court* means—

- (a) if the order of the Tribunal is for a monetary amount above the jurisdictional limit of the Magistrates Court for a monetary claim founded on contract—the District Court;
- (b) in any other case—the Magistrates Court.

### **37—Application to vary or set aside order**

- (1) A party to proceedings before the Tribunal may apply to the Tribunal for an order varying or setting aside an order made in the proceedings.
- (2) An application to vary or set aside an order must be made within 1 month of the making of the order (unless the Tribunal allows an extension of time).
- (3) If the reasons of the Tribunal are not given in writing at the time of making an order and the applicant for an order varying or setting aside the order then requests the Tribunal to state its reasons in writing, the time for making the application runs from the time when the applicant receives the written statement of the reasons.

### **38—Costs**

The Governor may, by regulation, provide that in proceedings of a prescribed class the Tribunal will not award costs unless—

- (a) all parties to the proceedings were represented by legal practitioners; or
- (b) the Tribunal is of the opinion that there are special circumstances justifying an award of costs.

## **Division 8—Obligation to give reasons for decisions**

### **39—Reasons for decisions**

The Tribunal must, if asked by a person affected by a decision or order, state in writing the reasons for its decision or order.

## **Division 9—Reservation of questions of law and appeals**

### **40—Reservation of questions of law**

- (1) The Tribunal may reserve a question of law for determination by the Supreme Court.
- (2) If a question of law is reserved, the Supreme Court may decide the question and make consequential orders and directions appropriate to the circumstances of the case.

### **41—Appeals**

- (1) An appeal lies to the Administrative and Disciplinary Division of the District Court from a decision or order of the Tribunal made in the exercise (or purported exercise) of its powers under this Act.
- (3) The appeal must be commenced within one month of the decision or order appealed against unless the District Court allows an extension of time.
- (4) If the reasons of the Tribunal are not given in writing at the time of making a decision or order and the appellant then requests the Tribunal to state its reasons in writing, the time for commencing the appeal runs from the time when the appellant receives the written statement of the reasons.

## **Division 10—Miscellaneous**

### **43—Entry and inspection of property**

- (1) The Tribunal may enter land or a building and carry out an inspection the Tribunal considers relevant to a proceeding before the Tribunal.
- (2) The Tribunal may authorise a person to enter land or a building and carry out an inspection the Tribunal considers relevant to a proceeding before the Tribunal.
- (3) A person who obstructs the Tribunal, or a person authorised by the Tribunal, in exercising a power of entry or inspection under this section commits a contempt of the Tribunal.

### **44—Contempt of the Tribunal**

A person who—

- (a) interrupts the proceedings of the Tribunal or misbehaves before the Tribunal;  
or
- (b) insults the Tribunal or an officer of the Tribunal acting in the exercise of official functions; or
- (c) refuses, in the face of the Tribunal, to obey a lawful direction of the Tribunal,  
is guilty of a contempt of the Tribunal.

### **45—Punishment of contempts**

- (1) The Tribunal may punish a contempt as follows:
  - (a) it may impose a fine not exceeding \$5 000; or
  - (ab) it may suspend the right of a person under section 113 to represent parties to tenancy disputes for a specified period or until further order; or

- (b) it may commit to prison until the contempt is purged subject to a limit (not exceeding 1 year) to be fixed by the Tribunal at the time of making the order for commitment.
- (2) The powers conferred by this section may only be exercised by a member of the Tribunal who is legally qualified.
- (3) An order for commitment made under this section may be executed as if it were an order for commitment made by the Magistrates Court.

#### **46—Fees**

- (1) The Governor may, by regulation, prescribe and provide for the payment of fees in relation to proceedings in the Tribunal.
- (2) The registrar may remit or reduce a fee if the party by whom the fee is payable is suffering financial hardship, or for any other proper reason.
- (3) A fee paid by a party is not recoverable, including in connection with an award of costs or an order to pay compensation.

#### **47—Procedural rules**

- (1) The Governor may, by regulation—
  - (a) prescribe matters relevant to the practice and procedures of the Tribunal; and
  - (b) provide for the service of any process, notice or other document relevant to proceedings before the Tribunal (including circumstances where substituted service in accordance with the regulations or an order of the Tribunal will constitute due service); and
  - (c) deal with other matters necessary for the effective and efficient operation of the Tribunal.
- (2) The Presiding Member of the Tribunal may make Rules of the Tribunal relevant to the practice and procedure of the Tribunal, or to assist in the effective and efficient operation of the Tribunal, insofar as those matters are not dealt with by the regulations.
- (3) The Rules take effect as from the date of publication in the Gazette or a later date specified in the rules.
- (4) The *Subordinate Legislation Act 1978* does not apply to Rules of the Tribunal.

### **Part 4—Mutual rights and obligations of landlord and tenant**

#### **Division A1—Before entering into residential tenancy agreement**

##### **47A—Prospective tenant to be notified of sale of premises**

A landlord must ensure that a prospective tenant is advised, before entering into a residential tenancy agreement, if the landlord has advertised, or intends to advertise, the residential premises for sale and of any existing sales agency agreement for the sale of the residential premises.

## Division 1—Entering into residential tenancy agreement

### 48—Information to be provided by landlords to tenants

- (1) A landlord must ensure that a tenant is given, before or at the time the landlord and tenant enter into a residential tenancy agreement, a written notice setting out—
  - (a) if an agent is acting for the landlord—the agent's name, telephone number and address for service of documents; and
  - (b) the landlord's full name and address for service of documents (which must not be the agent's address for service); and
  - (c) if no agent is acting for the landlord—the landlord's telephone number; and
  - (d) the full name and address of any person with superior title to the landlord; and
  - (e) if the landlord is a company—the address of the registered office of the company; and
  - (f) any other information required by the Commissioner.

Maximum penalty: \$1 250.

Expiation fee: \$210.

- (2) A landlord must take reasonable steps to ensure that a tenant is given, before or at the time the tenant commences occupation of the premises under a residential tenancy agreement, manufacturers' manuals, or written or oral instructions, about the operation of any domestic facilities requiring instructions.

**Note—**

Domestic facilities requiring instructions should also be listed in the tenancy agreement—see section 69(3a).

- (3) If a person succeeds another as the landlord, the new landlord must, within 14 days, ensure that the tenant is given a written notice setting out—
  - (a) if an agent is acting for the new landlord—the agent's name, telephone number and address for service of documents; and
  - (b) the new landlord's full name and address for service of documents (which must not be the agent's address for service); and
  - (c) if no agent is acting for the new landlord—the new landlord's telephone number; and
  - (d) if the new landlord is a company—the address of the registered office of the company; and
  - (e) any other information required by the Commissioner.

Maximum penalty: \$1 250.

Expiation fee: \$210.

- (4) If a name, address or telephone number of which the landlord is required to notify the tenant under this section changes, the landlord must, within 14 days of becoming aware of the change, notify the tenant in writing of the change.

Maximum penalty: \$1 250.

Expiation fee: \$210.

#### **49—Residential tenancy agreements**

- (1) A written residential tenancy agreement entered into after the commencement of this section must—
- (a) state clearly in a prominent position at the beginning of the agreement that—
    - (i) the agreement is a residential tenancy agreement; and
    - (ii) the parties to the agreement should consider obtaining legal advice about their rights and obligations under the agreement; and
  - (b) set out—
    - (i) if an agent is acting for the landlord—the agent's name, address and telephone number, and, if the agent is registered as an agent under the *Land Agents Act 1994*, his or her registration number under that Act; and
    - (ii) the landlord's full name and address for service of documents (which must not be the agent's address for service); and
    - (iii) if no agent is acting for the landlord—the landlord's telephone number; and
    - (iv) the tenant's name; and
    - (v) the address of the residential premises; and
    - (vi) the terms of the agreement, including—
      - (A) the amount of rent payable; and
      - (B) the interval between rental payment times; and
      - (C) the method by which rent is to be paid; and
      - (D) the amount of the bond; and
      - (E) any agreement reached as to responsibility for rates and charges for water supply; and
      - (F) responsibility for insurance of the premises and the contents of the premises; and
      - (G) any other terms of the agreement (including, for example, terms in relation to pets or responsibility for repairs); and
  - (c) be dated and signed by the parties to the agreement; and
  - (d) comply with any other requirements prescribed by the regulations.
- (2) A provision of a residential tenancy agreement that does not comply with subsection (1) that requires the tenant to pay a bond is unenforceable.

- (3) A landlord must not enter into a residential tenancy agreement unless the landlord or an agent acting for the landlord has first given the tenant a written guide that explains the tenant's rights and obligations under such an agreement and is in the form approved by the Commissioner for the purposes of this section.
- Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (4) The matters specified or agreed in a written residential tenancy agreement entered into after the commencement of this section may not be varied unless the variation is in writing and dated and signed by the landlord and tenant.
- (5) A landlord under a written residential tenancy agreement must keep a copy of the agreement, and any variation of the agreement, whether in paper or electronic form, for at least 2 years following termination of the agreement.
- Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (6) If a landlord (or an agent acting for a landlord) invites or requires a tenant or prospective tenant to sign a written residential tenancy agreement, the landlord must ensure that—
- (a) the tenant receives a copy of the residential tenancy agreement when the tenant signs it; and
  - (b) if the agreement has not then been signed by the landlord, a copy of the agreement, as executed by all parties, is delivered to the tenant within 21 days after the tenant gives the agreement back to the landlord or the landlord's agent to complete its execution.
- Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (7) Subject to subsection (2), a failure to comply with this section does not make the residential tenancy agreement illegal, invalid or unenforceable.

### **50—Cost of preparing agreement**

The cost of preparing a written residential tenancy agreement must be borne by the landlord.

#### **Note—**

Residential tenancy agreements are exempt from stamp duty.

### **51—False information from tenant**

A tenant must not give a landlord false information about the tenant's identity or place of occupation.

Maximum penalty: \$1 250.

## **Division 2—Discrimination against tenants with children**

### **52—Discrimination against tenants with children**

- (1) A person must not refuse to grant a tenancy to another on the ground that it is intended that a child should live on the premises.  
Maximum penalty: \$2 500.
- (2) A person must not—
  - (a) instruct a person not to grant; or
  - (b) state an intention (by advertisement or in any other way) not to grant,a tenancy on the ground that it is intended that a child should live on the premises.  
Maximum penalty: \$2 500.
- (3) However, this section does not apply if the landlord, or an agent appointed by the landlord to manage the premises, resides in the premises to which the tenancy relates.

## **Division 3—Rent**

### **53—Permissible consideration for residential tenancy**

- (1) A person must not require or receive from a tenant or prospective tenant a payment, other than rent or a bond (or both), for a residential tenancy or the renewal or extension of a residential tenancy.  
Maximum penalty: \$2 500.
- (2) However—
  - (a) the landlord may lawfully require or receive consideration for an option to enter into a residential tenancy agreement but, in that case, the following condition applies:
    - (i) if the prospective tenant enters into the residential tenancy agreement, the landlord must apply the consideration towards rent payable under the agreement;
    - (ii) if the prospective tenant does not exercise the option to enter into the residential tenancy agreement, the landlord may retain the consideration; and
  - (b) the landlord may require the tenant to reimburse the landlord for rates and charges for water supply that are to be borne by the tenant under the residential tenancy agreement or a collateral agreement; and
  - (c) the landlord may lawfully require or receive a payment of a class the landlord is authorised to require or receive by another provision of this Act or under the regulations.



## 54—Rent in advance

- (1) A person must not require<sup>1</sup> the payment of more than two weeks' rent under a residential tenancy agreement before the end of the first two weeks of the tenancy.  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (2) If rent has been paid under a residential tenancy agreement, a person must not require<sup>1</sup> a further payment of rent until the end of the last period for which rent has been paid.  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (3) A person must not require another to give a post-dated cheque or other post-dated negotiable instrument in payment of rent under a residential tenancy agreement.  
Maximum penalty: \$2 500.  
Expiation fee: \$210.

### Note—

- 1 The prohibition is against *requiring* payment of rent for more than two weeks in advance. Hence, if a tenant voluntarily elects to pay rent for more than two weeks in advance, the landlord (or the landlord's agent) may lawfully accept the payment.

## 55—Variation of rent

- (1) The landlord may increase the rent payable under a residential tenancy agreement by giving written notice to the tenant specifying the date as from which the increase takes effect.
- (2) However—
  - (a) the right to increase the rent may be excluded or limited by the terms of the residential tenancy agreement; and
  - (b) if the tenancy is for a fixed term, the residential tenancy agreement is taken to exclude an increase in rent during the term unless it specifically allows for an increase in rent; and
  - (c) the date fixed for an increase of rent must be at least 12 months after the date of the agreement or, if there has been a previous increase of rent under this section, the last increase and at least 60 days after the notice is given but—
    - (i) if the maximum rent for the premises has been fixed by a housing improvement notice, and the notice is revoked, the landlord may, by notice given under this section within 60 days after revocation of the housing improvement notice, increase the rent for the premises from a date falling at least 14 days after the notice is given; and
    - (ii) if the landlord is a registered community housing provider, and the residential tenancy agreement provides for variation of rent in accordance with the tenant's income, the landlord may increase the rent on the ground of a variation in the tenant's income from a date falling at least 14 days after the notice of the increased rent is given; and

- (iii) if the landlord is a registered community housing provider under a residential tenancy agreement that allows the landlord to change the basis of calculating the rent payable under the agreement, and the landlord gives the tenant written notice that there is to be a change in the basis of calculating rent as from a specified date (which must be at least 60 days after the notice is given and at least 12 months from the date of the agreement, or if there has been a previous change in the basis of rent calculation, at least 12 months from the date of the last such change), the rent may be increased to accord with the new basis of rent calculation as from the specified date without further notice under this section.
- (2a) Despite subsections (1) and (2), the rent payable under a residential tenancy agreement may be increased at any time by mutual agreement between the landlord and the tenant.
  - (3) The rent payable under a residential tenancy agreement may be reduced by mutual agreement between the landlord and the tenant.
  - (4) A reduction of rent may be made on a temporary basis so that the rent reverts to the level that would have been otherwise applicable at the end of a specified period.
  - (5) If the rent payable under a residential tenancy agreement is increased or reduced under this section, the terms of the agreement are varied accordingly.
  - (6) This section does not affect the operation of a provision of a residential tenancy agreement under which the rent payable under the agreement changes automatically at stated intervals on a basis set out in the agreement.
  - (7) For the purposes of this section, a series of residential tenancy agreements between the same parties and relating to the same premises is treated as a single residential tenancy agreement unless at least 12 months have elapsed since rent for the premises was fixed or last increased.

## **56—Excessive rent**

- (1) The Tribunal may, on application by a tenant, declare that the rent payable under a residential tenancy agreement is excessive.
- (2) In deciding whether the rent payable under a residential tenancy agreement is excessive, the Tribunal must have regard to—
  - (a) the general level of rents for comparable premises in the same or similar localities; and
  - (b) the estimated capital value of the premises at the date of the application; and
  - (c) the outgoings for which the landlord is liable under the agreement; and
  - (d) the estimated cost of services provided by the landlord and the tenant under the agreement; and
  - (e) the nature and value of furniture, equipment and other personal property provided by the landlord for the tenant's use; and
  - (f) the state of repair and general condition of the premises; and
  - (fb) if the rent was purportedly increased under section 55(2a)—whether the tenant was put under undue pressure to agree to the increase; and

- (g) other relevant matters.
- (3) If the Tribunal finds, on an application under this section, that the rent payable under a residential tenancy agreement is excessive, the Tribunal may, by order—
  - (a) fix the rent payable for the premises and vary the agreement by reducing the rent payable under the agreement accordingly; and
  - (b) fix a date (which cannot be before the date of the application) from which the variation takes effect; and
  - (c) fix a period (which cannot exceed one year) for which the order is to remain in force.
- (4) The Tribunal may, on application by the landlord, vary or revoke an order under this section if satisfied that it is just to do so.
- (5) If, while an order remains in force under this section, a landlord asks for or receives rent for the premises to which the order relates exceeding the amount fixed by the order, the landlord is guilty of an offence.

Maximum penalty: \$2 500.

#### **56A—Manner of payment of rent**

A landlord under a residential tenancy agreement must permit a tenant to pay rent under the agreement by at least 1 means that does not involve the payment of cash by the tenant or the collection of rent from the tenant by a third party who charges a fee, payable by the tenant, for the collection service.

Maximum penalty: \$5 000.

Expiation fee: \$315.

#### **57—Landlord's duty to keep proper records of rent and other payments**

- (1) A landlord under a residential tenancy agreement must ensure that the following information is recorded in respect of payments received under the agreement:
  - (a) the date on which the payment was received;
  - (b) the name of the person making the payment;
  - (c) the amount paid;
  - (d) the address of the premises to which the payment relates;
  - (e) if the payment is for rent—the period of the tenancy to which the payment relates;
  - (f) if the payment is a bond—a statement of that fact;
  - (g) if the payment is not for rent or a bond—a description of the purpose of the payment, including, if applicable, the period of time to which the payment relates.

Maximum penalty: \$1 250.

Expiation fee: \$210.

- (2) A person must not—
  - (a) make a false entry in a record of a payment received under a residential tenancy agreement; or

(b) falsify the record in any other way.

Maximum penalty: \$2 500.

### **58—Duty to provide statement or give receipt for rent**

- (1) A landlord under a residential tenancy agreement must, at the written request of the tenant, give the tenant a statement of the information recorded by the landlord under section 57(1) in respect of the rent received during the period specified in the request (and such statement must be given to the tenant within 7 days of the making of the request).

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) If a tenant pays rent other than into an ADI account, the person who receives the rent must, within 48 hours after receiving the rent, give the tenant a receipt setting out the information required to be recorded by the landlord under section 57(1) in respect of the rent received.

Maximum penalty: \$2 500.

Expiation fee: \$210.

### **58A—Payment of rent by electronic transaction**

If a tenant pays rent into an ADI account kept by the landlord or the landlord's agent, the payment will be taken to have been made when it is credited to the ADI account.

### **59—Accrual and apportionment of rent**

- (1) The rent payable under a residential tenancy agreement accrues from day to day.
- (2) If rent is paid in advance, and the tenancy ends before the end of the period for which rent has been paid, the landlord must refund the appropriate proportion of the amount paid to the tenant or apply it towards other liabilities of the tenant to the landlord.

### **60—Abolition of distress for rent**

A landlord is not entitled to distrain goods of a tenant for non-payment of the rent payable under a residential tenancy agreement.

## **Division 4—Bonds**

### **61—Bond**

- (1) A person must not—
- (a) require more than one bond for the same residential tenancy agreement; or
  - (b) require the payment of a bond exceeding the relevant limit.

Maximum penalty: \$5 000.

- (2) If at least two years have elapsed since a bond was given or last increased, the landlord may by written notice to the tenant require the tenant to increase the bond by a specified additional amount, within a specified period (which must be at least 60 days from the date of the notice), but not so that the total amount of the bond exceeds the relevant limit.

- (2a) A requirement under subsection (2) has effect as if it were a term of the residential tenancy agreement.
- (3) The *relevant limit* is—
  - (a) if the rent payable under the agreement does not exceed an amount (which must be at least \$250 per week) prescribed by regulation for the purposes of this paragraph—four weeks rent under the agreement;
  - (b) if the rent payable under the agreement exceeds an amount prescribed by regulation for the purposes of this paragraph—six weeks rent under the agreement.
- (4) The relevant limit is, in the first instance, calculated by reference to the rent—or if the rent varies, the lowest rent—payable during the first six months of the tenancy (expressed as a weekly rent) and if there is to be an increase in the amount of the bond, the relevant limit is calculated by reference to the rent (expressed as a weekly rent) payable when the notice of increase is given.

## **62—Receipt of bond and transmission to Commissioner**

- (1) A person must, within 48 hours after receiving an amount paid by way of a bond, give the person who paid a receipt stating the date payment was received, the name of the person from whom the payment was received, the amount paid, and the address of the premises to which the payment relates.  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (2) A person who receives an amount by way of a bond must pay the amount of the bond to the Commissioner within the period allowed by regulation.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.

## **63—Repayment of bond**

- (1) An application may be made to the Commissioner for—
  - (a) payment of the whole amount of the bond either to the landlord or the tenant;  
or
  - (b) payment of a specified amount of the bond to the landlord and the balance to the tenant.
- (2) The application—
  - (a) must be in a form approved by the Commissioner; and
  - (b) may be made jointly by the landlord and the tenant or by either the landlord or the tenant.
- (3) If the application is undisputed, the Commissioner must pay out the amount of the bond as specified in the application.

- (4) If an application is liable to be disputed, the Commissioner must give the respondent written notice of the application (in a form the Commissioner considers appropriate) and inform the respondent that, if the respondent wants to dispute the application, a written notice of dispute must be lodged with the Commissioner within ten days after the date the notice is given to the respondent.
- (5) If the respondent does not give the Commissioner written notice of dispute within 10 days after the day on which the Commissioner's notice under subsection (4) is given to the respondent, the Commissioner may pay out the amount of the bond as proposed in the application.
- (6) If the Commissioner receives a written notice of dispute before the amount of the bond is paid out under subsection (5), the Commissioner must refer the dispute to the Tribunal for determination.
- (7) Despite a preceding subsection, if—
- (a) the bond has been provided or paid on behalf of the tenant by a third party prescribed by the regulations, or in circumstances prescribed by the regulations; and
  - (b) the Commissioner is given notice of the third party's interest in accordance with the regulations,
- then—
- (c) the third party is entitled to make application to the Commissioner for the payment of the whole, or a specified part, of the bond; and
  - (d) —
    - (i) if the application is made with the consent of the landlord—the Commissioner must pay out the amount of the bond as specified in the application;
    - (ii) in any other case—the Commissioner must give the landlord and, if the tenant is still in possession of the premises, the tenant, written notice of the application (in a form the Commissioner considers appropriate) and—
      - (A) if the Commissioner does not receive a written notice of dispute from the party or parties to whom the notice of the application was given within ten days after the date on which the original notice is given—the Commissioner may pay out the amount of the bond as proposed in the application;
      - (B) in any other case—the Commissioner must refer the matter to the Tribunal for determination.
- (8) If a payment is made under subsection (7) and the tenant is still in possession of the premises, the landlord may require the tenant to provide a new bond in accordance with section 61.
- (9) If—
- (a) a bond is provided on behalf of the tenant by a third party prescribed by the regulations in circumstances prescribed by the regulations; and

- (b) the landlord makes application to the Commissioner for the payment of the whole, or a specified part, of the amount payable under the bond,  
then—
  - (c) if the application is made with the consent of the third party—the Commissioner must pay out the amount as specified in the application;
  - (d) in any other case—the Commissioner must give the third party and, if the tenant is still in possession of the premises, the tenant, written notice of the application (in a form the Commissioner considers appropriate) and—
    - (i) if the Commissioner does not receive a written notice of dispute from the party or parties to whom the notice of the application was given within ten days after the date on which the original notice is given—the Commissioner may pay out the amount as proposed in the application;
    - (ii) in any other case—the Commissioner must refer the matter to the Tribunal for determination.
- (10) If a payment is made under subsection (9), the third party must reimburse the Fund to the extent of the payment.
- (11) A payment under this section will be made from the Fund and, in the case of a payment to a tenant, must include interest.
- (12) The interest will be calculated on the amount of the payment to the tenant under this section, and will be taken to have accrued from the day on which the security was paid to the Commissioner to the day of payment to the tenant at a rate fixed by the Minister for the purposes of this section.
- (13) For the purposes of this section—
  - (a) an application is undisputed if it is a joint application by the landlord and the tenant; or an application by the landlord that the whole of the amount of the bond be paid to the tenant; or an application by the tenant that the whole of the amount of the bond be paid to the landlord;
  - (b) an application that does not fall into any of those categories is liable to be disputed;
  - (c) if the application was made by the landlord, the tenant is the respondent; if the application was made by the tenant, the landlord is the respondent.

## **Division 5—Tenant's entitlement to possession and quiet enjoyment**

### **64—Vacant possession etc**

- (1) It is a term of a residential tenancy agreement that the tenant is entitled to vacant possession of the premises (except for a part of the premises in respect of which a right to exclusive possession is not given by the agreement) from the day the tenancy begins.
- (2) It is a term of a residential tenancy agreement that there is no legal impediment of which the landlord has, or ought to have knowledge, to the tenant's occupation of the premises for the period of the tenancy as a place of residence.

## **65—Quiet enjoyment**

- (1) It is a term of a residential tenancy agreement that—
  - (a) the tenant is entitled to quiet enjoyment of the premises without interruption by the landlord or a person claiming under the landlord or with superior title to the landlord's title; and
  - (b) the landlord will not cause or permit an interference with the reasonable peace, comfort or privacy of the tenant in the tenant's use of the premises; and
  - (c) the landlord will take reasonable steps to prevent other tenants of the landlord in occupation of adjacent premises from causing or permitting interference with the reasonable peace, comfort or privacy of the tenant in the tenant's use of the premises.
- (2) If the landlord causes or permits interference with the reasonable peace, comfort or privacy of the tenant in the tenant's use of the premises in circumstances that amount to harassment of the tenant, the landlord is guilty of an offence.  
Maximum penalty: \$5 000.

## **Division 6—Security of premises**

### **66—Security of premises**

- (1) It is a term of a residential tenancy agreement that—
  - (a) the landlord will take reasonable steps to provide and maintain the locks and other devices that are necessary to ensure the premises are reasonably secure; and
  - (b) neither the landlord nor the tenant will alter or remove a lock or security device or add a lock or security device without the consent of the other; and
  - (c) neither the landlord nor the tenant will unreasonably withhold his or her consent to the alteration, removal or addition of a lock or security device by, and at the expense of, the other.
- (2) A landlord or tenant who, without reasonable excuse, contravenes the term of the agreement arising under subsection (1)(b) is guilty of an offence.  
Maximum penalty: \$5 000.
- (3) If the landlord's agent, without reasonable excuse, alters or removes a lock or security device, or adds a lock or security device, without the tenant's consent, the agent is guilty of an offence.  
Maximum penalty: \$5 000.

## **Division 7—Landlord's obligation in regard to condition of the premises**

### **67—Cleanliness**

It is a term of a residential tenancy agreement that the landlord will ensure that the premises, and ancillary property, are in a reasonable state of cleanliness when the tenant goes into occupation of the premises.



## 68—Landlord's obligation to repair

- (1) It is a term of a residential tenancy agreement that the landlord—
  - (a) will ensure that the premises, and ancillary property, are in a reasonable state of repair at the beginning of the tenancy and will keep them in a reasonable state of repair having regard to their age, character and prospective life; and
  - (b) will comply with statutory requirements affecting the premises.
- (1a) The obligation to repair applies even though the tenant had notice of the state of disrepair before entering into occupation.
- (2) However—
  - (a) the landlord will not be regarded as being in breach of the obligation to repair unless—
    - (i) the landlord has notice of the defect requiring repair; and
    - (ii) the landlord fails to act with reasonable diligence to have the defect repaired; and
  - (b) if the landlord is a registered community housing provider, the regulations may limit the extent of the obligation imposed by subsection (1); and
  - (c) if the premises are subject to a housing improvement notice fixing the maximum rent for the premises, the landlord's obligation under subsection (1) to repair the premises does not apply.
- (3) If—
  - (a) premises or ancillary property are in a state of disrepair that does not arise from a contravention of the residential tenancy agreement by the tenant; and
  - (b) the state of disrepair is, unless remedied, likely to result in personal injury or damage to property or undue inconvenience; and
  - (c) the landlord—
    - (i) has been notified of the state of disrepair by the tenant but has failed to take reasonable action to remedy the state of disrepair; or
    - (ii) has not been notified of the state of disrepair despite the tenant's reasonable attempts to do so,

then the tenant is entitled—

  - (d) to reasonable compensation from the landlord in respect of any damage to property resulting from the state of disrepair after the tenant has notified, or made a reasonable attempt to notify, the landlord of the state of disrepair (however, the tenant must take reasonable steps to mitigate any loss and is not entitled to compensation for damage that could have been avoided by those steps); and
  - (e) to recover from the landlord reasonable costs incurred by the tenant in having the state of disrepair remedied, but only if the repairs are carried out by a person who is licensed to carry out the necessary work and the person provides the landlord with a report on the work carried out and the apparent cause of the state of disrepair.

- (4) However, the tenant is not entitled to recover the cost of repairing the premises or to compensation under this section if the premises are subject to a housing improvement notice fixing the maximum rent payable for premises.
- (5) The Tribunal may, on application by the tenant, order the landlord to pay to the tenant compensation to which the tenant is entitled under this section.

## **Division 8—Tenant's obligations in relation to the premises and ancillary property**

### **69—Tenant's responsibility for cleanliness, damage and loss**

- (1) It is a term of a residential tenancy agreement that the tenant—
  - (a) must keep the premises and ancillary property in a reasonable state of cleanliness; and
  - (ab) must replace, or compensate the landlord for the reasonable cost of replacing, any ancillary property lost or destroyed while in the care of the tenant; and
  - (b) must notify the landlord of damage to the premises or ancillary property; and
  - (c) must not intentionally or negligently cause or permit damage to the premises or ancillary property.
- (2) A tenant who intentionally causes serious damage to the premises or ancillary property is guilty of an offence.  
Maximum penalty: \$2 500.
- (3) It is a term of a residential tenancy agreement that, at the end of the tenancy, the tenant must give the premises and ancillary property back to the landlord in reasonable condition and in a reasonable state of cleanliness.
- (3a) If a tenant unintentionally causes damage to the premises or ancillary property as a result of the use of a domestic facility requiring instruction, the landlord is not entitled to compensation for the damage unless—
  - (a) the domestic facility is listed in the residential tenancy agreement as a domestic facility requiring instruction; and
  - (b) the landlord complied with section 48(2) in relation to the domestic facility.
- (4) In deciding whether premises or other property is in reasonable condition, its condition when the tenant took possession of it, and the probable effect of reasonable wear and tear since that time, must be taken into account.

### **70—Alteration of premises**

- (1) It is a term of a residential tenancy agreement that a tenant must not, without the landlord's written consent, make an alteration or addition to the premises.
- (1a) It is a term of a residential tenancy agreement that a landlord will not unreasonably withhold his or her consent to an alteration or addition to the premises that is necessary to ensure the provision of infrastructure or a service of a prescribed kind.
- (2) A tenant may remove a fixture affixed to the premises by the tenant unless its removal would cause damage to the premises.

- (3) If a tenant causes damage to the premises by making an alteration or addition to the premises or by removing a fixture, the tenant must notify the landlord and, at the option of the landlord, repair the damage or compensate the landlord for the reasonable cost of repairing the damage.

## **Division 9—Tenant's conduct on the premises**

### **71—Tenant's conduct**

It is a term of a residential tenancy agreement that—

- (a) the tenant must not use the premises, or cause or permit the premises to be used, for an illegal purpose; and
- (b) the tenant must not cause or permit a nuisance; and
- (c) the tenant must not cause or permit an interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises.

## **Division 9A—Landlord's obligation to advise of sale of premises**

### **71A—Sale of residential premises**

- (1) It is a term of a residential tenancy agreement that—
- (a) the landlord will give the tenant written notice of the landlord's intention to sell the residential premises not later than 14 days after the landlord enters into a sales agency agreement for the sale of the premises or determines to make the premises available for inspection by prospective purchasers; and
  - (b) the residential premises will not be advertised for sale or made available for inspection by prospective purchasers before the day falling 14 days after the tenant is given notice of the landlord's intention to sell the premises.
- (2) It is a term of a residential tenancy agreement that, if a contract is entered into for the sale of the residential premises, the landlord must, not less than 14 days before the day of settlement under the contract or, if the day of settlement is less than 14 days after the day on which the contract is entered into, as soon as possible after the contract is entered into, give the tenant written notice of the name of the purchaser under the contract and the date from which rent is to be paid to him or her.

## **Division 10—Landlord's right of entry**

### **72—Right of entry**

- (1) It is a term of a residential tenancy agreement that the landlord (or an agent of the landlord) may enter the premises—
- (a) in an emergency; or
  - (b) to collect rent (if a reasonable alternative method of payment of rent not involving attendance at the premises has been offered to, but not accepted by, the tenant)—
    - (i) not more than once each week; and

- (ii) only at a time previously arranged with the tenant (which may only be outside normal hours if the arrangement has been made no more than 7 days before the day of entry); or
- (c) to inspect the premises—
  - (i) not more than once each 4 weeks; and
  - (ii) only in accordance with a written notice given to the tenant no less than 7 and no more than 14 days before the day of entry—
    - (A) stating the purpose of the proposed entry and the date of the proposed entry; and
    - (B) specifying a period of up to 2 hours (which must be within normal hours) within which the proposed entry will occur,  
(however, if the premises are in a remote location or it is necessary for the landlord or agent to be accompanied by a person for the purposes of the inspection, the notice need not specify a 2 hour period within which the proposed entry is to occur, but the entry must occur within normal hours);
- (d) to carry out garden maintenance, but only—
  - (i) at a time previously arranged with the tenant no more than 7 days before the day of entry; or
  - (ii) in accordance with a written notice given to the tenant no less than 7 and no more than 14 days before the day of entry stating the purpose of the proposed entry and the date and time (which must be within normal hours) of the proposed entry; or
- (e) to carry out necessary maintenance (other than garden maintenance) or repairs (other than in an emergency), but only at a time within normal hours of which the tenant has been given at least 48 hours notice; or
- (f) to show the premises to prospective tenants during the period of 28 days preceding the termination of the tenancy agreement, but only on a reasonable number of occasions and only at a time within normal hours of which the tenant has been given reasonable notice; or
- (g) to show the premises to prospective purchasers, on not more than 2 occasions in any 7 day period (unless the tenant has agreed otherwise), but only—
  - (i) at a time previously arranged with the agreement of the tenant (who must not unreasonably refuse to agree to times when the premises are to be available for inspection by prospective purchasers); or
  - (ii) if agreement cannot be reached with the tenant—at a time within normal hours of which the tenant has been given reasonable notice; or
- (h) if the landlord has given the tenant notice of a breach of the residential tenancy agreement under section 80—to determine whether the breach has been remedied, but only in accordance with a written notice in the prescribed form given to the tenant no less than 7 and no more than 14 days before the day of entry stating the purpose of the proposed entry and the date and time (which must be within normal hours) of the proposed entry; or

- (i) for some other genuine purpose, but only—
    - (i) in accordance with a written notice given to the tenant no less than 7 and no more than 14 days before the day of entry and stating the purpose of the proposed entry and the date and time (which must be within normal hours) of the proposed entry; or
    - (ii) with the consent of the tenant; or
  - (j) if the landlord believes on reasonable grounds that the tenant has abandoned the premises.
- (2) It is a term of a residential tenancy agreement that if the tenant has indicated to the landlord that he or she wishes to be present during the period when the landlord or landlord's agent is at the premises, the landlord (or an agent of the landlord) may not enter the premises unless a reasonable effort has been made to arrange for the visit to occur at a time when it is convenient for the tenant to be present (having regard to the work and other commitments of both the tenant and the persons entering the premises).
- (3) Subsection (2) does not apply to entry under subsection (1)(a), (h) or (j).
- (4) It is a term of a residential tenancy agreement that neither the landlord nor an agent of the landlord may enter the premises otherwise than in accordance with the preceding subsections.
- (5) This section does not apply to a part of the premises that the tenant uses in common with the landlord or another tenant of the landlord.
- (6) In this section—
- normal hours* means the hours between 8am and 8pm on any day other than a Sunday or public holiday.

## **Division 11—Statutory charges**

### **73—Statutory charges**

- (1) It is a term of a residential tenancy agreement that the landlord must bear all statutory charges imposed in respect of the premises.
- (2) However, the following provisions apply subject to subsections (3) and (4):
- (a) rates and charges for water supply are to be borne as agreed between the landlord and tenant;
  - (b) in the absence of an agreement—
    - (i) if the supply of water to the premises is separately metered—rates and charges for water supply are to be borne by the tenant; and
    - (ii) in any other case—rates and charges for water supply are to be borne by the landlord.
- (3) A tenant is not required to pay rates and charges for water supply if—
- (a) the landlord fails to request payment from the tenant within 3 months of the issue of the bill for those rates and charges by the water supply authority; or

- (b) the tenant has requested from the landlord a copy of the account for the rates and charges and the landlord has failed to provide the copy to the tenant within 30 days of the request and at no cost.
- (4) A landlord must ensure that an amount borne by a tenant under an agreement under subsection (2)(a) or under subsection (2)(b)(i) is reduced by—
  - (a) in the case of a tenant on land held as a single title consisting of a single place of residence—the water security rebate amount; or
  - (b) in the case of a tenant on land held as a single title consisting of more than 1 place of residence—the proportionate water security rebate amount,(and if the reduction under this subsection results in a negative amount, 0 is to be substituted for that amount).
- (5) If, during the billing period in which a landlord obtained the benefit of the water security rebate amount, the premises to which the rebate relates were subject to more than 1 residential tenancy agreement, the landlord must ensure that a reduction under subsection (4) is applied to the amount borne by a tenant under each tenancy agreement on a pro rata basis according to the number of days in the billing period in which each tenancy agreement respectively applied at the premises.
- (6) In this section—

*proportionate water security rebate amount*, in relation to a tenant on land held as a single title consisting of more than 1 place of residence, is the amount that results from dividing the water security rebate amount for that title by the number of places of residence at the land to which the title relates;

*water security rebate amount*, in relation to rates and charges for water supply to residential premises, means the amount specified in an account for those rates and charges (whether before or after the commencement of this definition) as representing the rebate for water security purposes.

## **Division 12—Assignment**

### **74—Assignment of tenant's rights under residential tenancy agreement**

- (1) A tenant under a residential tenancy agreement may, by written or oral agreement with another—
  - (a) assign the tenant's interest in the agreement to the other; or
  - (b) sub-let the premises to which the residential tenancy agreement relates to the other.
- (2) However, it is a term of a residential tenancy agreement that—
  - (a) the tenant must not assign the tenant's interest, or sub-let the premises, without the written consent of the landlord; but
  - (b) the landlord—
    - (i) must not unreasonably withhold consent (unless the landlord is a registered community housing provider, in which case the landlord has an absolute discretion to withhold consent to an assignment); and

- (ii) must not make a charge for giving consent or considering an application for consent exceeding the landlord's reasonable expenses.
- (2a) The absence of consent does not invalidate an assignment or sublease unless the landlord is a registered community housing provider.
- (2ab) However, if the landlord's consent to an assignment is not obtained—
  - (a) the tenant who assigns the interest remains liable to the landlord under the residential tenancy agreement (together with the new tenant, who is jointly and severally liable) unless the landlord has unreasonably withheld consent; but
  - (b) this continuing liability of the assignor does not apply, in the case of a periodic tenancy, to a liability accruing more than 21 days after the landlord became aware or ought reasonably to have become aware of the assignment (whichever is the earlier).
- (2b) If the landlord's consent to an assignment is not obtained and the landlord had, before the assignment, served a notice of termination on the assignor, the landlord may enforce the notice against the assignee.
- (2c) The landlord may terminate a residential tenancy agreement on the ground that the tenant has assigned the tenant's interest, or has granted a sub-tenancy, without the landlord's consent, but only if the landlord has not unreasonably withheld consent and serves the notice of termination within 21 days after the time the landlord became aware or ought reasonably to have become aware of the assignment or sub-tenancy (whichever is the earlier).
- (3) The effect of an assignment under this section is that the assignee is substituted for the assignor as tenant under the residential tenancy agreement (but the assignor remains responsible for liabilities that accrued before the date of the assignment)<sup>1</sup>.
- (4) An assignee is liable to indemnify the assignor for liabilities incurred by the assignor to the landlord because of a breach of the residential tenancy agreement by the assignee.
- (5) If the tenant assigns the tenant's interest, an amount paid by the tenant and held by way of a bond will (unless the parties agree to the contrary) continue to be held as a bond for the proper performance by the assignee of obligations under the residential tenancy agreement.

**Note—**

- 1 If the assignment is made without the landlord's consent, the tenant may also remain liable under the agreement for liabilities that accrue later—see above.

## **Division 13—Tenant's vicarious liability**

### **75—Vicarious liability**

It is a term of a residential tenancy agreement that, if a person is on the premises at the invitation or with the consent of the tenant, the tenant is vicariously responsible for an act or omission by the person that would, if it had been an act or omission of the tenant, have constituted a breach of the agreement.

## **Division 14—Harsh or unconscionable terms**

### **76—Harsh or unconscionable terms**

- (1) The Tribunal may, on application by a tenant, make an order rescinding or varying a term of a residential tenancy agreement if satisfied that the term is harsh or unconscionable.
- (2) On making an order under subsection (1), the Tribunal may make consequential changes to the residential tenancy agreement or another related document.

## **Division 15—Miscellaneous**

### **77—Accelerated rent and liquidated damages**

- (1) If a residential tenancy agreement provides that, upon breach by the tenant of a term about rent or other term of the agreement, the tenant is liable to pay—
  - (a) all or any part of the rent remaining payable under the agreement; or
  - (b) rent of an increased amount; or
  - (c) an amount by way of penalty; or
  - (d) an amount by way of liquidated damages,the provision is void.
- (2) If a residential tenancy agreement provides that, on early or punctual payment of rent, the rent will or may be decreased or the tenant will or may be granted or paid a rebate, refund or other benefit, the tenant is entitled to the reduction, rebate, refund or other benefit in any event.
- (3) If a residential tenancy agreement contains a provision to which this section applies, the landlord is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **78—Duty of mitigation**

The rules of the law of contract about mitigation of loss or damage on breach of a contract apply to a breach of a residential tenancy agreement.

### **78A—Compensation for expenses**

- (1) If, as a direct consequence of a tenant being at fault, a landlord reasonably incurs costs or expenses in connection with the residential tenancy agreement, the landlord is entitled to compensation for the costs or expenses.

**Note—**

Examples of faults that may give rise to compensation for costs or expenses under this section:

- the dishonouring of a cheque provided by the tenant;
- the failure of a transaction for the transfer of funds from the tenant to the landlord;



- the loss by the tenant of a record or document.
- (2) The Tribunal may, on application by the landlord, order the tenant to pay to the landlord compensation to which the landlord is entitled under this section.

## **Part 5—Termination of residential tenancy agreements**

### **Division 1—Termination generally**

#### **79—Termination of residential tenancy**

A residential tenancy terminates if—

- (b) the landlord or the tenant terminates the tenancy by notice of termination given to the other (as required under this Act); or
- (c) the Tribunal terminates the tenancy; or
- (d) a person having title superior to the landlord's title becomes entitled to possession of the premises under the order of the Tribunal or a court<sup>1</sup>; or
- (e) a mortgagee takes possession of the premises under a mortgage; or
- (f) the tenant abandons the premises; or
- (g) the tenant dies without leaving dependants in occupation of the premises; or
- (h) the tenant gives up possession of the premises with the landlord's consent; or
- (i) the interest of the tenant merges with another estate or interest in the land; or
- (j) disclaimer of the tenancy occurs.

**Note—**

- 1 See section 96.

#### **79A—Agreement for fixed term continues if not terminated**

- (1) If a residential tenancy agreement for a fixed term has not terminated before the end of the fixed term or at the end of the fixed term by notice of termination under section 83A or 86A, the agreement continues—
- (a) as a residential tenancy agreement for a periodic tenancy with a tenancy period equivalent to the interval between rental payment times under the agreement; and
  - (b) with terms of agreement that in other respects are the same as those applying under the agreement immediately before the end of the fixed term.
- (2) This section does not apply in relation to a residential tenancy agreement to which section 4 applies.

### **Division 2—Termination by the landlord**

#### **80—Notice of termination by landlord on ground of breach of agreement**

- (1) If the tenant breaches a residential tenancy agreement, the landlord may give the tenant a written notice in the form required by regulation—
- (a) specifying the breach; and

- (b) informing the tenant that if the breach is not remedied within a specified period (which must be a period of at least seven days) from the date the notice is given then—
  - (i) the tenancy is terminated by force of the notice; and
  - (ii) the tenant must give up possession of the premises on or before a day specified in the notice (which, subject to subsection (2)(c), must be at least seven days after the end of the period allowed for the tenant to remedy the breach).
- (2) If notice is given under this section on the ground of a failure to pay rent—
  - (a) the notice is ineffectual unless the rent (or any part of the rent) has remained unpaid in breach of the agreement for not less than 14 days before the notice was given; and
  - (b) the notice is not rendered ineffectual by failure by the landlord to make a prior formal demand for payment of the rent; and
  - (c) the day specified in the notice for the tenant to give up possession of the premises if the rent is not paid in accordance with the terms of the notice can be any day after the day on which the tenancy is terminated under the notice<sup>1</sup>; and
  - (d) if the tenant gives up possession of the premises—
    - (i) the landlord is entitled to compensation for any loss (including loss of rent) caused by the termination of the tenancy (but the landlord must take reasonable steps to mitigate any loss and is not entitled to compensation for loss that could have been avoided by those steps); and
    - (ii) the Tribunal may, on application by the landlord, order the tenant to pay to the landlord compensation to which the landlord is entitled under this paragraph.
- (3) If notice is given under this section in respect of a residential tenancy agreement that creates a tenancy for a fixed term, the notice is not ineffectual because the day specified as the day on which the tenant is to give up possession of the premises is earlier than the last day of that term.
- (4) The tenant may at any time after receiving a notice under this section and before giving vacant possession to the landlord, apply to the Tribunal for an order—
  - (a) declaring that the tenant is not in breach of the residential tenancy agreement, or has remedied the breach of the agreement, and that the tenancy is not liable to be terminated under this section; or
  - (b) reinstating the tenancy.
- (5) If the Tribunal is satisfied that a tenancy has been validly terminated under this section, but that it is just and equitable to reinstate the tenancy (or would be just and equitable to reinstate the tenancy if the conditions of the order were complied with), the Tribunal may make an order reinstating the tenancy.
- (6) An order reinstating the tenancy under this section may be made on conditions that the Tribunal considers appropriate.

- (7) On an application for an order reinstating the tenancy, the Tribunal may make alternative orders providing for reinstatement of the tenancy if specified conditions are complied with but, if not, ordering the tenant to give up possession of the premises to the landlord.

**Note—**

- 1            In the requirement to give the tenant at least seven days to give up possession of the premises if the tenant remains in default does not apply.

**81—Termination because possession is required by landlord for certain purposes**

- (1) A landlord may, by notice of termination given to the tenant, terminate a periodic residential tenancy on the ground that—
- (a) the landlord requires possession of the premises for demolition; or
  - (b) the landlord requires possession of the premises for repairs or renovations that cannot be carried out conveniently while the tenant remains in possession of the premises; or
  - (c) the landlord requires possession of the premises for—
    - (i) the landlord's own occupation; or
    - (ii) occupation by the landlord's spouse, child or parent; or
    - (iii) occupation by the spouse of the landlord's child or parent; or
  - (d) the landlord has entered into a contract for the sale of the premises under which the landlord is required to give vacant possession of the premises; or
  - (e) the landlord requires possession of the premises for a purpose prescribed by regulation.
- (2) The period of notice given under this section must be at least 60 days or a period equivalent to a single period of the tenancy (whichever is the longer).
- (3) A person must not falsely state the ground of termination in a notice of termination given, or purportedly given, under this section.  
Maximum penalty: \$2 500.
- (4) A landlord who recovers possession of premises under this section must not, without the consent of the Tribunal, grant a fresh tenancy over the premises within six months after recovering possession.  
Maximum penalty: \$2 500.

**82—Termination of residential tenancy by community housing providers with members who are tenants**

- (1) If—
- (a) a registered community housing provider is a landlord under a residential tenancy agreement; and
  - (b) it is a requirement that the occupant of the premises be a member of the registered community housing provider,

the registered community housing provider may, by notice of termination given to the tenant, terminate the residential tenancy on the ground that—

- (c) the tenant has ceased to be a member of the registered community housing provider; or
  - (d) the tenant no longer satisfies conditions specified in the agreement as essential to the continuation of the tenancy.
- (2) The period of notice under this section must be at least 28 days.

### **83—Termination by landlord without specifying a ground of termination**

- (1) A landlord may, by notice of termination given to the tenant, terminate the tenancy without specifying a ground of termination.
- (2) However—
- (a) a tenancy cannot be terminated under this section if—
    - (i) it is for a fixed term; or
    - (ii) the premises are subject to a housing improvement notice; or
    - (iii) an order is in force under section 56 (Excessive rent) in respect of the premises or proceedings for such an order have been commenced; and
  - (b) a registered community housing provider cannot terminate a tenancy with a member of the registered community housing provider under this section where it is a requirement that the occupant of the premises be a member of the registered community housing provider.
- (3) The period of notice under this section must be at least 90 days.

### **83A—Notice to be given at end of fixed term**

- (1) A landlord may, by notice of termination given to the tenant, terminate a residential tenancy agreement for a fixed term at the end of the fixed term without specifying a ground of termination.
- (2) The period of notice under this section must be at least 28 days.

### **83B—Termination where agreement frustrated**

- (1) A landlord may, by notice of termination given to the tenant, terminate a residential tenancy agreement on the ground that, otherwise than as a result of a breach of the agreement, the premises or a substantial portion of the premises—
- (a) have been destroyed or rendered uninhabitable; or
  - (b) have ceased to be lawfully usable for residential purposes; or
  - (c) have been acquired by compulsory process.
- (2) A notice given under subsection (1)(a) or (b) may terminate the agreement immediately.
- (3) A notice given under subsection (1)(c) must provide for a period of notice of at least 60 days.

**84—Limitation of right to terminate**

- (1) If—
  - (a) premises to which a residential tenancy agreement applies are subject to a housing improvement notice; or
  - (b) an order is in force under section 56 (Excessive rent) in respect of the premises or proceedings for such an order have been commenced,the landlord may only terminate the tenancy by notice of termination under this Part if—
  - (c) the notice of termination is given on 1 or more grounds prescribed by regulation for the purposes of this subsection; and
  - (d) the Tribunal authorises the notice of termination.
- (2) The Tribunal may authorise a notice of termination under this section if satisfied of the genuineness of the proposed ground on which the notice is to be given.
- (3) This section does not apply to a notice of termination given by the landlord—
  - (a) to terminate a residential tenancy agreement for a fixed term at the end of the fixed term; or
  - (b) for a failure to pay rent.

**Division 3—Termination by tenant****85—Notice of termination by tenant on ground of breach of the agreement**

- (1) If the landlord breaches a residential tenancy agreement, the tenant may give the landlord a written notice, in the form required by regulation—
  - (a) specifying the breach; and
  - (b) informing the landlord that if the breach is not remedied within a specified period (which must be a period of at least seven days) from the date the notice is given the tenancy is terminated by force of the notice from a date that is also specified in the notice (which must be at least seven days after the end of the period allowed for the landlord to remedy the breach).
- (2) The landlord may, before the time fixed in the tenant's notice for termination of the tenancy or the tenant gives up possession of the premises (whichever is the later), apply to the Tribunal for an order—
  - (a) declaring that the landlord is not in breach of the residential tenancy agreement, or has remedied the breach of the agreement, and that the tenancy is not liable to be terminated under this section; or
  - (b) reinstating the tenancy.
- (3) If the Tribunal is satisfied that a tenancy has been validly terminated under this section, but that it is just and equitable to reinstate the tenancy (or would be just and equitable to reinstate the tenancy if the conditions of the order were complied with), the Tribunal may make an order reinstating the tenancy.
- (3a) An order reinstating the tenancy under this section may be made on conditions that the Tribunal considers appropriate.

### **85A—Termination by tenant if residential premises for sale**

The tenant under a residential tenancy agreement may, by notice of termination given to the landlord, terminate the tenancy if—

- (a) within 2 months after the start of the agreement, the landlord enters into a contract for the sale of the residential premises; and
- (b) the landlord did not, before the residential tenancy agreement was entered into, advise the tenant as required under section 47A.

### **86—Termination by tenant without specifying a ground of termination**

- (1) The tenant under a residential tenancy agreement for a periodic tenancy may, by notice of termination given to the landlord, terminate the tenancy without specifying a ground of termination.
- (2) The minimum period of notice under this section is 21 days or a period equivalent to a single period of the tenancy (whichever is longer).

### **86A—Notice to be given at end of fixed term**

- (1) The tenant under a residential tenancy agreement for a fixed term may, by notice of termination given to the landlord, terminate the tenancy at the end of the fixed term without specifying a ground of termination.
- (2) The period of notice under this section must be at least 28 days.

### **86B—Termination where agreement frustrated**

- (1) A tenant may, by notice of termination given to the landlord, terminate a residential tenancy agreement on the ground that, otherwise than as a result of a breach of the agreement, the premises or a substantial portion of the premises—
  - (a) have been destroyed or rendered uninhabitable; or
  - (b) have ceased to be lawfully usable for residential purposes; or
  - (c) have been acquired by compulsory process.
- (2) A notice given under subsection (1) may terminate the agreement immediately.

## **Division 4—Termination by the Tribunal**

### **87—Termination on application by landlord**

- (1) The Tribunal may, on application by a landlord, terminate a residential tenancy and make an order for possession of the premises if satisfied that—
  - (a) the tenant has committed a breach of the residential tenancy agreement; and
  - (b) the breach is sufficiently serious to justify termination of the tenancy<sup>1</sup>.
- (1a) The Tribunal may, on application by a landlord, terminate a residential tenancy and make an order for possession of the premises if satisfied that—
  - (a) the tenant has failed to pay rent in breach of the residential tenancy agreement; and
  - (b) on at least 2 occasions in the 12 month period preceding the breach—

- (i) the tenant was given a notice under section 80 of a breach of the agreement on the ground of a failure to pay rent; and
  - (ii) the notice was not ineffectual within the meaning of section 80(2).
- (1b) On an application under subsection (1a), the Tribunal may make alternative orders providing for the tenant to comply with specified conditions in relation to the payment of rent under the agreement.
- (2) The Tribunal may, on application by a landlord, terminate a residential tenancy and make an order for immediate possession of the premises if the tenant or a person permitted on the premises with the consent of the tenant has, intentionally or recklessly, caused or permitted, or is likely to cause or permit—
- (a) serious damage to the premises; or
  - (b) personal injury to—
    - (i) the landlord or the landlord's agent; or
    - (ii) a person in the vicinity of the premises.

**Note—**

- 1 A tenancy may be terminated by a notice under section 80 if the tenant fails to remedy a breach after being required to do so by the landlord. This alternative procedure may be appropriate if (for example) the breach is not capable of remedy.

**88—Termination on application by tenant**

The Tribunal may, on application by a tenant, terminate a residential tenancy and make an order for possession of the premises if satisfied that—

- (a) the landlord has committed a breach of the residential tenancy agreement; and
- (b) the breach is sufficiently serious to justify termination of the tenancy<sup>1</sup>.

**Note—**

- 1 A tenancy may be terminated by a notice under section 85 if the landlord fails to remedy a breach after being required to do so by the tenant. This alternative procedure may be appropriate if (for example) the breach is not capable of remedy.

**89—Termination based on hardship**

- (1) If the continuation of a residential tenancy would result in undue hardship to the landlord or the tenant, the Tribunal may, on application by the landlord or the tenant, terminate the agreement from a date specified in the Tribunal's order and make an order for possession of the premises as from that day.
- (2) The Tribunal may also make an order compensating a landlord or tenant for loss and inconvenience resulting, or likely to result, from the early termination of the tenancy.

**90—Tribunal may terminate tenancy if tenant's conduct unacceptable**

- (1) The Tribunal may, on application by an interested person, terminate a residential tenancy and make an order for possession of the premises if it is satisfied that the tenant has—
  - (a) used the premises, or caused or permitted the premises to be used, for an illegal purpose; or
  - (b) caused or permitted a nuisance; or

- (c) caused or permitted an interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises.
- (2) If the Tribunal terminates a tenancy and makes an order for possession under this section—
- (a) the Tribunal must specify the day as from which the order will operate, being not more than 28 days after the day on which the orders are made; and
  - (b) the Tribunal may order the landlord—
    - (i) to take such action as is specified in the order for the purpose of taking possession of the premises; and
    - (ii) not to permit the tenant to occupy the premises (whether as a tenant or otherwise) for a specified period or until further order (and any agreement entered into in contravention of such an order is void).
- (2a) However—
- (a) the Tribunal must not make an order under this section unless the landlord has been given a reasonable opportunity to be heard in relation to the matter; and
  - (b) if the landlord objects to the making of an order under this section, the Tribunal must not make an order unless the Tribunal is satisfied that exceptional circumstances exist justifying the making of the order in any event.
- (3) In this section—
- interested person*** means—
- (a) the landlord; or
  - (b) a person who has been adversely affected by the conduct of the tenant on which the application is based; or
  - (c) a strata corporation or community corporation representing the interests of persons who have been adversely affected by the conduct of the tenant on which the application is based; or
  - (d) a police officer; or
  - (e) an authorised officer within the meaning of the *Fair Trading Act 1987*.
- (4) If an application relating to a tenant is, or is to be, made under this section by an authorised officer within the meaning of the *Fair Trading Act 1987*, the authorised officer may refer the application to the Commissioner of Police.
- (5) As soon as reasonably practicable following referral of an application under subsection (4), the Commissioner of Police must make available to the authorised officer information to which the Commissioner of Police has access relevant to the application (unless the Commissioner of Police considers there is good reason for withholding the information).



## Division 5—Notices of termination

### 91—Form of notice of termination

- (1) A notice of termination given by a landlord to a tenant must—
  - (a) be in writing and in the form prescribed by regulation<sup>1</sup>; and
  - (b) be signed by the landlord or the landlord's agent; and
  - (c) state the address of the premises subject to the tenancy; and
  - (d) state the day on which the tenant is required to give up vacant possession of the premises to the landlord; and
  - (e) if the tenancy is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
  - (f) include any further information required by regulation.
- (2) A notice of termination given by a tenant to a landlord must—
  - (a) be in writing and in the form required by regulation<sup>1</sup>; and
  - (b) be signed by the tenant or an agent of the tenant; and
  - (c) state the address of the premises subject to the tenancy; and
  - (d) state the day on which the tenant is to give up vacant possession of the premises to the landlord; and
  - (e) if the tenancy is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
  - (f) include any further information required by regulation.

**Note—**

- 1 The *Acts Interpretation Act 1915* allows some divergence from the prescribed form providing that the form actually used is to the same effect.

### 92—Termination of periodic tenancy

A notice terminating a periodic tenancy under this Act is not ineffectual because—

- (a) the period of notice is less than would, apart from this Act, have been required at law; or
- (b) the day on which the tenancy is to end is not the last day of a period of the tenancy.

### 92A—Notice of termination void if no action taken

If—

- (a) a notice of termination is given to a landlord or tenant; and
- (b) the tenant has not given up vacant possession of the residential premises to the landlord within 1 month after the day on which he or she is to do so in accordance with the notice; and
- (c) the landlord has not, within that period, applied to the Tribunal for an order for possession of the premises,

the notice of termination is ineffectual and the residential tenancy will be taken not to have been terminated.

## **Division 6—Repossession of premises**

### **93—Order for possession**

- (1) If a residential tenancy is terminated by notice of termination under this Act or, in the case of a tenancy under which the South Australian Housing Trust is landlord, under the residential tenancy agreement, the landlord may apply to the Tribunal for an order for possession of the premises.

**Note—**

The landlord may not make the application if the notice of termination is ineffectual under section 92A.

- (2) If the Tribunal is satisfied that the tenancy has been terminated, the Tribunal may make an order for possession of the premises.
- (3) The order for possession will take effect on a date specified by the Tribunal in the order, being a date not more than seven days after the date of the order unless the operation of the order for possession is suspended<sup>1</sup>.
- (4) However, if the Tribunal, although satisfied that the landlord is entitled to an order for possession of the premises, is satisfied by the tenant that the grant of an order for immediate possession of the premises would cause severe hardship to the tenant, the Tribunal may—
- (a) suspend the operation of the order for possession for up to 90 days; and
  - (b) extend the operation of the residential tenancy agreement until the landlord obtains vacant possession of the premises from the tenant.
- (4a) In extending the operation of the residential tenancy agreement, the Tribunal may make modifications to the agreement that it considers appropriate (but the modifications cannot reduce the tenant's financial obligations under the agreement).
- (5) If the tenant fails to comply with an order for possession, the landlord is entitled to compensation for any loss caused by that failure.
- (6) The Tribunal may, on application by the landlord, order the tenant to pay to the landlord compensation to which the landlord is entitled under subsection (5).

**Note—**

- 1 See subsection (4).

### **94—Abandoned premises**

- (1) The Tribunal may, on application by a landlord—
- (a) declare that a tenant abandoned premises on a day stated in the declaration; and
  - (b) make an order for immediate possession of the premises.

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- (1a) In determining whether a tenant has abandoned premises, the Tribunal may have regard to—
- (a) any failure by the tenant to pay rent or to carry out obligations under the residential tenancy agreement; and
  - (b) any evidence suggesting that the tenant no longer occupies the premises as a place of residence; and
  - (c) any other matter the Tribunal thinks fit.
- (2) A tenant is taken to have abandoned the premises on the day stated in a declaration under this section.
- (3) If a tenant has abandoned premises, the landlord is entitled to compensation for any loss (including loss of rent) caused by the abandonment.
- (4) However, the landlord must take reasonable steps to mitigate any loss and is not entitled to compensation for loss that could have been avoided by those steps.
- (5) The Tribunal may, on application by the landlord, order the tenant to pay to the landlord compensation to which the landlord is entitled under this section.

### **95—Repossession of premises**

A person must not enter premises for the purpose of taking possession of the premises before, or after, the end of a residential tenancy unless—

- (a) the tenant abandons, or voluntarily gives up possession of, the premises; or
- (b) the person is authorised to take possession of the premises under the order of a court or the Tribunal.

Maximum penalty: \$5 000.

### **96—Forfeiture of head tenancy not to result automatically in destruction of right to possession under residential tenancy agreement**

- (1) A person cannot take possession of residential premises subject to a residential tenancy agreement so as to defeat the tenant's right to possession under the residential tenancy agreement unless an order for possession of the premises is made by a court or the Tribunal.
- (1a) An order under subsection (1) must be served on the tenant and takes effect—
- (a) in the case of an order made in favour of a mortgagee—30 days after the day on which it is served or at such later time as is specified by the court or the Tribunal; and
  - (b) in any other case—at such time as is specified by the court or the Tribunal.
- (1b) If an order of a kind referred to in subsection (1a)(a) is made, the tenant—
- (a) is not required to pay any rent, fee or other charge in respect of his or her occupation of the residential premises in the period following service of the order; and
  - (b) is entitled to compensation for any rent paid in respect of that period.

- (1c) The Tribunal may, on application by the tenant, order a person to whom rent has been paid to pay to the tenant compensation to which the tenant is entitled under subsection (1b).
- (2) If a person is entitled to possession of residential premises as against a person who granted a residential tenancy, a court before which proceedings for possession of the premises are brought, or the Tribunal, may, on application by an interested person, vest the residential tenancy agreement in the person who would, but for the agreement, be entitled to possession of the premises so that the tenant holds the premises directly from that person as landlord.
- (3) An order may be made under subsection (2) on terms and conditions the court or Tribunal considers just.

## **Division 7—Abandoned property**

### **97—Abandoned property**

- (1) This Division applies to property (*abandoned property*) that is left on residential premises by a tenant after termination of a residential tenancy agreement.
- (2) Nothing in this Division affects any obligation a landlord may have in relation to property left on the premises under another Act or law.

### **97A—Offence to deal with abandoned property in unauthorised way**

A landlord must not deal with abandoned property otherwise than in accordance with this Division.

Maximum penalty: \$2 500.

### **97B—Action to deal with abandoned property other than personal documents**

- (1) This section applies to abandoned property other than personal documents.
- (2) The landlord may, at any time after recovering possession of the premises, remove from the premises and destroy or dispose of abandoned property consisting of perishable goods.
- (3) The landlord may, when at least 2 days have passed after recovering possession of the premises, remove from the premises and destroy or dispose of abandoned property, other than perishable goods, if the value of the property is less than a fair estimate of the cost of removal, storage and sale of the property.
- (4) If there is abandoned property (other than personal documents) on the premises that may not be dealt with under subsection (2) or (3) (*valuable abandoned property*), the landlord must—
  - (a) as soon as practicable, make reasonable attempts to notify the tenant that such property has been found on the premises; and
  - (b) take reasonable steps to keep the property safe until at least 28 days after possession of the premises is recovered.
- (5) A person who is entitled to possession of valuable abandoned property may reclaim the property by paying to the landlord the reasonable costs incurred by the landlord in dealing with the property in accordance with this Division and any other reasonable costs incurred by the landlord as a result of the property being left on the premises.

- (6) If valuable abandoned property is not reclaimed within the period of 28 days referred to in subsection (4)(b), the landlord may, subject to the regulations, sell or otherwise lawfully dispose of the property (as if the landlord were the owner of the property).
- (7) If valuable abandoned property is sold in accordance with this section, the landlord—
  - (a) may retain out of the proceeds of sale—
    - (i) the reasonable costs incurred by the landlord in dealing with the property in accordance with this Division and any other reasonable costs incurred by the landlord as a result of the property being left on the premises; and
    - (ii) any amounts owed to the landlord under the residential tenancy agreement; and
  - (b) must pay the balance (if any) to the owner of the property, or if the identity and address of the owner are not known to, or reasonably ascertainable by, the landlord, to the Commissioner for the credit of the Fund.
- (8) If a dispute arises between a landlord and tenant about the exercise of powers conferred by this section, the Tribunal may, on application by either party to the dispute, make orders resolving the matters in dispute.

#### **97C—Action to deal with abandoned personal documents**

- (1) This section applies to abandoned property consisting of personal documents.
- (2) The landlord must—
  - (a) as soon as practicable, make reasonable attempts to notify the tenant that the documents have been found on the premises; and
  - (b) take reasonable steps to keep the documents safe until at least 28 days after possession of the premises is recovered.
- (3) If the personal documents are not reclaimed by the tenant within the 28 day period referred to in subsection (2)(b), the landlord may destroy or dispose of the documents.
- (4) Subsection (3) applies subject to any Act relating to the preservation of records.

### **Division 8—Miscellaneous**

#### **98—Bailiffs**

- (1) The Governor may appoint a person to be a bailiff of the Tribunal.
- (2) The office of bailiff may be held in conjunction with another office in the public service of the State.
- (3) A bailiff is entitled to remuneration and expenses determined by the Minister.

## **99—Enforcement of orders for possession**

- (1) If an order for possession of premises is made by the Tribunal and the person in whose favour the order was made advises the Tribunal, within 14 days of the day on which the order takes effect or such longer period as the Tribunal may allow, that the order has not been complied with—
  - (a) the order is enforceable by a bailiff of the Tribunal (and, subject to subsection (3), only by a bailiff of the Tribunal); and
  - (b) the bailiff must enforce the order as soon as is practicable after the Tribunal is advised that it has not been complied with.
- (2) A bailiff enforcing an order for possession of premises may enter the premises, ask questions and take all steps as are reasonably necessary for the purpose of enforcing the order.
- (3) A police officer must, if requested by a bailiff, assist the bailiff in enforcing an order for possession.
- (4) In the exercise of the powers conferred by this section a bailiff may use the force that is reasonable and necessary in the circumstances.
- (5) A person must not hinder or obstruct a bailiff in the exercise of the powers conferred by this section.  
Maximum penalty: \$2 500.
- (6) A person questioned pursuant to this section must not refuse or fail to answer the question to the best of his or her knowledge, information and belief.  
Maximum penalty: \$2 500.
- (7) However, a person is not obliged to answer a question under this section if to do so might tend to incriminate the person or to make the person liable to a penalty, or would require the disclosure of information that is privileged under the principles of legal professional privilege.
- (8) A bailiff or a police officer assisting a bailiff incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions under this section.

## **Part 5A—Residential tenancy databases**

### **99A—Definitions**

In this Division—

***agent*** of a landlord means a person employed, or otherwise authorised, by the landlord to act as the landlord's agent;

***database*** means a system, device or other thing used for storing information, whether electronically or in some other form;

***database operator*** means an entity that operates a residential tenancy database;

***inaccurate***, in relation to personal information in a residential tenancy database, includes information that is inaccurate because—

- (a) the information indicates that the person owes a landlord an amount that is more than the bond for a residential tenancy agreement; and
- (b) the amount owed was paid to the landlord more than 3 months after the amount became due;

**Note—**

If the amount is paid to the landlord within 3 months after the amount became due, the information would be out of date. See definition of ***out of date***, paragraph (a).

***list*** personal information in a residential tenancy database means—

- (a) enter the personal information into the database; or
- (b) give the personal information to a database operator or someone else for entry into the database,

and includes amend personal information about a person in the database to include additional personal information about the person;

***out of date***, in relation to personal information in a residential tenancy database, means the information is no longer accurate because—

- (a) for a listing made on the basis the person owes a landlord an amount that is more than the bond for a residential tenancy agreement—the amount owed was paid to the landlord within 3 months after the amount became due; or
- (b) for a listing made on the basis the Tribunal has made an order terminating the residential tenancy agreement—the order has been set aside, varied or quashed on review or appeal;

***personal information*** means information (including an individual's name) or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

***residential tenancy database*** means a database—

- (a) containing personal information—
  - (i) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or
  - (ii) entered into the database for reasons relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; and
- (b) with an intended purpose of use by landlords or agents of landlords for checking a person's tenancy history for deciding whether a residential tenancy agreement should be entered into with the person.

**Note—**

For statutory provisions relating to reports provided otherwise than through the use of a residential tenancy database see Part 4 of the *Fair Trading Act 1987*.

### 99B—Application

This Division does not apply to a residential tenancy database kept by an entity (including a department of the government of a State or Territory) for use only by that entity or its officers, employees or agents.

### 99C—Extra-territorial operation of Part

- (1) This section applies if—
  - (a) a person does an act, or makes an omission, outside the State in relation to personal information—
    - (i) about a person who resides in the State; or
    - (ii) relating to, or arising from, the occupation of residential premises in the State; or
    - (iii) entered into a residential tenancy database for reasons relating to, or arising from, the occupation of residential premises in the State; and
  - (b) the act or omission would constitute an offence against a provision of this Part if it were done or made by the person within the State.
- (2) The person commits an offence of the same kind as that mentioned in subsection (1)(b) and may be charged with and convicted of the offence.

### 99D—Notice of usual use of database

- (1) This section applies if—
  - (a) a person (the *applicant*) applies to a landlord, whether or not through the landlord's agent, to enter into a residential tenancy agreement; and
  - (b) the landlord or, if the application is made through the landlord's agent, the landlord or agent usually uses 1 or more residential tenancy databases for deciding whether a residential tenancy agreement should be entered into with a person.
- (2) The landlord or agent must, when the application is made, give the applicant written notice stating the following:
  - (a) the name of each residential tenancy database the landlord or agent usually uses, or may use, for deciding whether a residential tenancy agreement should be entered into with a person;
  - (b) that the reason the landlord or agent uses a residential tenancy database mentioned in paragraph (a) is for checking an applicant's tenancy history;
  - (c) for each residential tenancy database mentioned in paragraph (a), how persons may contact the database operator who operates the database and obtain information from the operator.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) Subsection (2) applies in relation to a residential tenancy database whether or not the landlord or agent intends to use the database for deciding whether a residential tenancy agreement should be entered into with the applicant.



- (4) However, the landlord or agent is not required to give the written notice mentioned in subsection (2) if a written notice stating the matters mentioned in the subsection was given to the applicant not more than 7 days before the application was made.

**Example—**

The landlord or agent gave a written notice stating the matters mentioned in subsection (2) to the applicant when the applicant obtained the application form and that happened less than 7 days before the applicant made the application.

**99E—Notice of listing if database used**

- (1) This section applies if—
- (a) a person (the *applicant*) applies to a landlord, whether or not through the landlord's agent, to enter into a residential tenancy agreement; and
  - (b) the landlord or, if the application is made through the landlord's agent, the landlord or agent uses a residential tenancy database for checking whether personal information about the applicant is in the database; and
  - (c) personal information about the applicant is in the database.
- (2) The landlord or agent must, as soon as possible but within 7 days after using the database, give the applicant a written notice stating—
- (a) the name of the database; and
  - (b) that personal information about the applicant is in the database; and
  - (c) the name of each person who listed the personal information in the database; and
  - (d) how and in what circumstances the applicant can have the personal information removed or amended under this Division.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) However, subsection (2)(c) requires the written notice to state the name of a person only if the person is identified in the residential tenancy database as the person who listed the personal information in the database.

**99F—Listing can be made only for particular breaches by particular persons**

- (1) A landlord, landlord's agent or database operator must not list personal information about a person in a residential tenancy database unless—
- (a) the person was named as a tenant in a residential tenancy agreement that has ended; and
  - (b) the person has breached the agreement; and
  - (c) because of the breach, either—
    - (i) the person owes the landlord an amount that is more than the bond for the agreement; or
    - (ii) the Tribunal has made an order terminating the residential tenancy agreement; and
  - (d) the personal information—

- (i) relates only to the breach; and
- (ii) is accurate, complete and unambiguous.

Maximum penalty: \$5 000.

- (2) Without limiting subsection (1)(d)(ii), the personal information must indicate the nature of the breach.

**Examples of how personal information can indicate nature of breach—**

- including the words "rent arrears" in personal information about a person who has breached a residential tenancy agreement by failing to pay rent;
- including the words "damage to premises" in the personal information about a person who has breached a residential tenancy agreement by damaging premises.

**99G—Further restriction on listing**

- (1) A landlord, landlord's agent or database operator must not list personal information about a person in a residential tenancy database unless the landlord, agent or operator—
  - (a) has, without charging a fee—
    - (i) given the person a copy of the personal information; or
    - (ii) taken other reasonable steps to disclose the personal information to the person; and
  - (b) has given the person at least 14 days to review the personal information and make submissions—
    - (i) objecting to its entry into the database; or
    - (ii) about its accuracy, completeness and clarity; and
  - (c) has considered any submissions made.

Maximum penalty: \$5 000.

- (2) Subsection (1) does not apply if the landlord, landlord's agent or database operator cannot locate the person after making reasonable enquiries.
- (3) Subsection (1)(b) and (c) do not apply—
  - (a) to information that, at the time of the listing, is contained in publicly available court or Tribunal records; or
  - (b) to a listing involving only an amendment of personal information about a person under section 99H.

**99H—Ensuring quality of listing—landlord's or agent's obligation**

- (1) This section applies if a landlord or landlord's agent who lists personal information in a residential tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out of date.
- (2) The landlord or agent must, within 7 days, give written notice of the following to the database operator who keeps the database:
  - (a) if the information is inaccurate, incomplete, or ambiguous—

- (i) that the information is inaccurate, incomplete or ambiguous; and
- (ii) how the information must be amended so that it is no longer inaccurate, incomplete or ambiguous;

**Example—**

A landlord lists, in a residential tenancy database, personal information about a tenant who owes the landlord an amount that is more than the bond for a residential tenancy agreement. The tenant pays the amount owed to the landlord more than 3 months after the amount became due. The landlord must, within 7 days after the landlord becomes aware of the payment, give the database operator who keeps the database written notice of—

- (a) the personal information being inaccurate; and
  - (b) the details of the payment to be included in the personal information so that it is no longer inaccurate.
- (b) if the information is out of date—that the information is out of date and must be removed.

Maximum penalty: \$5 000.

- (3) The landlord or agent must keep a copy of the written notice for 1 year after it was given under subsection (2).

Maximum penalty: \$5 000.

**99I—Ensuring quality of listing—database operator's obligation**

- (1) This section applies if a landlord or landlord's agent who has listed personal information in a tenancy database gives the database operator who operates the database a written notice stating that the personal information must be—
  - (a) amended in a stated way to make it accurate, complete and unambiguous; or
  - (b) removed.
- (2) The database operator must amend the personal information in the stated way, or remove the personal information, within 14 days after the operator is given the written notice.

Maximum penalty: \$5 000.

**99J—Providing copy of personal information listed**

- (1) A landlord or landlord's agent who lists personal information about a person in a residential tenancy database must, if asked in writing by the person, give the person a copy of the information within 14 days after the request is made.
- (2) A database operator must, if asked in writing by a person whose personal information is in the residential tenancy database kept by the operator, give the person a copy of the information within 14 days after the request is made.

Maximum penalty: \$5 000.

- (3) If a landlord or landlord's agent charges a fee for giving personal information under subsection (1), or a database operator charges a fee for giving personal information under subsection (2), the subsection applies only if the fee has been paid.

- (4) A fee charged by a landlord or landlord's agent for giving personal information under subsection (1), or by a database operator for giving personal information under subsection (2)—
  - (a) must not be excessive; and
  - (b) must not apply to lodging a request for the information.

### **99K—Keeping personal information listed**

- (1) A database operator must not keep personal information about a particular person in the operator's residential tenancy database for longer than—
  - (a) 3 years; or
  - (b) if, under the national privacy principles, the operator of the database is required to remove the personal information before the end of the 3 year period mentioned in paragraph (a)—the period ending when the information must be removed under the national privacy principles.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) However, a database operator may keep the person's name in the operator's residential tenancy database for longer than the period stated in subsection (1)(a) or (b) if—
  - (a) other personal information about the person in the database is attached to the name; and
  - (b) the other personal information is not required to be removed under subsection (1) or another law.
- (3) This section does not limit the operation of another provision of this Part or any other law that requires the removal of the personal information.
- (4) In this section—

*national privacy principles* means the principles stated in Schedule 3 of the *Privacy Act 1988* of the Commonwealth.

### **99L—Powers of Tribunal**

- (1) The Tribunal may, on the application of the Commissioner or a person whose personal information is in a residential tenancy database, make such orders against a landlord, landlord's agent or database operator as may be necessary or expedient in the opinion of the Tribunal to ensure compliance with this Part or any provision of this Part.
- (2) If a database operator commits an offence against this Part, the Tribunal may, on the application of the Commissioner, make an order requiring the database operator to comply with conditions specified in the order in relation to a residential tenancy database operated by the operator.
- (3) An order under subsection (1) or (2) is effective for such period as may be specified in the order or until further order of the Tribunal.

### 99M—Notifying relevant non-parties of Tribunal order about listing

- (1) This section applies if—
  - (a) the Tribunal makes an order that a person must, in relation to a residential tenancy database—
    - (i) amend personal information in a stated way; or
    - (ii) remove all or particular personal information about a person; and
  - (b) the person against whom the order is made (the *relevant person*) is not a party to the proceedings before the Tribunal.
- (2) The Tribunal must ensure that a copy of the order is given to the relevant person.

## Part 6—Residential Tenancies Fund

### 100—Residential Tenancies Fund

- (1) The fund entitled the *Residential Tenancies Fund* continues in existence.
- (2) The Fund is to be kept and administered by the Commissioner.
- (3) The Fund consists of the amounts received by the Commissioner by way of bonds, and other amounts paid into the Fund under this Act.
- (4) The Fund may be invested as approved by the Minister.
- (5) The Commissioner will make repayments in respect of bonds from the Fund.

### 101—Application of income

- (1) The income derived from investment of the Fund may be applied—
  - (a) towards the costs of administering and enforcing this Act (including the operating costs of the Tribunal) and the *Residential Parks Act 2007*; and
  - (b) for the education of landlords, tenants, rooming house proprietors, rooming house residents and park owners and residents of residential parks about their statutory and contractual rights and obligations, and for other educational purposes approved by the Commissioner; and
  - (c) towards the costs of projects directed at providing accommodation, or assistance related to accommodation, for the homeless or other disadvantaged sections of the community; and
  - (d) on research, approved by the Commissioner, into—
    - (i) the availability of rental accommodation within the community; and
    - (ii) areas of social need related to the availability (or non-availability) of rental accommodation or particular kinds of rental accommodation; and
    - (iii) other matters connected with, or arising under, this Act or the *Residential Parks Act 2007*; and
  - (e) for the benefit of landlords, tenants, rooming house proprietors, rooming house residents and park owners and residents of residential parks in other ways approved by the Commissioner; and

- (f) for any other purposes connected with, or arising under, this Act or the *Residential Parks Act 2007* approved by the Commissioner.
- (2) In this section, *residential park*, *park owner* and *resident* of a residential park have the same respective meanings as in the *Residential Parks Act 2007*.

## 102—Accounts and audit

- (1) The Commissioner must keep proper accounts of the receipts and payments from the Fund.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

## Part 7—Rooming houses

### Division 1—Interpretation

#### 103—Interpretation

In this Part—

*bond* means an amount a resident is required to pay under a rooming house agreement, or an agreement collateral to a rooming house agreement, as security for the performance of obligations under a rooming house agreement;

*house rules*—see section 105A;

*proprietor* means rooming house proprietor;

*rent* means an amount payable under a rooming house agreement for accommodation at the rooming house;

*resident* means a rooming house resident.

### Division 2—Rooming house agreements

#### 104—Standard terms of rooming house agreements

A rooming house agreement will be taken to include terms prescribed by regulation as standard terms for rooming house agreements.

#### 105—Copies of written agreements

- (1) If a proprietor invites or requires a resident to sign a written rooming house agreement, or a document recording its terms, the proprietor must ensure that—
  - (a) the resident receives a copy of the agreement or other document (for the resident to keep), when the resident signs it; and
  - (b) if the agreement or other document has not been signed by the proprietor, a copy of the agreement or other document, as executed by all parties, is delivered to the resident within 14 days after the resident gives the agreement or other document back to the proprietor to complete its execution.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) A rooming house agreement is not rendered void or unenforceable by non-compliance with a requirement of this section.

### **Division 3—House rules**

#### **105A—House rules**

- (1) A proprietor of a rooming house may make written rules about conduct or behaviour of the residents.
- (2) A house rule will be void to the extent that—
  - (a) it is made for a purpose other than enhancing the health or safety of persons or the safety of property; or
  - (b) it is inconsistent with this Act or any other Act or law.
- (3) The house rules for a rooming house (as from time to time in force under this section) are to be taken to constitute terms of every rooming house agreement relating to the rooming house.
- (4) The *Subordinate Legislation Act 1978* does not apply to house rules.

#### **105B—Amendment of house rules**

- (1) A proprietor may make written amendments to house rules for a rooming house.
- (2) An amendment does not have effect unless each resident of the rooming house has been given 7 days written notice of the amendment.
- (3) In this section—

*amendment* to house rules includes—

  - (a) a variation of a house rule; or
  - (b) the addition to the house rules of a new rule; or
  - (c) the revocation of an existing house rule.

#### **105C—Application to Tribunal if house rules are considered unreasonable**

- (1) An application may be made to the Tribunal by a resident of a rooming house for a declaration that a house rule for the rooming house is unreasonable.
- (2) On an application under this section, the Tribunal may, by order—
  - (a) declare the rule or proposed rule to be reasonable; or
  - (b) declare the rule or proposed rule to be unreasonable and, if the Tribunal considers it appropriate, require the proprietor to amend the rule in a specified manner.
- (3) A house rule is void if the Tribunal makes an order that the rule or proposed rule is unreasonable.
- (4) If a proprietor does not amend a house rule as required by order of the Tribunal, the proprietor is guilty of an offence.  
Maximum penalty: \$2 500.

### **105D—Availability of house rules**

- (1) A rooming house proprietor must—
  - (a) ensure that the house rules (as in force from time to time) are displayed in a prominent place at the rooming house; and
  - (b) at the request of a resident or prospective resident of the rooming house, provide a copy of the house rules (as in force from time to time) to the resident or prospective resident.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) However, if the rooming house proprietor has, within the previous 2 months, provided a copy of the house rules to a person, the proprietor need not provide a further copy but, in that case, must make a copy available for inspection by the person.

## **Division 4—Mutual rights and obligations of proprietors and residents**

### **Subdivision 1—Rent and other charges**

#### **105E—Permissible consideration and statutory charges**

- (1) A proprietor must not require or receive from a resident or prospective resident a payment, other than rent or a bond (or both), under a rooming house agreement, or as a condition to entering into, renewing or extending a rooming house agreement.

Maximum penalty: \$2 500.

- (2) It is a term of a rooming house agreement that the proprietor must bear all statutory charges imposed in respect of the accommodation.
- (3) However, the proprietor may require a resident to make a payment—
  - (a) for rates and charges for water supply; or
  - (b) for the provision of electricity, gas or telephone services at the premises; or
  - (c) for meals or other facilities or services (such as meals, cleaning and laundry of linen) provided by the proprietor,

if the proprietor has, before the facilities or services were made available or provided to the resident, informed the resident in writing of the basis on which charges for those facilities or services would be made.

- (4) A proprietor must, before requiring a resident to make a payment for facilities or services, give the resident an itemised account setting out the resident's proportional use of the facilities or services.

Maximum penalty: \$1 250.

#### **105F—Rent in advance**

- (1) A person must not demand or require another person to pay more than 1 weeks rent under a rooming house agreement before the end of the first week of the period of accommodation under the agreement.

Maximum penalty: \$2 500.

Expiation fee: \$210.



- (2) If rent has been paid under a rooming house agreement, a person must not require a further payment of rent until the end of the last period for which rent has been paid.  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (3) A person must not require another person to give a post-dated cheque or other post-dated negotiable instrument in payment of rent under a rooming house agreement.  
Maximum penalty: \$2 500.  
Expiation fee: \$210.

### **105G—Duty to provide statement or give receipt for payments**

- (1) If a resident makes a payment under a rooming house agreement or an agreement collateral to a rooming house agreement, the proprietor must, at the reasonable request of the resident, give the resident a statement of the relevant information for each payment made during the period specified in the request (and such statement must be given to the resident within 7 days of the making of the request).  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (2) If a resident makes a payment under a rooming house agreement or an agreement collateral to a rooming house agreement other than into an ADI account, the person who receives the payment must, within 48 hours after receiving the payment, give the resident a receipt setting out the relevant information in respect of the payment.  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (3) In this section—  
**relevant information** in respect of a payment means—
- (a) the date on which the payment was received; and
  - (b) the name of the person making the payment; and
  - (c) the amount paid; and
  - (d) the address of the premises to which the payment relates; and
  - (e) if the payment is for rent—the period of accommodation to which the payment relates; and
  - (f) if the payment is a bond—a statement of that fact; and
  - (g) if the payment is for facilities or services (other than accommodation)—a description of the facilities or services and the period to which the payment relates.

### **105H—Payment of rent by electronic transaction**

If a resident pays rent into an ADI account kept by the proprietor or the proprietor's agent, the payment will be taken to have been made when it is credited to the ADI account.

### **105I—Rent increases**

- (1) A proprietor may increase the rent payable under a rooming house agreement by giving written notice to the resident specifying the date as from which the increase takes effect.
- (2) However—
  - (a) the right to increase the rent may be excluded or limited by the terms of the rooming house agreement; and
  - (b) if accommodation at the rooming house is to be provided for a fixed term, the rooming house agreement is taken to exclude an increase in rent during the term unless it specifically allows for an increase in rent; and
  - (c) the date fixed for an increase of rent must be at least 6 months after the date of the agreement or, if there has been a previous increase of rent under this section, the last increase and, subject to subsection (3), at least 4 weeks after the notice is given.
- (3) If the maximum rent for accommodation at the rooming house has been fixed by a housing improvement notice, and the notice is revoked, the proprietor may, by notice given under this section within 4 weeks after revocation of the housing improvement notice, increase the rent for accommodation at the rooming house from a date falling at least 14 days after the notice is given.
- (4) If the rent payable under a rooming house agreement is increased under this section, the terms of the agreement are varied accordingly.
- (5) This section does not affect the operation of a provision of a rooming house agreement under which the rent payable under the agreement changes automatically on a basis set out in the agreement.
- (6) For the purposes of this section, a series of rooming house agreements between the same parties and relating to accommodation at the same rooming house is treated as a single rooming house agreement unless at least 6 months have elapsed since rent for accommodation at the rooming house was fixed or last increased.

### **105J—Rent decreases**

- (1) The rent payable under a rooming house agreement may be reduced by mutual agreement between the proprietor and the resident.
- (2) The Tribunal may, on application by a resident, make an order for the reduction of rent payable under the rooming house agreement if satisfied that services or facilities ordinarily provided to the resident under the agreement will not be provided by the proprietor for a period of time.
- (3) A reduction of rent may be made on a temporary basis so that the rent reverts to the level that would have been otherwise applicable at the end of a specified period.
- (4) If the rent payable under a rooming house agreement is reduced under this section, the terms of the agreement are varied accordingly.
- (5) This section does not affect the operation of a provision of a rooming house agreement under which the rent payable under the agreement changes automatically on a basis set out in the agreement.

- (6) For the purposes of this section, a series of rooming house agreements between the same parties and relating to accommodation at the same rooming house is treated as a single rooming house agreement unless at least 6 months have elapsed since rent for accommodation at the rooming house was fixed or last increased.

## **Subdivision 2—Bonds**

### **105K—Bond**

A person must not—

- (a) require more than 1 bond for the same rooming house agreement; or
- (b) require the payment of a bond exceeding 2 weeks rent under a rooming house agreement.

Maximum penalty: \$2 500.

### **105L—Receipt of bond and transmission to Commissioner**

- (1) A person must, within 48 hours after receiving an amount paid by way of a bond, give the person who paid a receipt stating the date payment was received, the name of the person from whom the payment was received, the amount paid, and the address of the rooming house to which the payment relates.

Maximum penalty: \$2 500.

Expiation fee: \$210.

## **Subdivision 3—Other obligations of proprietor**

### **105N—Use and enjoyment of room and facilities**

- (1) It is a term of a rooming house agreement that the proprietor—
- (a) will not unreasonably restrict, or interfere with—
    - (i) the quiet enjoyment of a room or facilities at the rooming house by the resident; or
    - (ii) the reasonable peace, comfort or privacy of the resident in the resident's use of a room or facilities at the rooming house; and
  - (b) will ensure that the resident has reasonable access (at all times) to the resident's room, and to the toilet and bathroom facilities; and
  - (c) will exercise his or her right of access to the resident's room in a reasonable manner and will not stay in the room longer than is necessary to achieve the purpose of entry without the resident's consent.
- (2) A proprietor who, without reasonable excuse, contravenes a term of an agreement arising under subsection (1) is guilty of an offence.

Maximum penalty: \$2 500.

### **105O—Security of premises and personal property**

- (1) It is a term of a rooming house agreement that—
  - (a) the proprietor will take reasonable steps to provide and maintain the locks and other devices that are necessary to ensure each resident of the rooming house may make his or her room reasonably secure; and
  - (b) neither the proprietor nor the resident will alter or remove a lock or security device or add a lock or security device without the consent of the other; and
  - (c) neither the proprietor nor the resident will unreasonably withhold his or her consent to the alteration or removal of a lock or security device by the other; and
  - (d) the proprietor will take reasonable steps to ensure the security of personal property of each resident of the rooming house and, for that purpose, will provide each resident with a cupboard, or other similar facility, capable of being locked so as to enable the resident to keep personal property secure within his or her room.
- (2) A proprietor or resident who, without reasonable excuse, contravenes a term of an agreement arising under subsection (1) is guilty of an offence.

Maximum penalty: \$2 500.

### **105P—Obligation to repair and keep room and premises clean**

- (1) It is a term of a rooming house agreement that the proprietor—
  - (a) must ensure that the resident's room and any facilities shared with other residents of the rooming house are in a reasonable state of repair when the resident enters into occupation of the room and must keep them in a reasonable state of repair having regard to their age, character and prospective life; and
  - (b) must ensure that any facilities shared with other residents of the rooming house are kept in a reasonable state of cleanliness; and
  - (c) must comply with statutory requirements affecting the rooming house; and
  - (d) must give the resident not less than 14 days notice of renovations to be carried on at the rooming house; and
  - (e) must, if required to carry out repairs to shared bathroom, toilet or laundry facilities, minimise inconvenience or disruption to the resident and, if necessary, provide temporary substitute facilities.
- (2) The obligation to repair applies even though the resident had notice of the state of disrepair before entering into occupation.
- (3) However—
  - (a) the proprietor will not be regarded as being in breach of the obligation to repair unless—
    - (i) the proprietor has notice of the defect requiring repair; and
    - (ii) the proprietor fails to act with reasonable diligence to have the defect repaired; and

- (b) if the rooming house is subject to a housing improvement notice fixing the maximum rent for the rooming house, the proprietor's obligation under subsection (1) to repair the rooming house does not apply.

### **105Q—Sale of rooming house**

- (1) It is a term of a rooming house agreement that—
  - (a) the proprietor will give the resident written notice of the proprietor's intention to sell the rooming house not later than 14 days after the proprietor enters into a sales agency agreement for the sale of the premises; and
  - (b) the rooming house will not be advertised for sale or made available for inspection by prospective purchasers before the day falling 14 days after the resident is notified of the proprietor's intention to sell the rooming house.
- (2) It is a term of a rooming house agreement that, if the rooming house is sold, the proprietor will give the resident written notice of the name of the purchaser and the date from which rent is to be paid to him or her.

### **Subdivision 4—Other obligations of resident**

#### **105R—General obligations of resident**

- (1) It is a term of a rooming house agreement that the resident—
  - (a) must not use the rooming house, or cause or permit the rooming house to be used, for an illegal purpose; and
  - (b) must not keep an animal on the rooming house premises without the proprietor's consent; and
  - (c) must keep the resident's room in a condition that does not give rise to a fire or health hazard; and
  - (d) must notify the proprietor of damage to the rooming house or to property provided by the proprietor for use by the resident; and
  - (e) must allow the proprietor reasonable access to the resident's room.
- (2) A resident who intentionally causes serious damage to the rooming house is guilty of an offence.  
Maximum penalty: \$2 500.

### **Subdivision 5—Miscellaneous**

#### **105S—Accelerated rent and liquidated damages**

- (1) If a rooming house agreement provides that, on breach by the resident of a term about rent or other term of the agreement, the resident is liable to pay—
  - (a) all or any part of the rent remaining payable under the agreement; or
  - (b) rent of an increased amount; or
  - (c) an amount by way of penalty; or
  - (d) an amount by way of liquidated damages,the provision is void.

- (2) If a rooming house agreement provides that, on early or punctual payment of rent, the rent will or may be decreased or the resident will or may be granted or paid a rebate, refund or other benefit, the resident is entitled to the reduction, rebate, refund or other benefit in any event.
- (3) If a rooming house agreement contains a provision to which this section applies, the proprietor is guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.

### **105T—Goods not to be taken in lieu of amounts owing to proprietor**

A proprietor must not take or dispose of a resident's goods on account of any rent or other amount owing to the proprietor by the resident under the rooming house agreement.

Maximum penalty: \$5 000.

## **Division 5—Termination of rooming house agreement**

### **105U—Termination of rooming house agreement**

- (1) If a resident under a rooming house agreement has abandoned the resident's room, the rooming house agreement is terminated.
- (2) A resident will be taken to have abandoned the resident's room if—
  - (a) the Tribunal has made a declaration under section 105V that the resident abandoned the room; or
  - (b) —
    - (i) the rent payable under the agreement has remained unpaid in breach of the agreement for not less than 7 days; and
    - (ii) the proprietor—
      - (A) has made reasonable efforts to contact the resident without success; or
      - (B) has been advised by the resident that the room is abandoned.
- (3) If rent remains outstanding for at least 2 rental periods or 2 weeks (whichever is the lesser), the proprietor may give the resident a written notice informing the resident that if the amount owing is not paid within a specified period (which must be a period of at least 2 clear days) from the date the notice is given then—
  - (a) the rooming house agreement is terminated at the end of the specified period by force of the notice; and
  - (b) the resident must vacate the premises at the end of the specified period.

- (4) If a resident, or a person who has entered the rooming house at the resident's invitation, causes serious damage to the rooming house, creates a danger to a person or property in the rooming house, or seriously interrupts the privacy, peace, comfort or quiet enjoyment of another resident, the proprietor may give the resident a written notice informing the resident that—
  - (a) the rooming house agreement is terminated by force of the notice immediately or on a specified day; and
  - (b) the resident must vacate the premises immediately or on or before the specified day (as the case requires).
- (5) If a resident breaches a term of the rooming house agreement (otherwise than as referred to in a preceding subsection), the proprietor may give the resident a written notice informing the resident that—
  - (a) the rooming house agreement is terminated by force of the notice on a specified day (which must be at least 7 clear days after the day the notice is given); and
  - (b) the resident must vacate the premises on or before the specified day.
- (6) A proprietor may terminate a rooming house agreement providing for accommodation on a periodic basis without specifying a ground for termination by giving the resident at least 4 weeks written notice of termination.
- (7) A resident under a rooming house agreement providing for accommodation on a periodic basis may terminate the agreement without specifying a ground for termination by giving the proprietor at least 1 days notice of termination.
- (8) A notice under this section must be in the form approved by the Commissioner.

### **105V—Abandoned room**

- (1) The Tribunal may, on application by a proprietor, declare that a resident abandoned the resident's room on a day stated in the declaration.
- (2) The resident is taken to have abandoned the room on the day stated in a declaration under this section.
- (3) If a resident under a rooming house agreement for the provision of accommodation for a period of 6 months or more has abandoned the resident's room, the proprietor is entitled to compensation for any loss (including loss of rent) caused by the abandonment.
- (4) However, the proprietor must take reasonable steps to mitigate any loss and is not entitled to compensation for loss that could have been avoided by those steps.
- (5) The Tribunal may, on application by the proprietor, order the resident to pay to the proprietor compensation to which the proprietor is entitled under this section.

### **105W—Abandoned property**

- (1) If property is left on the premises by a resident after the resident vacates the resident's room—
  - (a) the proprietor may, at any time after recovering possession of the room, remove from the premises and destroy or dispose of property consisting of perishable goods; and

- (b) in the case of any other property (other than personal documents), the proprietor—
  - (i) must, as soon as practicable, make reasonable attempts to notify the resident that the property has been found on the premises; and
  - (ii) must take reasonable steps to keep the property safe for at least 14 days after possession of the room is recovered; and
  - (iii) may destroy or dispose of the property after taking steps to keep it safe for the period referred to in subparagraph (ii).
- (2) If personal documents are left on the premises by a resident after the resident vacates the resident's room, the proprietor—
  - (a) must, as soon as practicable, make reasonable attempts to notify the resident that the documents have been found on the premises; and
  - (b) must take reasonable steps to keep the documents safe for at least 14 days after possession of the room is recovered; and
  - (c) may destroy or dispose of the documents if they are not reclaimed by the resident within the 14 day period referred to in paragraph (b).
- (3) For the purposes of this section, a person who is entitled to possession of the property may reclaim it by paying to the proprietor the reasonable costs incurred by the proprietor as a result of the property being left on the premises.
- (4) A proprietor may not deal with property left on premises by a resident after termination of a rooming house agreement otherwise than in accordance with this section.

Maximum penalty: \$2 500.
- (5) Nothing in this section affects any obligation a proprietor may have in relation to property left on the premises under another Act or law.

## **Part 8—Dispute resolution**

### **Division 1—Conciliation**

#### **Subdivision 1—Definitions for this Division**

##### **106—Definitions**

In this Division—

**conciliation** of a dispute includes preliminary assistance in dispute resolution such as the giving of advice to ensure that—

- (a) the parties to the dispute are fully aware of their rights and obligations; and
- (b) there is full and open communication between the parties about the dispute;

**conciliation conference** means—

- (a) a conference called by the Commissioner under section 107(4); or
- (b) a conference to which a tenancy dispute is referred by the Tribunal under section 108(2).



**Subdivision 2—Conciliation of dispute by Commissioner****107—Conciliation by Commissioner**

- (1) If a party to a tenancy dispute applies to the Commissioner for conciliation of the dispute, the Commissioner may conciliate the dispute.
- (2) A fee prescribed by regulation is payable on an application under subsection (1).
- (3) The registrar or deputy registrar may refer an application made to the Tribunal to the Commissioner for conciliation.
- (4) The Commissioner may call a conference of the parties to the dispute for the purpose of attempting to resolve the dispute by agreement.
- (5) The Commissioner must notify the parties of the time and place fixed for the conference.
- (6) If conciliation of a dispute is terminated because it appears to the Commissioner that it is unlikely that an agreed settlement can be reached within a reasonable time or for any other reason, the Commissioner must refer the matter to the registrar or deputy registrar for the listing of the matter before the Tribunal.

**Subdivision 3—Conciliation of dispute by Tribunal****108—Referral of dispute to conciliation conference**

- (1) Before making an order to determine a tenancy dispute, it is the duty of the Tribunal to use its best endeavours to bring the parties to the dispute to a settlement that is acceptable to the parties.
- (2) In addition to, or in the course of, any action taken under subsection (1), the Tribunal may, before the hearing of proceedings concerning a tenancy dispute—
  - (a) refer the dispute to a conference of the parties to the dispute to explore the possibilities of resolving the matters at issue by agreement; and
  - (b) require each party to the dispute (or a representative of a party who has authority to settle the proceedings on behalf of the party) to attend the conference.
- (3) If a tenancy dispute is referred to a conciliation conference under this section—
  - (a) the registrar must notify the parties of the time and place fixed for the conference in a manner prescribed by the Rules; and
  - (b) a member of the Tribunal, the registrar or another officer of the Tribunal authorised by the Presiding Member will preside at the conference.
- (4) If a party to a tenancy dispute fails to attend a properly convened conciliation conference—
  - (a) the conference may proceed at the appointed time in the party's absence; and
  - (b) the Tribunal may determine the proceeding adversely to the absent party and make any appropriate orders.

## **Subdivision 4—Duties and procedure**

### **108A—Duties of conciliators**

Conciliators have the following functions in the conciliation of a tenancy dispute:

- (a) to seek to identify the issues in dispute and to narrow the range of the dispute;
- (b) to encourage the settlement of the dispute by facilitating, and helping to conduct, negotiations between the parties to the dispute;
- (c) to promote the open exchange of information relevant to the dispute by the parties;
- (d) to provide to the parties information about the operation of this Act relevant to a settlement of the dispute;
- (e) to help in the settlement of the dispute in any other appropriate way.

### **108B—Procedure**

- (1) A conciliation conference may, at the discretion of the conciliator, be adjourned from time to time.
- (2) Unless the conciliator decides otherwise, the conference will be held in private and the conciliator may exclude from the conference any person apart from the parties and their representatives.
- (3) The conciliator (if not legally qualified) may refer a question of law arising at the conference to a member of the Tribunal who is legally qualified for determination.
- (4) A party must, if required by the conciliator, disclose to the other party details of the party's case and of the evidence available to the party in support of that case.
- (5) The conciliator or a party may terminate a conciliation at any time.
- (6) A settlement to which a party or representative of a party agrees at a conciliation conference is binding on the party provided that it is not inconsistent with this Act.
- (7) The settlement must be put into writing and signed by or for the parties (and if the conciliation conference was conducted by the Commissioner or a delegate of the Commissioner, a copy of the signed settlement must be provided to the Tribunal).
- (8) The Tribunal may make a determination or order to give effect to the settlement.
- (9) A member of the Tribunal who conducts a conciliation conference in relation to a tenancy dispute is not entitled to hear and determine proceedings concerning the dispute unless the parties otherwise agree.
- (10) A conciliator has the same protection and immunity as a member of the Tribunal.

### **108C—Restriction on evidence**

Evidence of anything said or done in the course of conciliation of a tenancy dispute under this Division is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.

## **Division 2—Intervention**

### **109—Power to intervene**

- (1) The Commissioner may intervene in proceedings before the Tribunal or a court concerning a tenancy dispute.
- (2) If the Commissioner intervenes in proceedings the Commissioner becomes a party to the proceedings and has all the rights (including rights of appeal) of a party to the proceedings.

## **Division 3—Powers of the Tribunal**

### **110—Powers of Tribunal**

- (1) The Tribunal may, on application by a party to a tenancy dispute—
  - (a) restrain an action in breach of this Act, a residential tenancy agreement, a rooming house agreement, or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or
  - (b) require a person to comply with an obligation under this Act, a residential tenancy agreement, a rooming house agreement or an agreement collateral to a residential tenancy agreement or a rooming house agreement; or
  - (c) order a person to make a payment (which may include compensation) under this Act, a residential tenancy agreement, a rooming house agreement or a collateral agreement or for breach of this Act, a residential tenancy agreement, a rooming house agreement, or a collateral agreement; or
  - (d) relieve a party to a residential tenancy agreement, a rooming house agreement or a collateral agreement from the obligation to comply with a provision of the agreement; or
  - (e) terminate a residential tenancy or rooming house agreement or declare that a residential tenancy or rooming house agreement has, or has not, been validly terminated; or
  - (f) reinstate rights under a residential tenancy agreement or rooming house agreement that have been forfeited or have otherwise terminated; or
  - (g) require payment of rent into the Fund until conditions stipulated by the Tribunal have been complied with; or
  - (h) require that rent paid into the Fund be paid out and applied as directed by the Tribunal; or
  - (i) require that a bond (including a bond under Part 7) paid into the Fund be paid out and applied as directed by the Tribunal; or
  - (j) require a tenant or a rooming house resident to give up the possession of premises to the landlord or rooming house proprietor; or
  - (k) make orders to give effect to rights and liabilities arising from the assignment of a residential tenancy agreement; or
  - (l) exercise any other power conferred on the Tribunal under this Act; or

- (m) do anything else necessary or desirable to resolve a tenancy dispute.
- (2) The Tribunal does not have jurisdiction to award compensation for damages arising from personal injury.

### **111—Conditional and alternative orders**

- (1) The Tribunal may make orders on conditions the Tribunal considers appropriate.
- (2) The Tribunal may make orders in the alternative so that a particular order takes effect, or does not take effect, according to whether stipulated conditions are complied with.

### **112—Restraining orders**

- (1) If the Tribunal is satisfied, on application by a landlord, that there is a risk that the tenant or a person permitted on the premises by the tenant may cause serious damage to property or personal injury, the Tribunal may make an order (*a restraining order*) restraining the tenant and other persons on the premises from engaging in conduct of a kind described in the order.
- (2) An application for a restraining order may be made without notice to the persons against whom the order is sought but, if the order is made without giving them a reasonable opportunity to respond to the allegations against them, the Tribunal must allow them a reasonable opportunity to satisfy it that the order should not continue in operation.
- (3) A person must not contravene a restraining order.  
Maximum penalty: Imprisonment for 1 year.

## **Division 4—Representation**

### **113—Representation in proceedings before Tribunal**

- (1) A party to a tenancy dispute may only be represented in proceedings before the Tribunal or at a conciliation conference under this Act as allowed by this section.
- (2) A party to a tenancy dispute may be represented by a lawyer if—
  - (a) all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage a party who does not have a professional representative; or
  - (b) the Tribunal is satisfied that the party is unable to present the party's case properly without assistance; or
  - (c) another party to the dispute is a lawyer, or is represented by a professional representative; or
  - (d) the Commissioner has intervened in, or is a party to, the proceedings.
- (3) A party to a tenancy dispute may be represented by a person who is not a lawyer if—
  - (a) the party is a body corporate and the representative is an officer or employee of the body corporate; or
  - (b) the party is a landlord or rooming house proprietor and the representative is an agent, or an officer or employee of an agent, appointed by the landlord or rooming house proprietor to manage the premises on the party's behalf; or

- (c) all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage an unrepresented party; or
  - (d) the Tribunal is satisfied that the party is unable to present the party's case properly without assistance.
- (4) In this section—
- professional representative* means—
- (a) a lawyer, a law clerk, or a person who holds or has held legal qualifications under the law of the State or another place; or
  - (b) a land agent, or an officer or employee of a land agent.

### **114—Remuneration of representative**

A person must not ask for or receive a fee for representing a party to a tenancy dispute in proceedings before the Tribunal or at a conciliation conference under this Act unless—

- (a) the representative is a lawyer or a law clerk employed by a lawyer; or
- (b) the representative is an officer or employee of a body corporate who represented the body corporate in the proceedings; or
- (c) the representative is an agent, or an officer or employee of an agent, who represented a landlord in the proceedings whose premises the agent had been appointed to manage on behalf of the landlord.

Maximum penalty: \$15 000.

## **Part 9—Miscellaneous**

### **115—Contract to avoid Act**

- (1) An agreement or arrangement that is inconsistent with this Act or purports to exclude, modify or restrict the operation of this Act, is (unless the inconsistency, exclusion, modification or restriction is expressly permitted under this Act) to that extent void.
- (2) A purported waiver of a right under this Act is void.
- (3) A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of this Act (directly or indirectly) is guilty of an offence.

Maximum penalty: \$10 000.

### **117—Notice by landlord not waived by acceptance of rent**

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

### **117A—Liability to prosecution not to derogate from civil liability**

The liability to be prosecuted for an offence is in addition to any civil liability for breach of a residential tenancy agreement or rooming house agreement or any other civil liability the person may incur.

## 118—Exemptions

The Minister may, by order published in the Gazette—

- (a) exempt agreements, or premises, of a specified class from the provisions, or specified provisions, of this Act; or
- (b) modify specified provisions of this Act in their application to a specified class of agreements or a specified class of premises; or
- (c) vary or revoke an order previously made by the Minister under this section.

## 119—Tribunal may exempt agreement or premises from provision of Act

- (1) The Tribunal may, on application by an interested person, if the Tribunal considers it necessary or desirable in the circumstances, order that a provision of this Act will not apply in relation to an agreement or prospective agreement or to particular premises, or will apply in a modified manner (and the order will have effect accordingly).
- (2) An order may be made on conditions that the Tribunal considers appropriate.
- (3) A person must not contravene a condition to an order.

Maximum penalty: \$2 500.

## 120—Service

- (1) A notice or document required or authorised to be given to a person under this Act may be—
  - (a) given to the person, or an agent of the person, personally; or
  - (b) sent by post addressed to the person, or an agent of the person, at the last known place of residence, employment or business of the person or agent; or
  - (c) left in a letterbox or other place where it is likely to come to the attention of the person, or an agent of the person, at the last known place of residence, employment or business; or
  - (d) transmitted by fax or email to a fax number or email address provided by the person for the purposes of service under this Act (in which case the notice or document will be taken to have been given or served at the time of transmission); or
  - (e) given in some other manner permitted by the Tribunal.
- (3) If two or more persons are the landlords or tenants under a residential tenancy agreement, a notice or other document is duly given if given to any one of them.

## 121—Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may—
  - (a) be of general or limited application; and
  - (b) provide that a matter or thing is to be determined, dispensed with or regulated by the Minister.
- (3) A regulation may impose a penalty not exceeding \$5 000 for breach of the regulation.

- (4) The regulations may fix expiation fees, not exceeding \$315, for alleged offences against the regulations.

## **Schedule 1—Transitional provisions—*Residential Tenancies (Miscellaneous) Amendment Act 2013***

### **1—Interpretation**

In this Schedule—

*amending Act* means the *Residential Tenancies (Miscellaneous) Amendment Act 2013*.

### **2—Operation of amendments**

- (1) Subject to the regulations, an amendment made by the amending Act applies to a residential tenancy agreement or rooming house agreement whether the agreement was entered into before or after the commencement of the amendment.
- (2) However—
- (a) subsection (3a) of section 69 as inserted by the amending Act does not apply in relation to a residential tenancy agreement entered into before the commencement of that subsection; and
  - (b) subsections (2) and (3) of section 73 as inserted by the amending Act do not apply in relation to a residential tenancy agreement entered into before the commencement of those subsections (and section 73(2) and (3) as in force immediately before the commencement of section 47 of the amending Act will continue to apply to residential tenancy agreements entered into before that commencement); and
  - (c) section 85A as inserted by the amending Act does not apply in relation to a residential tenancy agreement entered into before the commencement of that section; and
  - (d) section 105Q as inserted by the amending Act does not apply in relation to a rooming house agreement entered into before the commencement of that section.

### **3—Registrar and deputy registrars**

Section 15(2) as inserted by the amending Act does not apply in relation to a person appointed to be the registrar or a deputy registrar before the commencement of that section.

### **4—Jurisdiction of Tribunal**

The amendments made to section 24(2) and (5) by the amending Act—

- (a) do not apply in respect of proceedings commenced before the commencement of the amendments (and those proceedings may continue as if the amendments had not been made); and
- (b) apply in respect of proceedings commenced on or after the commencement of the amendments (including proceedings in respect of a claim arising before the commencement of the amendments).

### **5—Interest payable on repayment of bond**

*Section 63(11) and (12) as in force immediately before the commencement of this clause apply in relation to a bond paid to the Commissioner before that commencement as if the amendments made to that section by the amending Act had not been made.*

*Note—*

*Clause 5 had not come into operation at the date of the publication of this version.*

### **6—Abandoned property**

(1) The revised abandoned property provisions apply in respect of property left on premises whether the property was left on the premises before or after the commencement of those provisions.

(2) In this clause—

*revised abandoned property provisions* means Part 5 Division 7 and section 105W as inserted by the amending Act.

### **7—Application to existing house rules**

Part 7 Division 3 as inserted by section 72 of the amending Act applies to house rules made by a rooming house proprietor and in operation immediately before the commencement of this clause.

### **8—Other provisions**

(1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the amending Act.

(2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of the amending Act or from a later day.

(3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

- (a) decreasing the person's rights; or
- (b) imposing liabilities on the person.



## Legislative history

### Notes

- In this version provisions that are uncommenced appear in italics.
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Residential Tenancies Act 1995* repealed the following:

*Residential Tenancies Act 1978*

*Residential Tenancies (Housing Trust) Amendment Act 1993*

### Legislation amended by principal Act

The *Residential Tenancies Act 1995* amended the following:

*Retirement Villages Act 1987*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	63	<i>Residential Tenancies Act 1995</i>	10.8.1995	24.8.1995 ( <i>Gazette 24.8.1995 p499</i> ) except ss 4, 5(1) & (2)(c), 6—23, 24(1)(a) & (c) & (2)—(5), 25—62, 63(1)—(6), 64—72, 74—100, 101(a), (b), (d)—(f), 102, 106—120 and Sch (cl 1(1), 3(a), 4 & 6)—30.11.1995 ( <i>Gazette 23.11.1995 p1412</i> ) and except s 63(7)—(10)—5.2.1996 ( <i>Gazette 25.1.1996 p808</i> ) and except ss 5(2)(a), (b), (d)—(h) and 24(1)(b)—1.7.1996 ( <i>Gazette 27.6.1996 p3107</i> ) and except ss 63(11) & (12), 101(c), 103—105 and Sch (cl 5)—10.8.1997 (s 7(5) <i>Acts Interpretation Act 1915</i> )
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 29)—3.2.1997 ( <i>Gazette 19.12.1996 p1923</i> )

**Residential Tenancies Act 1995—1.4.2014 to 28.3.2015**

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1998	21	<i>Statutes Amendment (Consumer Affairs) Act 1998</i> as amended by 22/1998	2.4.1998	Pt 9 (ss 24—26)—28.5.1998 ( <i>Gazette</i> 28.5.1998 p2292)
1998	22	<i>Statutes Amendment (Consumer Affairs) Amendment Act 1998</i>	2.4.1998	2.4.1998
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 45)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
1999	55	<i>Residential Tenancies (Miscellaneous) Amendment Act 1999</i>	12.8.1999	3.10.1999 ( <i>Gazette</i> 30.9.1999 p1341)
2001	59	<i>Retirement Villages (Miscellaneous) Amendment Act 2001</i>	22.11.2001	s 19—1.7.2002 ( <i>Gazette</i> 15.1.2002 p186)
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette</i> 13.11.2003 p4048)
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 25 (s 49)—18.1.2007 ( <i>Gazette</i> 18.1.2007 p234)
2007	19	<i>Residential Parks Act 2007</i>	14.6.2007	Sch 2 (cl 1)—5.11.2007 ( <i>Gazette</i> 25.10.2007 p4044)
2007	20	<i>Statutes Amendment (Affordable Housing) Act 2007</i>	14.6.2007	Pt 5 (ss 92 & 93)—11.2.2008 ( <i>Gazette</i> 17.1.2008 p264)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 131 (s 299)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2012	54	<i>Statutes Amendment and Repeal (Budget 2012) Act 2012</i>	6.12.2012	Pt 11 (s 34)—28.2.2013 ( <i>Gazette</i> 28.2.2013 p581)

2013	13	<i>Residential Tenancies (Miscellaneous) Amendment Act 2013</i>	9.5.2013	Pt 2 (s 47(4))—8.6.2013 ( <i>Gazette 6.6.2013 p2497</i> ); s 71—7.2.2014; <i>bond</i> (as inserted by s 4(1)), <i>domestic facility requiring instructions</i> (as inserted by s 4(2)), deletion of <i>mediation</i> by s 4(3), <i>personal documents</i> (as inserted by s 4(3)), ss 4(4), (5), (7)—(9), 5(1)—(3), new s 5(1b) (as inserted by s 5(4)), ss 6—30, new s 56(2)(fb) (as inserted by s 31(1)), ss 31(2), 32—35, 36(1)—(10), 37, 38(1), (2), substitution of s 63(5) by s 38(3), ss 38(4)—(9), (12), 39—46, 47(1)—(3), 48—69, 70(1), (2), new Pt 7 (except ss 105L(2) & 105M) (as substituted by s 72), 73—82, new Sch 1 (except cl 5) (as substituted by s 83)—1.3.2014 ( <i>Gazette 6.2.2014 p549</i> ); <i>collateral agreement</i> (as inserted by s 4(1)), <i>domestic services agreement</i> (as inserted by s 4(2)), <i>no premium retirement village</i> (as inserted by s 4(3)), s 4(6), new s 5(1c) (as inserted by s 5(4)), new s 56(2)(fa) (as inserted by s 31(1)), s 36(11), new s 63(5a) (as inserted by s 38(3)), ss 38(10), (11), 70(3), new Pt 7 ss 105L(2) & 105M (as inserted by s 72), new Sch 1 cl 5 (as substituted by s 83)—uncommenced
2013	65	<b><i>Community Housing Providers (National Law) (South Australia) Act 2013</i></b>	21.11.2013	<b>Sch 3 (cll 6—12)—1.4.2014 (<i>Gazette 6.2.2014 p547</i>)</b>
2014	26	<i>Statutes Amendment (SACAT) Act 2014</i>	11.12.2014	Pt 14 (ss 158—186)—29.3.2015 ( <i>Gazette 5.3.2015 p883</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 1		
s 2	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
s 3		
s 3(1)		
bond	inserted by 13/2013 s 4(1)	1.3.2014
collateral agreement	inserted by 13/2013 s 4(1)	uncommenced—not incorporated
domestic facility requiring instructions	inserted by 13/2013 s 4(2)	1.3.2014
domestic services agreement	inserted by 13/2013 s 4(2)	uncommenced—not incorporated
<i>financial institution</i>	<i>deleted by 33/1999 Sch (item 45(a))</i>	1.7.1999

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<i>mediation</i>	<i>deleted by 13/2013 s 4(3)</i>	1.3.2014
no premium	inserted by 13/2013 s 4(3)	uncommenced—not incorporated
retirement village		
personal documents	inserted by 13/2013 s 4(3)	1.3.2014
<i>registered agent</i>	<i>deleted by 13/2013 s 4(4)</i>	1.3.2014
<i>registered</i>	<i>inserted by 13/2013 s 4(4)</i>	1.3.2014
<i>community housing organisation</i>		
	<b><i>deleted by 65/2013 Sch 3 cl 6</i></b>	<b>1.4.2014</b>
<b>registered community housing provider</b>	<b>inserted by 65/2013 Sch 1 cl 6</b>	<b>1.4.2014</b>
<i>registered housing association</i>	<i>inserted by 13/2013 s 4(4)</i>	1.3.2014
	<b><i>deleted by 65/2013 Sch 3 cl 6</i></b>	<b>1.4.2014</b>
<i>registered housing co-operative</i>	<i>amended by 13/2013 s 4(5)</i>	1.3.2014
	<b><i>deleted by 65/2013 Sch 3 cl 6</i></b>	<b>1.4.2014</b>
rent	substituted by 13/2013 s 4(6)	uncommenced—not incorporated
<i>security</i>	<i>deleted by 13/2013 s 4(7)</i>	1.3.2014
<i>security bond</i>	<i>deleted by 13/2013 s 4(7)</i>	1.3.2014
statutory charges	inserted by 13/2013 s 4(8)	1.3.2014
<i>statutory rates, taxes and charges</i>	<i>deleted by 13/2013 s 4(8)</i>	1.3.2014
tenancy dispute	amended by 13/2013 s 4(9)	1.3.2014
s 3(4)	inserted by 55/1999 s 3	3.10.1999
s 5		
s 5(1)	amended by 19/2007 Sch 2 cl 1	5.11.2007
	amended by 13/2013 s 5(1)—(3)	1.3.2014
s 5(1a)	inserted by 20/2007 s 92(1)	11.2.2008
s 5(1b)	inserted by 13/2013 s 5(4)	1.3.2014
s 5(1c)	inserted by 13/2013 s 5(4)	uncommenced—not incorporated
s 5(2)	amended by 55/1999 s 4	3.10.1999
	amended by 20/2007 s 92(2)—(5)	11.2.2008
Pt 2		
s 9	<i>deleted by 84/2009 s 299</i>	1.2.2010
Pt 3		
Pt 3 Div 1		
s 13		
s 13(1a)	inserted by 13/2013 s 6	1.3.2014
s 15	substituted by 13/2013 s 7	1.3.2014
s 16		
s 16(1)	s 16 redesignated as s 16(1) by 13/2013 s 8	1.3.2014
s 16(2)	inserted by 13/2013 s 8	1.3.2014
Pt 3 Div 2		

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s 21	amended by 13/2013 s 9	1.3.2014
Pt 3 Div 3		
s 24		
s 24(1)	amended by 20/2007 s 93	11.2.2008
	amended by 13/2013 s 10(1)	1.3.2014
s 24(2) and (5)	amended by 13/2013 s 10(2)	1.3.2014
s 25		
s 25(3)	inserted by 13/2013 s 11	1.3.2014
Pt 3 Div 4	<i>deleted by 13/2013 s 12</i>	1.3.2014
Pt 3 Div 5		
s 31		
s 31(2)	amended by 13/2013 s 13(1), (2)	1.3.2014
s 31(3)	inserted by 13/2013 s 13(3)	1.3.2014
s 32		
s 32(1)	amended by 13/2013 s 14(1), (2)	1.3.2014
s 32(1a)	inserted by 13/2013 s 14(3)	1.3.2014
s 32(2)	substituted by 13/2013 s 14(4)	1.3.2014
<b>s 32(3)—(5)</b>	<b>substituted by 65/2013 Sch 3 cl 7</b>	<b>1.4.2014</b>
Pt 3 Div 6	<i>deleted by 13/2013 s 15</i>	1.3.2014
Pt 3 Div 7		
s 36		
s 36(1)	amended by 21/1998 s 24(a)	28.5.1998
s 36(2)	amended by 59/2001 s 19	1.7.2002
s 36(3)	inserted by 21/1998 s 24(b)	28.5.1998
s 37		
s 37(2)	amended by 13/2013 s 16(1)	1.3.2014
s 37(3)	inserted by 13/2013 s 16(2)	1.3.2014
Pt 3 Div 9		
s 41		
s 41(1)	amended by 13/2013 s 17(1)	1.3.2014
s 41(2)	<i>deleted by 13/2013 s 17(2)</i>	1.3.2014
s 42	<i>deleted by 13/2013 s 18</i>	1.3.2014
Pt 3 Div 10		
s 45		
s 45(1)	amended by 13/2013 s 19(1)—(3)	1.3.2014
s 45(3)	inserted by 13/2013 s 19(4)	1.3.2014
s 46		
s 46(3)	inserted by 13/2013 s 20	1.3.2014
s 47		
s 47(4)	inserted by 13/2013 s 21	1.3.2014
Pt 4		
Pt 4 Div A1	inserted by 13/2013 s 22	1.3.2014
Pt 4 Div 1		

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<i>s 48 before substitution by 13/2013</i>		
<i>s 48(1), (2) and (4) amended by 34/1996 s 4 (Sch cl 29)</i>		3.2.1997
s 48	substituted by 13/2013 s 23	1.3.2014
s 49	amended by 34/1996 s 4 (Sch cl 29)	3.2.1997
	substituted by 13/2013 s 24	1.3.2014
s 50	amended by 13/2013 s 25	1.3.2014
s 51	amended by 13/2013 s 26	1.3.2014
Pt 4 Div 2		
s 52		
s 52(1)	amended by 13/2013 s 27(1)	1.3.2014
s 52(2)	amended by 13/2013 s 27(2)	1.3.2014
s 52(3)	amended by 13/2013 s 27(3)	1.3.2014
Pt 4 Div 3		
s 53		
s 53(1)	amended by 13/2013 s 28(1), (2)	1.3.2014
s 54		
s 54(1)	amended by 13/2013 s 29(1)	1.3.2014
s 54(2)	amended by 13/2013 s 29(2)	1.3.2014
s 54(3)	amended by 13/2013 s 29(3)	1.3.2014
s 55		
s 55(1)	amended by 13/2013 s 30(1)	1.3.2014
s 55(2)	amended by 13/2013 s 30(2), (3)	1.3.2014
	<b>amended by 65/2013 Sch 3 cl 8(1), (2)</b>	<b>1.4.2014</b>
s 55(2a)	inserted by 13/2013 s 30(4)	1.3.2014
s 55(7)	inserted by 13/2013 s 30(5)	1.3.2014
s 56		
s 56(2)	(fa) inserted by 13/2013 s 31(1)	uncommenced—not incorporated
	(fb) inserted by 13/2013 s 31(1)	1.3.2014
s 56(5)	amended by 13/2013 s 31(2)	1.3.2014
s 56A	inserted by 13/2013 s 32	1.3.2014
s 57		
s 57(1)	amended by 13/2013 s 33(1), (2)	1.3.2014
s 57(2)	amended by 13/2013 s 33(3), (4)	1.3.2014
<i>s 58 before substitution by 13/2013</i>		
<i>s 58(1)</i>	<i>amended by 34/1996 s 4 (Sch cl 29)</i>	3.2.1997
<i>s 58(2)</i>	<i>amended by 33/1999 Sch (item 45(b))</i>	1.7.1999
s 58	substituted by 13/2013 s 34	1.3.2014
s 58A	inserted by 13/2013 s 34	1.3.2014
Pt 4 Div 4		
heading	amended by 13/2013 s 35	1.3.2014

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s 61		
s 61(1)	amended by 13/2013 s 36(1)—(3)	1.3.2014
s 61(2)	amended by 13/2013 s 36(4)—(7)	1.3.2014
s 61(2a)	inserted by 13/2013 s 36(8)	1.3.2014
s 61(3)	amended by 13/2013 s 36(9)	1.3.2014
s 61(4)	amended by 13/2013 s 36(10)	1.3.2014
s 61(5)	inserted by 13/2013 s 36(11)	uncommenced—not incorporated
s 62		
s 62(1)	amended by 34/1996 s 4 (Sch cl 29)	3.2.1997
	amended by 13/2013 s 37(1), (2)	1.3.2014
s 62(2)	amended by 34/1996 s 4 (Sch cl 29)	3.2.1997
	amended by 13/2013 s 37(3)—(5)	1.3.2014
s 63		
s 63(1)	amended by 13/2013 s 38(1)	1.3.2014
s 63(3)	amended by 13/2013 s 38(2)	1.3.2014
s 63(5)	substituted by 13/2013 s 38(3)	1.3.2014
s 63(5a)	inserted by 13/2013 s 38(3)	uncommenced—not incorporated
s 63(6)	amended by 13/2013 s 38(4)	1.3.2014
s 63(7)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
	amended by 13/2013 s 38(5), (6)	1.3.2014
s 63(8)	amended by 13/2013 s 38(7)	1.3.2014
s 63(9)	amended by 13/2013 s 38(8), (9)	1.3.2014
s 63(11)	amended by 13/2013 s 38(10)	uncommenced—not incorporated
s 63(12)	deleted by 13/2013 s 38(11)	uncommenced—not incorporated
s 63(13)	s 63 footnotes 1 and 2 redesignated as s 63(13) by 44/2003 s 3(1) (Sch 1)	24.11.2003
	amended by 13/2013 s 38(12)	1.3.2014
Pt 4 Div 5		
s 65		
s 65(2)	amended by 13/2013 s 39(1), (2)	1.3.2014
Pt 4 Div 6		
s 66		
s 66(1)	amended by 13/2013 s 40(1)	1.3.2014
s 66(2)	amended by 13/2013 s 40(2), (3)	1.3.2014
s 66(3)	amended by 13/2013 s 40(4), (5)	1.3.2014
Pt 4 Div 7		
s 68		
s 68(1)	amended by 13/2013 s 41(1)	1.3.2014
s 68(1a)	inserted by 13/2013 s 41(2)	1.3.2014
s 68(2)	amended by 13/2013 s 41(3)	1.3.2014
	<b>amended by 65/2013 Sch 3 cl 9</b>	<b>1.4.2014</b>
s 68(3)	substituted by 13/2013 s 41(4)	1.3.2014
s 68(4)	amended by 13/2013 s 41(5)	1.3.2014

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s 68(5)	inserted by 13/2013 s 41(6)	1.3.2014
Pt 4 Div 8		
s 69		
s 69(1)	amended by 13/2013 s 42(1)	1.3.2014
s 69(2)	amended by 13/2013 s 42(2), (3)	1.3.2014
s 69(3a)	inserted by 13/2013 s 42(4)	1.3.2014
s 70		
s 70(1a)	inserted by 13/2013 s 43(1)	1.3.2014
s 70(3)	amended by 13/2013 s 43(2)	1.3.2014
Pt 4 Div 9A	inserted by 13/2013 s 44	1.3.2014
Pt 4 Div 10		
s 72	substituted by 13/2013 s 45	1.3.2014
Pt 4 Div 11		
heading	substituted by 13/2013 s 46	1.3.2014
s 73		
s 73(1)	amended by 13/2013 s 47(1)	1.3.2014
s 73(2)	amended by 54/2012 s 34(1)	28.2.2013
	substituted by 13/2013 s 47(2)	1.3.2014
s 73(3)	amended by 54/2012 s 34(2)	28.2.2013
	substituted by 13/2013 s 47(2)	1.3.2014
s 73(4)	inserted by 54/2012 s 34(3)	28.2.2013
	amended by 13/2013 s 47(3)	1.3.2014
s 73(5)	inserted by 54/2012 s 34(3)	28.2.2013
s 73(6)	inserted by 54/2012 s 34(3)	28.2.2013
water security rebate amount	amended by 13/2013 s 47(4)	8.6.2013
Pt 4 Div 12		
s 74		
s 74(2)	amended by 13/2013 s 48(1)	1.3.2014
	<b>amended by 65/2013 Sch 3 cl 10(1)</b>	<b>1.4.2014</b>
s 74(2a)	s 74(2) dot point redesignated as s 74(2a) by 44/2003 s 3(1) (Sch 1)	24.11.2003
	substituted by 13/2013 s 48(2)	1.3.2014
	<b>amended by 65/2013 Sch 3 cl 10(2)</b>	<b>1.4.2014</b>
s 74(2ab)	inserted by 13/2013 s 48(2)	1.3.2014
s 74(2b) and (2c)	s 74(2) dot points redesignated as s 74(2b) and (2c) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 74(5)	amended by 13/2013 s 48(3)	1.3.2014
Pt 4 Div 15		
s 77		
s 77(3)	amended by 13/2013 s 49	1.3.2014
s 78A	inserted by 13/2013 s 50	1.3.2014
Pt 5		
Pt 5 Div 1		



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s 79	(a) deleted by 13/2013 s 51	1.3.2014
s 79A	inserted by 13/2013 s 52	1.3.2014
Pt 5 Div 2		
s 80		
s 80(2)	amended by 13/2013 s 53	1.3.2014
s 80(6) and (7)	s 80(5) dot points redesignated as s 80(6) and (7) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 81		
s 81(3)	amended by 13/2013 s 54(1)	1.3.2014
s 81(4)	amended by 13/2013 s 54(2)	1.3.2014
s 82		
s 82(1)	<b>substituted by 65/2013 Sch 3 cl 11</b>	<b>1.4.2014</b>
s 83		
s 83(2)	substituted by 13/2013 s 55	1.3.2014
	<b>amended by 65/2013 Sch 3 cl 12</b>	<b>1.4.2014</b>
ss 83A and 83B	inserted by 13/2013 s 56	1.3.2014
s 84		
s 84(1)	substituted by 13/2013 s 57(1)	1.3.2014
s 84(3)	inserted by 13/2013 s 57(2)	1.3.2014
Pt 5 Div 3		
s 85		
s 85(3a)	s 85(3) dot point redesignated as s 85(3a) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 85A	inserted by 13/2013 s 58	1.3.2014
ss 86A and 86B	inserted by 13/2013 s 59	1.3.2014
Pt 5 Div 4		
s 87		
s 87(1a) and (1b)	inserted by 13/2013 s 60	1.3.2014
s 90		
s 90(2)	substituted by 55/1999 s 5	3.10.1999
	amended by 44/2006 s 49	18.1.2007
s 90(2a)	inserted by 55/1999 s 5	3.10.1999
s 90(3)		
interested person	amended by 13/2013 s 61(1)	1.3.2014
s 90(4) and (5)	inserted by 13/2013 s 61(2)	1.3.2014
Pt 5 Div 5		
s 92A	inserted by 13/2013 s 62	1.3.2014
Pt 5 Div 6		
s 93		
s 93(1)	substituted by 13/2013 s 63(1)	1.3.2014
s 93(2)	amended by 13/2013 s 63(2)	1.3.2014
s 93(4a)	s 93(4) dot point redesignated as s 93(4a) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 94		

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s 94(1a)	inserted by 13/2013 s 64	1.3.2014
s 95	amended by 13/2013 s 65	1.3.2014
s 96		
s 96(1a)—(1c)	inserted by 13/2013 s 66	1.3.2014
<i>Pt 5 Div 7 before substitution by 13/2013</i>		
s 97		
s 97(4)	<i>substituted by 55/1999 s 6(a)</i>	3.10.1999
s 97(6)	<i>amended by 55/1999 s 6(b)</i>	3.10.1999
Pt 5 Div 7	substituted by 13/2013 s 67	1.3.2014
Pt 5 Div 8		
s 99		
s 99(1)	substituted by 13/2013 s 68(1)	1.3.2014
s 99(3)	amended by 13/2013 s 68(2)	1.3.2014
s 99(5)	amended by 13/2013 s 68(3)	1.3.2014
s 99(6)	amended by 13/2013 s 68(4)	1.3.2014
s 99(8)	amended by 13/2013 s 68(2)	1.3.2014
Pt 5A	inserted by 13/2013 s 69	1.3.2014
Pt 6		
s 100		
s 100(3)	amended by 13/2013 s 70(1)	1.3.2014
s 100(5)	amended by 13/2013 s 70(2)	1.3.2014
s 100(6)	inserted by 13/2013 s 70(3)	uncommenced—not incorporated
s 101		
s 101(1)	s 101 amended and redesignated as s 101(1) by 13/2013 s 71(1)—(3)	7.2.2014
s 101(2)	inserted by 13/2013 s 71(3)	7.2.2014
<i>Pt 7 before substitution by 13/2013</i>		
s 105A	<i>inserted by 21/1998 s 25</i>	28.5.1998
Pt 7	substituted by 13/2013 s 72	1.3.2014 except ss 105L(2) and 105M—uncommenced—not incorporated
Pt 8		
Pt 8 Div 1	substituted by 13/2013 s 73	1.3.2014
Pt 8 Div 3		
s 110		
s 110(1)	s 110 amended and redesignated as s 110(1) by 55/1999 s 7(a)—(c)	3.10.1999
	amended by 13/2013 s 74(1)—(3)	1.3.2014
s 110(2)	inserted by 55/1999 s 7(c)	3.10.1999
Pt 8 Div 4		
s 113		
s 113(1)	amended by 13/2013 s 75(1)	1.3.2014

s 113(3)	amended by 13/2013 s 75(2), (3)	1.3.2014
s 114	amended by 13/2013 s 76	1.3.2014
Pt 9		
s 115		
s 115(3)	amended by 13/2013 s 77	1.3.2014
s 116	<i>deleted by 13/2013 s 78</i>	<i>1.3.2014</i>
s 117A	inserted by 13/2013 s 79	1.3.2014
s 119		
s 119(1)	amended by 21/1998 s 26	28.5.1998
s 119(3)	amended by 13/2013 s 80	1.3.2014
s 120		
s 120(1)	amended by 13/2013 s 81(1)	1.3.2014
s 120(2)	<i>deleted by 13/2013 s 81(2)</i>	<i>1.3.2014</i>
s 121		
s 121(3)	amended by 13/2013 s 82(1)	1.3.2014
s 121(4)	inserted by 34/1996 s 4 (Sch cl 29)	3.2.1997
	amended by 13/2013 s 82(2)	1.3.2014
<i>Sch before deletion by 13/2013</i>	<i>heading substituted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
<i>Div 1</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
<i>Div 2 heading</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
<i>Div 3</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
<i>Sch</i>	<i>deleted by 13/2013 s 83</i>	<i>1.3.2014</i>
Sch 1	inserted by 13/2013 s 83	1.3.2014 except cl 5—uncommenced

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996*

#### 5—Transitional provision

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

## Historical versions

Reprint No 1—3.2.1997

Reprint No 2—28.5.1998

Reprint No 3—1.7.1999

Reprint No 4—3.10.1999

Reprint No 5—1.7.2002

Reprint No 6—24.11.2003

18.1.2007

5.11.2007

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11.2.2008

1.2.2010

28.2.2013

8.6.2013

7.2.2014

1.3.2014