

South Australia

# Residential Tenancies (Miscellaneous) Amendment Act 2013

An Act to amend the *Residential Tenancies Act 1995*; and to make related amendments to the *Fair Trading Act 1987* and the *Residential Parks Act 2007*.

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2 Amendment of section 29—Repayment of bond

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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 (Miscellaneous) Amendment Act 2013*.

**2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

**3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

**Part 2—Amendment of *Residential Tenancies Act 1995*****4—Amendment of section 3—Interpretation**

(1) Section 3(1)—after the definition of *ancillary property* insert:

*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;

*collateral agreement*, in relation to a residential tenancy agreement for residential premises in a no premium retirement village, includes a domestic services agreement that a tenant of the premises is required to enter into as a condition of the residential tenancy agreement or otherwise as a condition of admission as a resident of the village;

(2) Section 3(1)—after the definition of *Commissioner* insert:

*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;

*domestic services agreement* means an agreement with a tenant of residential premises in a no premium retirement village for the provision of domestic services (such as meals, cleaning, gardening and laundry of linen);

- (3) Section 3(1), definition of *mediation*—delete the definition and substitute:

*no premium retirement village* means a complex of residential premises or a number of separate complexes of residential premises that would be a retirement village within the meaning of the *Retirement Villages Act 1987* except that no resident or prospective resident of the village pays a premium (within the meaning of that Act) in consideration for, or in contemplation of, admission as a resident of the village;

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

- (4) Section 3(1), definition of *registered agent*—delete the definition and substitute:

*registered community housing organisation* means a registered housing association or a registered housing co-operative;

*registered housing association* means a housing association registered under Schedule 1 of the *South Australian Co-operative and Community Housing Act 1991*;

- (5) Section 3(1), definition of *registered housing co-operative*—delete "*Housing Co-operatives Act 1991*" and substitute:

*South Australian Co-operative and Community Housing Act 1991*

- (6) Section 3(1), definition of *rent*—delete the definition and substitute:

*rent* consists of—

- (a) the amount payable under a residential tenancy agreement for the right to occupy premises for a period of the tenancy; and
- (b) if the residential tenancy agreement is for residential premises in a no premium retirement village and there is a domestic services agreement collateral to the residential tenancy agreement—the amount payable under the domestic services agreement for the period of the tenancy referred to in paragraph (a);

- (7) Section 3(1), definitions of *security* and *security bond*—delete the definitions

- (8) Section 3(1), definition of *statutory rates, taxes and charges*—delete the definition and substitute:

*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;

- (9) Section 3(1), definition of *tenancy dispute*—after paragraph (b) insert:

or

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

### **5—Amendment of section 5—Application of Act**

- (1) Section 5(1)(a)(ii)—after the present contents of subparagraph (ii) insert:

**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).

- (2) Section 5(1)(c)—delete "An agreement conferring a right to occupy premises for a fixed term of 60 days or longer will be taken, in the absence of proof to the contrary, not to have been genuinely entered into for the purpose of conferring a right to occupy premises for a holiday."
- (3) Section 5(1)(e)—after "premises" insert:  
for a period of 28 days or less
- (4) Section 5—after subsection (1a) insert:
- (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).
- (1c) For the purposes of this Act, a residential tenancy agreement for residential premises in a no premium retirement village is to be taken not to be an agreement under which a person boards or lodges with another.

### **6—Amendment of section 13—Presiding and Deputy Presiding Members**

Section 13—after subsection (1) insert:

- (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.

### **7—Substitution of section 15**

Section 15—delete the section and substitute:

**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.

### **8—Amendment of section 16—Registrar may exercise jurisdiction in certain cases**

Section 16—after its present contents (now to be designated as (subsection (1)) insert:

- (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).

### **9—Amendment of section 21—Duty to act expeditiously**

Section 21—delete "hear and"

### **10—Amendment of section 24—Jurisdiction of Tribunal**

- (1) Section 24(1)(a)—delete "a matter that may be the subject of an application under this Act" and substitute:

a tenancy dispute

- (2) Section 24(2) and (5)—delete "\$10 000" wherever occurring and substitute in each case:

\$40 000

### **11—Amendment of section 25—Application to Tribunal**

Section 25—after subsection (2) insert:

- (3) A notice under subsection (2) directed to an occupier or subtenant of premises need not address the occupier or subtenant by name.

### **12—Repeal of Part 3 Division 4**

Part 3 Division 4—delete the Division

### **13—Amendment of section 31—Tribunal's power to gather evidence**

- (1) Section 31(2)—delete "and liable to a penalty not exceeding \$2 000"

- (2) Section 31(2)—at the foot of subsection (2) insert:

Maximum penalty: \$2 500.

- (3) Section 31—after subsection (2) insert:

- (3) Evidence before the Tribunal cannot be used in criminal proceedings except proceedings for an offence against this Act or for perjury.

### **14—Amendment of section 32—Procedural powers of Tribunal**

- (1) Section 32(1)(c)—delete "the application frivolous" and substitute:

that the application is vexatious or frivolous or involves a trivial matter or amount



- (2) Section 32(1)(d)—delete "hear and"
- (3) Section 32—after subsection (1) insert:
  - (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.
- (4) Section 32(2)—delete subsection (2) and substitute:
  - (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.

### **15—Repeal of Part 3 Division 6**

Part 3 Division 6—delete the Division

### **16—Amendment of section 37—Application to vary or set aside order**

- (1) Section 37(2)—delete "three months" and substitute:

1 month
- (2) Section 37—after subsection (2) insert:
  - (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.

### **17—Amendment of section 41—Appeals**

- (1) Section 41(1)—after "lies to" insert:

the Administrative and Disciplinary Division of
- (2) Section 41(2)—delete subsection (2)

### **18—Repeal of section 42**

Section 42—delete the section

### **19—Amendment of section 45—Punishment of contempts**

- (1) Section 45(1)(a)—delete "\$2 000" and substitute:

\$5 000

(2) Section 45(1)—after paragraph (a) insert:

- (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

(3) Section 45(1)(b)—delete "six months" and substitute:

1 year

(4) Section 45—after subsection (2) insert:

- (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.

## **20—Amendment of section 46—Fees**

Section 46—after subsection (2) insert:

- (3) A fee paid by a party is not recoverable, including in connection with an award of costs or an order to pay compensation.

## **21—Amendment of section 47—Procedural rules**

Section 47—after subsection (3) insert:

- (4) The *Subordinate Legislation Act 1978* does not apply to Rules of the Tribunal.

## **22—Insertion of Part 4 Division A1**

Part 4—before Division 1 insert:

### **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.

## **23—Substitution of section 48**

Section 48—delete the section and substitute:

### **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.

## **24—Substitution of section 49**

Section 49—delete the section and substitute:

### **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.

## **25—Amendment of section 50—Cost of preparing agreement**

Section 50—delete ", or a document recording its terms,"

## **26—Amendment of section 51—False information from tenant**

Section 51, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$1 250.

**27—Amendment of section 52—Discrimination against tenants with children**

- (1) Section 52(1), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$2 500.
- (2) Section 52(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$2 500.
- (3) Section 52(3)—delete "or in premises adjacent to those premises"

**28—Amendment of section 53—Permissible consideration for residential tenancy**

- (1) Section 53(1)—delete "security" and substitute:  
a bond
- (2) Section 53(1), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$2 500.

**29—Amendment of section 54—Rent in advance**

- (1) Section 54(1), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (2) Section 54(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (3) Section 54(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$2 500.  
Expiation fee: \$210.

**30—Amendment of section 55—Variation of rent**

- (1) Section 55(1)—delete "A series of residential tenancy agreements between the same parties and relating to the same premises is treated as a single residential tenancy agreement for the purposes of this section unless at least six months have elapsed since rent for the premises was fixed or last increased."
- (2) Section 55(2)(c)—delete "six months" wherever occurring and substitute in each case:  
12 months
- (3) Section 55(2)(c)(ii) and (iii)—delete "registered housing co-operative" wherever occurring and substitute in each case:  
registered community housing organisation
- (4) Section 55—after subsection (2) insert:
  - (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.

- (5) Section 55—after subsection (6) insert:
- (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.

### **31—Amendment of section 56—Excessive rent**

- (1) Section 56(2)—after paragraph (f) insert:
- (fa) the estimated cost of goods and services provided under any domestic services agreement collateral to the residential tenancy agreement; 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
- (2) Section 56(5), penalty provision— delete the penalty provision and substitute:  
Maximum penalty: \$2 500.

### **32—Insertion of section 56A**

After section 56 insert:

#### **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.

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

- (1) Section 57(1)—delete "a proper record is kept of rent received under the agreement." and substitute:
- 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.
- (2) Section 57(1), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$1 250.  
Expiation fee: \$210.
- (3) Section 57(2)(a)—delete "the rent" and substitute:  
a payment
- (4) Section 57(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$2 500.

### **34—Substitution of section 58**

Section 58—delete the section and substitute:

#### **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.

### **35—Amendment of heading to Part 4 Division 4**

Heading to Part 4 Division 4—delete "Security"

### **36—Amendment of section 61—Bond**

- (1) Section 61(1)(a)—delete "security"
- (2) Section 61(1)(b)—delete "security" and substitute:  
a bond



- (3) Section 61(1), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$5 000.
- (4) Section 61(2)—delete "the security under a security" and substitute:  
a
- (5) Section 61(2)—delete "the security by" and substitute:  
the bond by
- (6) Section 61(2)—delete "the security exceeds" and substitute:  
the bond exceeds
- (7) Section 61(2)—delete "The requirement has effect as if it were a term of the residential tenancy agreement."
- (8) Section 61—after subsection (2) insert:
  - (2a) A requirement under subsection (2) has effect as if it were a term of the residential tenancy agreement.
- (9) Section 61(3)(a)—delete "\$150" and substitute:  
\$250
- (10) Section 61(4)—delete "security" and substitute:  
bond
- (11) Section 61—after subsection (4) insert:
  - (5) For the purposes of determining the relevant limit, any amount payable under a domestic services agreement collateral to the residential tenancy agreement is not to be regarded as rent.

**37—Amendment of section 62—Receipt of bond and transmission to Commissioner**

- (1) Section 62(1)—delete "security, give the person who pays" and substitute:  
a bond, give the person who paid
- (2) Section 62(1), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:  
Maximum penalty: \$2 500.  
Expiation fee: \$210.
- (3) Section 62(2)—delete "of security" and substitute:  
of a bond
- (4) Section 62(2)—delete "the security" and substitute:  
the bond
- (5) Section 62(2), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:  
Maximum penalty: \$5 000.  
Expiation fee: \$315.

### **38—Amendment of section 63—Repayment of bond**

- (1) Section 63(1)(a) and (b)—delete "security" wherever occurring and substitute in each case:  
bond
- (2) Section 63(3)—delete "security" and substitute:  
bond
- (3) Section 63(5)—delete subsection (5) and substitute:
  - (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.
  - (5a) However, if the application is made by the landlord alone more than 12 months after the termination of the residential tenancy agreement—
    - (a) the Commissioner must refer the application to the Tribunal for determination; and
    - (b) the Tribunal may authorise payment of the amount of the bond as proposed in the application if the Tribunal is satisfied, on the basis of information provided by the landlord, that the landlord is entitled to the payment.
- (4) Section 63(6)—delete "security" and substitute:  
bond
- (5) Section 63(7)—delete "security" wherever occurring and substitute in each case:  
bond
- (6) Section 63(7)(a)—after "provided or paid" insert:  
on behalf of the tenant
- (7) Section 63(8)—delete "security"
- (8) Section 63(9)(a)—delete "security for the performance of obligations under a residential tenancy agreement is provided" and substitute:  
a bond is provided on behalf of the tenant
- (9) Section 63(9)(b)—delete "security" and substitute:  
bond
- (10) Section 63(11)—delete "and, in the case of a payment to a tenant, must include interest"
- (11) Section 63(12)—delete subsection (12)
- (12) Section 63(13)(a)—delete "security" wherever occurring and substitute in each case:  
bond

### **39—Amendment of section 65—Quiet enjoyment**

- (1) Section 65(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$5 000.
- (2) Section 65(2)—delete "The liability to be prosecuted for the offence is in addition to civil liability for breach of the agreement."

### **40—Amendment of section 66—Security of premises**

- (1) Section 66(1)—after paragraph (b) insert:  
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) Section 66(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$5 000.
- (3) Section 66(2)—delete "The liability to be prosecuted for the offence is in addition to civil liability for breach of the agreement."
- (4) Section 66(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$5 000.
- (5) Section 66(3)—delete "The liability to be prosecuted for the offence is in addition to civil liability the agent or the landlord may incur."

### **41—Amendment of section 68—Landlord's obligation to repair**

- (1) Section 68(1)—delete "The obligation applies even though the tenant had notice of the state of disrepair before entering into occupation."
- (2) Section 68—after subsection (1) insert:
  - (1a) The obligation to repair applies even though the tenant had notice of the state of disrepair before entering into occupation.
- (3) Section 68(2)(b)—delete "registered housing co-operative" and substitute:  
registered community housing organisation
- (4) Section 68(3)—delete subsection (3) and substitute:
  - (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.
- (5) Section 68(4)—after "repairing the premises" insert:
    - or to compensation under this section
  - (6) Section 68—after subsection (4) insert:
    - (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.

#### **42—Amendment of section 69—Tenant's responsibility for cleanliness, damage and loss**

- (1) Section 69(1)—after paragraph (a) insert:
  - (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
- (2) Section 69(2), penalty provision—delete the penalty provision and substitute:
  - Maximum penalty: \$2 500.
- (3) Section 69(2)—delete "The liability to be prosecuted for an offence is in addition to any civil liability for breach of the agreement."
- (4) Section 69—after subsection (3) insert:
  - (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.

#### **43—Amendment of section 70—Alteration of premises**

- (1) Section 70—after subsection (1) insert:
- (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) Section 70(3)—after "premises by" insert:
- making an alteration or addition to the premises or by

#### **44—Insertion of Part 4 Division 9A**

Part 4—after Division 9 insert:

### **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.

#### **45—Substitution of section 72**

Section 72—delete the section and substitute:

#### **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.

#### **46—Substitution of heading to Part 4 Division 11**

Heading to Part 4 Division 11—delete the heading and substitute:

#### **Division 11—Statutory charges**

#### **47—Amendment of section 73—Statutory charges**

- (1) Section 73(1)—delete "statutory rates, taxes and charges" and substitute:  
statutory charges
- (2) Section 73(2) and (3)—delete subsections (2) and (3) and substitute:
  - (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.
- (3) Section 73(4)—delete "must, as soon as is reasonably practicable after obtaining the benefit of the water security rebate amount, ensure that an amount borne by a tenant under an agreement under subsection (2) or under subsection (3)(b)" and substitute:  
must ensure that an amount borne by a tenant under an agreement under subsection (2)(a) or under subsection (2)(b)(i)
- (4) Section 73(6), definition of *water security rebate amount*—after "those rates and charges" insert:  
(whether before or after the commencement of this definition)

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

- (1) Section 74(2)(b)(i)—delete "registered housing co-operative" and substitute:  
registered community housing organisation



(2) Section 74(2a)—delete subsection (2a) and substitute:

(2a) The absence of consent does not invalidate an assignment or sublease unless the landlord is a registered community housing organisation.

(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).

(3) Section 74(5)—delete "security" wherever occurring and substitute in each case:  
a bond

#### **49—Amendment of section 77—Accelerated rent and liquidated damages**

Section 77(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

#### **50—Insertion of section 78A**

After section 78 insert:

##### **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.

#### **51—Amendment of section 79—Termination of residential tenancy**

Section 79(a)—delete paragraph (a)

## **52—Insertion of section 79A**

After section 79 insert:

### **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.

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

Section 80(2)—after paragraph (c) insert:

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.

## **54—Amendment of section 81—Termination because possession is required by landlord for certain purposes**

- (1) Section 81(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$2 500.
- (2) Section 81(4), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$2 500.

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

Section 83(2)—delete subsection (2) and substitute:

- (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 housing co-operative cannot terminate a tenancy with a member of the co-operative.

## **56—Insertion of sections 83A and 83B**

After section 83 insert:

### **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.

## **57—Amendment of section 84—Limitation of right to terminate**

- (1) Section 84(1)—delete subsection (1) and substitute:
    - (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) Section 84—after subsection (2) insert:
- (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.

## **58—Insertion of section 85A**

After section 85 insert:

### **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.

## **59—Insertion of sections 86A and 86B**

After section 86 insert:

### **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.

#### **60—Amendment of section 87—Termination on application by landlord**

Section 87—after subsection (1) insert:

- (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.

#### **61—Amendment of section 90—Tribunal may terminate tenancy if tenant's conduct unacceptable**

- (1) Section 90(3), definition of *interested person*—after paragraph (b) insert:
- 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*.
- (2) Section 90—after subsection (3) insert:
- (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).

## **62—Insertion of section 92A**

After section 92 insert:

### **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.

## **63—Amendment of section 93—Order for possession**

(1) Section 93(1)—delete subsection (1) and substitute:

- (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) Section 93(2)—delete "has terminated or"

## **64—Amendment of section 94—Abandoned premises**

Section 94—after subsection (1) insert:

- (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.

## **65—Amendment of section 95—Repossession of premises**

Section 95, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

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

Section 96—after subsection (1) insert:

- (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).

**67—Substitution of Part 5 Division 7**

Part 5 Division 7—delete the Division and substitute:

**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.

### **68—Amendment of section 99—Enforcement of orders for possession**

- (1) Section 99(1)—delete subsection (1) and substitute:
  - (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) Section 99(3) and (8)—delete "member of the police force" wherever occurring and substitute in each case:

police officer
- (3) Section 99(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$2 500.
- (4) Section 99(6), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$2 500.

## 69—Insertion of Part 5A

After section 99 insert:

### 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.

Maximum penalty: \$5 000.

- (2) A database operator must, if asked in writing by a person whose personal information is in the residential tenancy database kept by the operator, give the person a copy of the information within 14 days after the request is made.

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.

### **70—Amendment of section 100—Residential Tenancies Fund**

- (1) Section 100(3)—delete "security" and substitute:  
bonds
- (2) Section 100(5)—delete "security bonds" and substitute:  
bonds
- (3) Section 100—after subsection (5) insert:
  - (6) In this section—  
*bond* includes a bond within the meaning of Part 7.

### **71—Amendment of section 101—Application of income**

- (1) Section 101(a)—after "Tribunal" insert:  
and the *Residential Parks Act 2007*

- (2) Section 101(b) to (f) (inclusive)—delete paragraphs (b) to (f) and substitute:
- (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.
- (3) Section 101—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (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*.

## **72—Substitution of Part 7**

Part 7—delete the Part and substitute:

### **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.

- (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.

### **105M—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 proprietor or the resident; or
  - (b) payment of a specified amount of the bond to the proprietor and the balance to the resident.
- (2) The application—
  - (a) must be in a form approved by the Commissioner; and



- (b) may be made jointly by the proprietor and the resident or by either the proprietor or the resident.
- (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 10 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) However, if the application is made by the proprietor alone more than 12 months after the termination of the rooming house agreement—
  - (a) the Commissioner must refer the application to the Tribunal for determination; and
  - (b) the Tribunal may authorise payment of the amount of the bond as proposed in the application if the Tribunal is satisfied, on the basis of information provided by the proprietor, that the proprietor is entitled to the payment.
- (7) 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.
- (8) Despite a preceding subsection, if—
  - (a) the bond has been provided or paid on behalf of the resident 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 proprietor—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 proprietor and, if the resident is still in possession of the premises, the resident, 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 10 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.
- (9) If a payment is made under subsection (8) and the resident is still in possession of the premises, the proprietor may require the resident to provide a new bond in accordance with section 105K.
- (10) If—
  - (a) a bond under a rooming house agreement is provided on behalf of the resident by a third party prescribed by the regulations in circumstances prescribed by the regulations; and
  - (b) the proprietor 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 resident is still in possession of the premises, the resident, 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 10 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.
- (11) If a payment is made under subsection (10), the third party must reimburse the Fund to the extent of the payment.

- (12) A payment under this section will be made from the Fund .
- (13) For the purposes of this section—
- (a) an application is undisputed if it is—
    - (i) a joint application by the proprietor and the resident; or
    - (ii) an application by the proprietor that the whole of the amount of the bond be paid to the resident; or
    - (iii) an application by the resident that the whole of the amount of the bond be paid to the proprietor; and
  - (b) an application that does not fall into any of those categories is liable to be disputed; and
  - (c) if the application was made by the proprietor, the resident is the respondent; and
  - (d) if the application was made by the resident, the proprietor is the respondent.

### **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.

### **73—Substitution of Part 8 Division 1**

Part 8 Division 1—delete the Division and substitute:

#### **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.

**74—Amendment of section 110—Powers of Tribunal**

- (1) Section 110(1)(e)—after "residential tenancy" wherever occurring insert:  
or rooming house agreement
- (2) Section 110(1)(f)—after "residential tenancy agreement" insert:  
or rooming house agreement
- (3) Section 110(1)(i)—delete "security" and substitute:  
a bond (including a bond under Part 7)

**75—Amendment of section 113—Representation in proceedings before Tribunal**

- (1) Section 113(1)—delete ", at a pre-trial conference or in proceedings for the mediation of the dispute" and substitute:  
or at a conciliation conference
- (2) Section 113(3)(b)—after "landlord" wherever occurring insert:  
or rooming house proprietor
- (3) Section 113(3)(b)—delete "landlord's" and substitute:  
party's

**76—Amendment of section 114—Remuneration of representative**

Section 114—delete ", at a pre-trial conference or in proceedings for the mediation of the dispute" and substitute:  
or at a conciliation conference

**77—Amendment of section 115—Contract to avoid Act**

Section 115(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$10 000.

**78—Repeal of section 116**

Section 116—delete the section

**79—Insertion of section 117A**

After section 117 insert:

**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.

**80—Amendment of section 119—Tribunal may exempt agreement or premises from provision of Act**

Section 119(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$2 500.

**81—Amendment of section 120—Service**

(1) Section 120(1)—after paragraph (c) insert:

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.

(2) Section 120(2)—delete subsection (2)

**82—Amendment of section 121—Regulations**

(1) Section 121(3)—delete "\$500" and substitute:

\$5 000

(2) Section 121(4)—delete "\$100" and substitute:

\$315

**83—Substitution of Schedule**

Schedule—delete the Schedule and substitute:

**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 46 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.

### **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.

## **Schedule 1—Related amendments**

### **Part 1—Amendment of *Fair Trading Act 1987***

#### **1—Amendment of section 30—Application of Part**

- (1) Section 30—delete "This Part" and substitute:

Subject to subsection (2), this Part
- (2) Section 30—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
  - (2) This Part does not apply to or in relation to a prescribed report that is provided through the use of a residential tenancy database to which Part 5A of the *Residential Tenancies Act 1995* applies.

### **Part 2—Amendment of *Residential Parks Act 2007***

#### **2—Amendment of section 29—Repayment of bond**

- (1) Section 29—after subsection (5) insert:
  - (5a) However, if the application is made by the park owner alone more than 12 months after the termination of the residential park agreement—
    - (a) the Commissioner must refer the application to the Tribunal for determination; and
    - (b) the Tribunal may authorise payment of the amount of the bond as proposed in the application if the Tribunal is satisfied, on the basis of information provided by the park owner, that the park owner is entitled to the payment.

(2) Section 29—after subsection (6) insert:

(6a) Despite a preceding subsection, if—

- (a) the bond has been provided or paid on behalf of the resident 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 park owner—the Commissioner must pay out the amount of the bond as specified in the application; or
  - (ii) in any other case—the Commissioner must give the park owner and, if the resident is still in possession of the premises, the resident, 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 10 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; or
    - (B) in any other case—the Commissioner must refer the matter to the Tribunal for determination.

(6b) If a payment is made under subsection (6a) and the resident is still in possession of the premises, the park owner may require the resident to provide a new bond in accordance with section 27.

(6c) If—

- (a) the bond is provided on behalf of the resident by a third party prescribed by the regulations in circumstances prescribed by the regulations; and
- (b) the park owner 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; or
  - (d) in any other case—the Commissioner must give the third party and, if the resident is still in possession of the premises, the resident, 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 10 days after the date on which the original notice is given—the Commissioner may pay out the amount as proposed in the application; or
    - (ii) in any other case—the Commissioner must refer the matter to the Tribunal for determination.
- (6d) If a payment is made under subsection (6c), the third party must reimburse the Fund to the extent of the payment.