

New South Wales

# Residential Tenancies Bill 2009

## Explanatory note

### Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the rights and obligations of landlords and tenants and for rental bonds and related matters, and
- (b) to repeal and re-enact, with modifications, the provisions of the *Residential Tenancies Act 1987* and the *Landlord and Tenant (Rental Bonds) Act 1977*, and
- (c) to make consequential amendments to other Acts.

### Outline of provisions

## Part 1 Preliminary

### Division 1 General

Division 1 of Part 1 (sections 1–5) of the proposed Act provides for the following matters:

- (a) the name of the proposed Act,

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- (b) the commencement of the proposed Act on a day or days to be appointed by proclamation,
- (c) the meaning of words and expressions used in the proposed Act,
- (d) that the proposed Act is to bind the Crown,
- (e) the repeal of the *Residential Tenancies Act 1987* (the **1987 Act**) and the *Landlord and Tenant (Rental Bonds) Act 1977* (the **1977 Act**).

## **Division 2      Application of Act**

Division 2 of Part 1 (sections 6–12) of the proposed Act re-enacts sections 5–7 of the 1987 Act with the following additions and modifications:

- (a) the proposed Act will not apply to premises used as a backpackers' hostel or to serviced apartments,
- (b) the exemption from the proposed Act for clubs is limited to parts of clubs used for temporary accommodation,
- (c) the proposed Act will not apply to the following additional kinds of agreements:
  - (i) agreements under which a person boards or lodges with another person,
  - (ii) agreements under which a person resides in refuge or crisis accommodation,
  - (iii) leases and licences under the *Crown Lands Act 1989*, the *Western Lands Act 1901* and the *Crown Lands (Continued Tenures) Act 1989*,
  - (iv) an agreement having a term (including any option to extend) of more than 99 years,
- (d) the existing exemption from the proposed Act for holiday accommodation will now apply to leases for periods of up to 3 months rather than 2 months,
- (e) the proposed Act will apply to agreements or arrangements under which persons occupy premises as a residence in return for or as part of remuneration for carrying out work in connection with the premises or for employment,
- (f) it is made clear that a person in a shared household who is not named as a tenant in a residential tenancy agreement will not be considered to be a tenant unless the person is named in the agreement, the tenant transfers a tenancy to the person or the person is a sub-tenant under a written agreement with the tenant under the agreement,
- (g) the Director-General of the Department of Services, Technology and Administration (the **Director-General**) or any other person may apply to the Consumer, Trader and Tenancy Tribunal (the **Tribunal**) for an order declaring that a specified agreement or premises is or are, or is or are not, a residential tenancy agreement or premises to which the proposed Act applies.

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## **Part 2 Residential tenancy agreements**

Part 2 (sections 13–22) of the proposed Act re-enacts Part 2 of the 1987 Act with the following additions and modifications:

- (a) all the provisions affecting the definition of a residential tenancy agreement are now included in one section,
- (b) if a residential tenancy agreement is of a kind for which a standard form is prescribed, it will be taken to include the terms of the standard form,
- (c) a landlord will be required to ensure that the residential tenancy agreement is in writing. A failure to do so will be an offence and will result in the landlord being prohibited from increasing rent during the first 6 months of a tenancy and losing the right to terminate the agreement without any special grounds during that period,
- (d) a tenant will be able to apply to the Tribunal for an order that the landlord prepare and enter into a written residential tenancy agreement,
- (e) the proposed Act prohibits specified kinds of terms from being included in residential tenancy agreements (such as terms requiring carpets to be professionally cleaned, requirements that the tenant take out insurance and premium and penalty rent terms) and enables regulations to be made prohibiting other specified terms,
- (f) terms that are mandatory under the proposed Act may not be included or may be varied, and prohibited terms may be included, in residential tenancy agreements with fixed terms of 20 years or more, subject to the right of a tenant to seek an order by the Tribunal that mandatory terms are included or prohibited terms are not included (with or without variation),
- (g) terms of a residential tenancy agreement will be void to the extent that they are inconsistent with terms included by the proposed Act or are prohibited by the proposed Act,
- (h) a landlord or tenant will be able to apply to the Tribunal for confirmation as to whether an additional term in a residential tenancy agreement is void or partly void for inconsistency with the proposed Act or a standard agreement,
- (i) a landlord will be required to ensure that the residential tenancy agreement contains any terms required to be included by the proposed Act and does not contain any prohibited terms and will be guilty of an offence if the landlord fails to do so.

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## **Part 3 Rights and obligations of landlords and tenants**

### **Division 1 Pre-agreement matters**

Division 1 of Part 3 (sections 23–31) of the proposed Act contains the following additional provisions relating to matters occurring before or at the time a residential tenancy agreement is entered into:

- (a) the amounts that may be charged before or when entering into a residential tenancy agreement now include a holding fee. The provision in the 1987 Act which permitted other fees to be prescribed has been omitted as has the prohibition on reservation fees,
- (b) a tenant may no longer be required to pay any costs of the preparation of a written residential tenancy agreement,
- (c) a holding fee will only be payable after a landlord has approved the tenant's application for tenancy of the residential premises. A landlord who accepts a holding fee will be prohibited from letting the residential premises to another person for 7 days unless the tenant notifies the landlord that the tenant no longer wishes to enter into the agreement,
- (d) it will be an offence for a landlord or landlord's agent to induce a tenant to enter into a residential tenancy agreement by a statement, representation or promise that the landlord or agent knows is false or misleading or by knowingly concealing a material fact,
- (e) a landlord or landlord's agent will be required to disclose any proposed sale or mortgagee action affecting the residential premises and to give the tenant an information statement in the form approved by the Director-General before the tenant enters into the residential tenancy agreement,
- (f) the requirements for condition reports, formerly contained in the regulations under the 1987 Act, have been included in the proposed Act together with a provision that makes a condition report signed by both parties evidence of the state of repair or condition of premises at the date of the report,
- (g) applications may be made to the Tribunal about disputes relating to holding fees and condition reports.

### **Division 2 Rent and other payments**

Division 2 of Part 3 (sections 32–48) of the proposed Act re-enacts section 19 and Part 4 of the 1987 Act with the following additions and modifications:

- (a) a tenant must be permitted to pay rent by at least one means for which the tenant does not incur a cost and that is reasonably available to the tenant,
- (b) a rent receipt for rent paid by cheque or by post must be given within 7 business days of payment being received,
- (c) the form of a rent record is to be prescribed by the regulations under the proposed Act,

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- (d) a landlord or landlord's agent will be required to provide a written statement setting out particulars of the rent record within 7 days of a written request being made by the tenant,
- (e) additional utility charges will be payable by the tenant, including charges for pumping out a septic system used for the residential premises and excess garbage or sanitary charges,
- (f) the tenant will be liable to pay water usage charges for residential premises if the premises are separately metered or water is delivered to premises not connected to a water supply service by vehicle and the premises contain water efficiency measures prescribed by the regulations under the proposed Act. The landlord must give the tenant 21 days to pay water usage charges and must also give the tenant evidence of the cost of the water used by the tenant. The tenant will not be required to pay water usage charges if the landlord fails to request payment within 3 months of the issue of the relevant bill and the tenant is not liable for late payment fees,
- (g) the utility charges and rates and taxes payable by a landlord are expressly stated to include specified charges, including charges (other than water usage charges) in connection with a water supply service to separately metered residential premises,
- (h) the rent under a residential tenancy agreement with a fixed term of less than 2 years may only be increased in accordance with the agreement. The rent under residential tenancy agreements with fixed term tenancies of more than 2 years may be increased during the fixed term even if the agreement does not set out the amount of or method for determining the increase, but such an increase must not be made more than once in any period of 12 months,
- (i) a landlord will be required to repay excess rent to a tenant or former tenant within 14 days of a written request by the tenant or former tenant. An application will not be able to be made to the Tribunal for an order for repayment of excess rent until 14 days after such a request has been made,
- (j) a tenant will be required to repay to the landlord the cost of replacing rent deposit books or rent cards lost by the tenant and of any bank fees charged because of funds of the tenant not being available for rent payment.

### **Division 3      Occupation and use of residential premises**

Division 3 of Part 3 (sections 49–54) of the proposed Act re-enacts sections 20–23, 25, 26 and 30 of the 1987 Act with the following additions and modifications:

- (a) the following additional obligations are imposed on a landlord:
  - (i) to take all reasonable steps to ensure that the landlord's other tenants do not interfere with the reasonable peace, comfort or privacy of the tenant in using the residential premises (this obligation also applies to the landlord's agent),

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- (ii) not to interfere with the supply of gas, electricity, water, telecommunications services or other services to the residential premises unless it is necessary to avoid danger to a person or to enable maintenance or repairs,
  - (iii) to comply with the landlord's statutory obligations relating to the health or safety of the residential premises,
- (b) additional obligations have been imposed on a tenant, on giving vacant possession of residential premises, to remove his or her goods, leave the premises in a reasonable state of cleanliness, remove or arrange for the removal of rubbish and to return all keys and security or pass cards or other similar devices for the premises,
- (c) a landlord will be required to give the tenant written notice of any intention to sell the residential premises before a contract of sale is prepared for the premises and to make all reasonable efforts to agree with the tenant as to the days and times for inspection of the premises by prospective purchasers. The tenant must not unreasonably refuse to agree to days and times for such inspections.

### **Division 4 Landlord's rights to enter residential premises**

Division 4 of Part 3 (sections 55–61) of the proposed Act re-enacts section 24 of the 1987 Act with the following additions and modifications:

- (a) the grounds on which a landlord may enter the residential premises without the consent of the tenant are to be extended to permit entry if the landlord has reasonable cause for serious concern about the health or safety of the tenant or any other person or to value the property or to show the premises to prospective buyers or mortgagees (but only with not less than 24 hours notice),
- (b) the tenant has an express duty to give persons access to the residential premises if they are authorised to have access under the Division and the tenant will be guilty of an offence if the tenant fails to do so,
- (c) the Division contains the powers of the Tribunal to order access to be given to the residential premises and to order compensation for damage caused by any person who is given access,
- (d) the landlord may apply to the Tribunal for an order authorising the landlord or other person to enter residential premises for the purpose of showing the premises to prospective purchasers on a periodic basis or to determine whether the tenant has breached a term of the residential tenancy agreement.

### **Division 5 Repairs to premises**

Division 5 of Part 3 (sections 62–65) of the proposed Act re-enacts sections 25 (1) (b) and 28 of the 1987 Act with the following additions and modifications:

- (a) it is made clear that the landlord's obligation to provide and maintain the residential premises in a reasonable state of repair applies even if the tenant

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- had notice of the state of disrepair before entering into occupation but does not apply to any disrepair caused by a breach by the tenant,
- (b) work needed to repair a broken or malfunctioning appliance, fitting or fixture that uses water or supplies water and is causing substantial amounts of water to be wasted, and to repair a breakdown in a cooling system, have been included in the list of urgent repairs for which the landlord is responsible for or is required to reimburse the tenant,
  - (c) the tenant may apply to the Tribunal for an order that the landlord carry out specified repairs or reimburse the tenant for the cost of urgent repairs. An order for carrying out specified repairs may only be granted if the landlord has breached the obligation to maintain premises in a reasonable state of repair and the landlord had notice of the need for repair and failed to act with reasonable diligence to carry out the repair,
  - (d) if any such order is made, the Tribunal may also order that all or part of the rent be paid into the Tribunal until the repair or reimbursement order has been complied with.

### **Division 6      Alterations and additions to residential premises**

Division 6 of Part 3 (sections 66–69) of the proposed Act re-enacts section 27 of the 1987 Act with the following additions and modifications:

- (a) a landlord must not unreasonably withhold consent to an alteration, addition or renovation to the residential premises by the tenant if it is of a minor or cosmetic nature,
- (b) any fixture installed by or on behalf of a tenant or any alteration, addition or renovation to the residential premises by or on behalf of the tenant is to be at the tenant's expense unless the landlord otherwise agrees,
- (c) a tenant will be entitled, at the tenant's expense, to remove any fixture installed by the tenant without the requirement for the landlord's consent, other than a fixture installed at the landlord's expense or for which the landlord provided an equivalent benefit,
- (d) the tenant may apply to the Tribunal for an order that the landlord give consent to the installation of a fixture or to a renovation, alteration or addition or an order that the tenant does not need the landlord's consent to the removal of a fixture,
- (e) the landlord may apply to the Tribunal for an order prohibiting the tenant from removing a fixture or that the tenant compensate the landlord for the cost of rectifying work done by or on behalf of the tenant on the residential premises.

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### **Division 7      Security and safety of residential premises**

Division 7 of Part 3 (proposed sections 70–73) of the proposed Act re-enacts section 29 of the 1987 Act with the following additions and modifications:

- (a) a tenant or occupant is entitled to alter, remove or add or cause or permit the alteration, removal or addition of a lock or other security device without the landlord's consent, if another tenant or occupant or former tenant or occupant becomes subject to an apprehended violence order prohibiting access to the residential premises,
- (b) the Division also enables the Tribunal to make orders in respect of occupants or tenants who exercise this right.

### **Part 4      Changes of landlord and tenant**

Part 4 (sections 74–79) of the proposed Act re-enacts Division 2 of Part 3 of the 1987 Act with the following additions and modifications:

- (a) the landlord is required not to unreasonably withhold consent to a partial transfer or sub-letting of a tenancy by a tenant,
- (b) the tenant may apply to the Tribunal for an order that the landlord consent to the partial transfer of a tenancy or the sub-letting of a tenancy by the tenant,
- (c) if a tenant dies, any remaining tenants may continue the tenancy or give the landlord 21 days notice of termination of the tenancy,
- (d) if a co-tenant is prohibited from having access to residential premises under a final apprehended violence order, that co-tenant's tenancy is automatically terminated without affecting the tenancy of any other co-tenant,
- (e) the Tribunal may recognise another occupant as a tenant after a apprehended violence order is made.

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

#### **Division 1      Termination of residential tenancy agreements generally**

Division 1 of Part 5 (sections 80–83) of the proposed Act re-enacts sections 53 and 63 of the 1987 Act with the following additions and modifications:

- (a) new definitions of **termination date** (the day by which vacant possession of residential premises is to be given), **termination notice** and **termination order** are included,
- (b) a termination order by the Tribunal must also include an order for possession of the residential premises specifying the day on which the order takes or took effect.

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## **Division 2      Termination by landlord**

Division 2 of Part 5 (sections 84–97) of the proposed Act re-enacts sections 56, 57, 58, 64, 68, 69, 77 and 78 of the 1987 Act with the following additions and modifications:

- (a) a landlord may, at any time, give notice of termination of a residential tenancy agreement for a fixed term tenancy, but only if the termination date is after the end of the fixed term and at least 30 days notice is given. In the case of periodic tenancies, 90 days notice must be given,
- (b) the power of the Tribunal to make a termination order after a notice of termination is given under the proposed Division is contained in each provision under which the notice is given, rather than in a single provision,
- (c) the Tribunal may, on application by a tenant, revoke a termination notice given by the landlord on the ground of a breach by the tenant if the tenant has remedied the breach and the Tribunal is satisfied that it is appropriate to do so in the circumstances of the case,
- (d) the Tribunal may consider additional specified factors (such as the nature of the breach and the previous history of the tenancy) when determining whether to terminate a residential tenancy agreement on the ground of a breach by the tenant,
- (e) a landlord may apply to the Tribunal for a termination order before the termination date if a termination notice is given on the ground of non-payment of rent but the Tribunal may not consider the application before the end of that period,
- (f) the Tribunal is prohibited from issuing a termination order on the ground of failure to pay rent if the tenant has paid all the rent owing or has entered into, and is complying with, a repayment plan agreed with the landlord. A tenant may not be evicted from residential premises on the ground of non-payment of rent if the tenant has paid all the rent owing or has entered into, and is complying with, a repayment plan agreed with the landlord,
- (g) a landlord may apply to the Tribunal for a termination order (without previously giving a termination notice) on the ground that the tenant has caused or permitted the use of the residential premises for unlawful purposes and that the use is sufficient to justify the termination,
- (h) a landlord may apply to the Tribunal for a termination order (without previously giving a termination notice) on the ground that the tenant has seriously or persistently threatened or abused the landlord, landlord's agent or an employee or contractor of the landlord or landlord's agent, or intentionally engaged in conduct to intimidate or harass any such person, or caused or permitted any such conduct. This right currently only applies to landlords under public housing tenancy agreements,

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- (i) if a tenant abandons the residential premises, the landlord may apply to the Tribunal for an order that the tenant pay a specified break fee and an occupation fee for a period of up to 14 days if the tenant left goods on the premises,
- (j) a landlord may give an occupant remaining on the residential premises after the tenant has left 14 days notice to give vacant possession of the premises, whether or not the residential tenancy agreement has been terminated. The landlord may apply to the Tribunal for an order for possession of the premises against the occupant if such a notice is given and is not complied with.

### **Division 3      Termination by tenant**

Division 3 of Part 5 (sections 98–107) of the proposed Act re-enacts sections 57, 59, 60, 64, 69A and 70 of the 1987 Act with the following additions and modifications:

- (a) the power of the Tribunal to make a termination order after a notice of termination is given under the proposed Division is contained in each provision under which the notice is given, rather than in a single provision,
- (b) a tenant may give notice of termination of a residential tenancy agreement (including an agreement for a fixed term tenancy) without any special grounds at any time. The minimum period of notice is to be 14 days for a fixed term tenancy and 21 days for a periodic tenancy,
- (c) if a tenant gives notice of termination without any special grounds of a residential tenancy agreement for a fixed term tenancy and the termination date is earlier than the end of the fixed term, the tenant must pay the landlord a specified break fee,
- (d) a tenant may give a notice of termination, and no compensation or other additional amount is payable, on the ground that the tenant has accepted accommodation in social housing or a place in an aged care facility, or requires care in such a facility, that the landlord has failed to disclose a proposed sale of the residential premises before entering into the residential tenancy agreement or that another tenant or occupant has become subject to a final apprehended violence order,
- (e) a co-tenant may give a termination notice, with a minimum 21 days notice, to the landlord and each other co-tenant if the fixed term of a residential tenancy agreement has ended or the tenancy is a periodic tenancy,
- (f) a co-tenant may apply to the Tribunal for a termination order terminating the co-tenant's tenancy or the tenancy of another co-tenant under a residential tenancy agreement or terminating the agreement, the term of which has not ended, if the co-tenant whose tenancy is terminated is the subject of a final apprehended violence order or the Tribunal is of the opinion that termination is appropriate in the special circumstances of the case,

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- (g) the Tribunal may, on application by a landlord, revoke a termination notice given by the tenant on the ground of a breach by the landlord if the landlord has remedied the breach and the Tribunal is satisfied that it is appropriate to do so in the circumstances of the case,
- (h) the Tribunal may consider additional specified factors (such as the nature of the breach and the previous history of the tenancy) when determining whether to terminate a residential tenancy agreement on the ground of a breach by the landlord,
- (i) the right of a tenant to apply to the Tribunal for termination on the ground of hardship will only apply to agreements where the term has not ended.

### **Division 4 Termination by events**

Division 4 of Part 5 (sections 108 and 109) of the proposed Act re-enacts section 61 of the 1987 Act. It also contains an additional provision that enables the legal personal representative of a deceased sole tenant under a residential tenancy agreement to give a termination notice. The estate of the tenant is not liable to pay rent for any period after which vacant possession of the residential premises is given.

### **Division 5 Miscellaneous**

Division 5 of Part 5 (sections 110–118) of the proposed Act re-enacts sections 54, 55 and 65 of the 1987 Act with the following additions and modifications:

- (a) a tenant who has been given a termination notice by the landlord (other than under section 85), or who gives a termination notice, may vacate the residential premises before the termination date and is not liable to pay rent for any period after the tenant vacates the residential premises,
- (b) the Tribunal may make a termination order despite a defect in the termination notice or service of the notice but must be satisfied that the person concerned has been placed in the same position as if there had been no defect,
- (c) it is made clear that a landlord or tenant may give more than one termination notice concurrently on different grounds.

## **Part 6 Recovery of possession of premises**

### **Division 1 Recovery of possession**

Division 1 of Part 6 (sections 119–125) of the proposed Act re-enacts Division 4 of Part 5 of the 1987 Act. The provision relating to the minimum period within which a tenant may be required to vacate residential premises subject to a mortgagee repossession has been omitted, as that requirement will now be contained in the *Sheriff Act 2005* (see **Schedule 3.15**). The requirement for a tenant who remains in occupation after failing to comply with an order of the Tribunal to pay compensation has been removed.

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## **Division 2      Goods left on residential premises**

Division 2 of Part 6 (sections 126–135) of the proposed Act contains a new scheme for dealing with goods left by a tenant or an occupant after giving vacant possession of the residential premises or abandoning the premises. The Division provides for the following:

- (a) the landlord may remove and destroy, or otherwise dispose of, goods that are perishable or of rubbish at any time,
- (b) a notice of disposal must be given to the former tenant or, if the landlord is unable to give the notice to the former tenant in any other permitted manner, by posting a notice in a prominent position on the residential premises,
- (c) the landlord may remove and store the goods pending disposal or collection,
- (d) the landlord may dispose of the goods (other than personal documents) by donating them to a charitable organisation or by other means if they are not collected or arrangements to collect them are not made within 14 days of the landlord giving a notice of disposal,
- (e) the landlord may dispose of personal documents (such as passports and other documents containing personal information) by returning them to the issuing authority or in any other manner the landlord thinks fit if they are not collected or arrangements to collect them are not made within 90 days of the landlord giving a notice of disposal,
- (f) the landlord must deliver up goods claimed by a person who is entitled to them before they are disposed of and may not charge any more than an occupation fee, not exceeding 14 days' rent, for each day the goods are left on the premises or stored,
- (g) if the tenant abandons the residential premises or dies, the landlord may apply to the Tribunal for orders as to the disposal of the goods and may act in accordance with such orders,
- (h) a tenant or a person with an interest in the goods may apply to the Tribunal for an order for compensation for an unlawful disposal of the goods by the landlord or an order for delivery of the goods into the possession of the tenant or person or for other orders relating to the goods,
- (i) a person who purchases goods sold by a landlord in accordance with the Division will obtain a good title to the goods,
- (j) a person will not be personally liable for any removal, destruction, disposal or sale of goods in accordance with the Division.

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## Part 7 Social housing tenancy agreements

### Division 1 Preliminary

Division 1 of Part 7 (sections 136 and 137) of the proposed Act re-enacts definitions of terms relating to social housing tenancies contained in the 1987 Act and provides that the Part prevails to the extent any inconsistency with the other provisions of the proposed Act.

### Division 2 Acceptable behaviour agreements

Division 2 of Part 7 (section 138) of the proposed Act re-enacts section 35A of the 1987 Act.

### Division 3 Water usage charges, rent and other payments

Division 3 of Part 7 (sections 139–141) of the proposed Act re-enacts sections 19A, 19B and 47A of the 1987 Act.

### Division 4 Fixed term agreements

Division 4 of Part 7 (section 142) of the proposed Act re-enacts section 14A of the 1987 Act.

### Division 5 Termination of social housing tenancy agreements—additional grounds

Division 5 of Part 7 (sections 143–155) of the proposed Act re-enacts Division 2A of Part 5 of the 1987 Act.

### Division 6 Exemption

Division 6 of Part 7 (section 156) of the proposed Act re-enacts, with minor changes, an exemption currently contained in regulations under the 1987 Act.

## Part 8 Rental bonds

### Division 1 Preliminary

Division 1 of Part 8 (sections 157 and 158) of the proposed Act re-enacts relevant definitions of terms relating to rental bonds contained in the 1977 Act. Included in the provisions is an extension of the definitions of *landlord*, *residential tenancy agreement* and *tenant* so as to apply the Part to premises and agreements covered by the *Residential Parks Act 1998*. The Division also makes it clear that a mortgagee entitled to possession may exercise the functions of a landlord under the proposed Part.

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### **Division 2      Payment and deposit of rental bonds**

Division 2 of Part 8 (sections 159–162) of the proposed Act re-enacts sections 8 and 9 of the 1977 Act with the following additions and modifications:

- (a) functions formerly conferred on the Rental Bond Board (the *Board*) are now conferred on the Director-General,
- (b) the maximum amount of rental bond that may be required or received is 4 weeks' rent under the agreement as in force when it was entered into. The current separate maximum amount of 6 weeks' rent for furnished premises has been omitted,
- (c) it will be an offence to require or receive more than one rental bond, or additional amounts of rental bond, for a residential tenancy agreement or to require or receive a rental bond if a rental bond has already been paid and not claimed under a residential tenancy agreement and one or more of the original tenants still occupy the premises under a successor agreement,
- (d) the period within which a rental bond is to be deposited with the Director-General has been changed from 7 days to 10 days,
- (e) rental bonds may be paid by instalments if the landlord and tenant agree, with separate provision being made for the periods within which instalments of rental bond are payable to the Director-General.

### **Division 3      Release of rental bonds**

Division 3 of Part 8 (sections 163–176) of the proposed Act re-enacts sections 11 and 11A of the 1977 Act with the following additions and modifications:

- (a) functions formerly conferred on the Board are now conferred on the Director-General,
- (b) the period within which a landlord or tenant who is not a party to a claim for payment of the rental bond amount must notify the Director-General that the amount is the subject of proceedings before the Tribunal or a court has been extended from 10 days to 14 days. If such a notice is not given, the Director-General may pay the claim,
- (c) a landlord or person on behalf of a landlord who makes a rental bond claim against a tenant, without the tenant's consent, must provide the other parties to the residential tenancy agreement with a copy of a completed condition report for the premises as at the end of the agreement and copies of estimates, quotes, receipts or invoices for relevant work for which the claim is made,
- (d) specified matters are listed for which a rental bond claim may be made, including repairs for damage (other than fair wear and tear), rent or other unpaid charges under the residential tenancy agreement, cleaning costs if the premises are not left reasonably clean and the cost of replacing locks or other security devices altered, removed or added without the landlord's consent,

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- (e) interest on an amount of rental bond is payable if the regulations under the proposed Act so provide,
- (f) co-tenants under a residential tenancy agreement must pay to a co-tenant who ceases to be a tenant the amount of any rental bond paid by the former co-tenant, unless there is a final apprehended violence order in force against the former co-tenant in relation to any remaining tenant.

### **Division 4      Rental Bond Board**

Division 4 of Part 8 (sections 177–179) of the proposed Act re-enacts Part 2 of the 1977 Act. The powers contained in Part 2A of that Act, relating to investment in residential accommodation, have not been included.

### **Division 5      Functions of Board relating to residential accommodation**

Division 5 of Part 8 (sections 180–184) of the proposed Act re-enacts Part 2A of the 1977 Act.

### **Division 6      Financial matters**

Division 6 of Part 8 (sections 185 and 186) of the proposed Act re-enacts sections 18–21 of the 1977 Act.

## **Part 9      Powers of Tribunal**

### **Division 1      General powers of Tribunal**

Division 1 of Part 9 (sections 187–189) of the proposed Act re-enacts sections 16 (2) and (3), 78 (3) and 85 of the 1987 Act. The Division also makes it clear that a former landlord or former tenant may apply for orders under the proposed Act.

### **Division 2      Powers of Tribunal relating to breaches of residential tenancy agreements**

Division 2 of Part 9 (sections 190 and 191) of the proposed Act re-enacts section 16 (1) and (4) of the 1987 Act. It also contains matters to be considered by the Tribunal when considering applications relating to breaches of security conditions.

### **Division 3      Powers of Director-General in proceedings**

Division 3 of Part 9 (sections 192–195) of the proposed Act re-enacts sections 95–98 of the 1987 Act, but confers the functions under those provisions on the Director-General.

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## Part 10 Enforcement

### Division 1 Powers of investigators

Division 1 of Part 10 (sections 196–201) contains provisions conferring the following powers on investigators for the purpose of ascertaining whether the proposed Act and any regulations are being complied with or obtaining evidence, documents or information in relation to contraventions of the Act or regulations:

- (a) powers of entry and inspection,
- (b) power to require persons to produce documents and to take copies or extracts of such documents,
- (c) power to take photographs and other recordings after entering premises,
- (d) power to require a person on premises entered to answer questions or furnish information,
- (e) power to require a person, by giving the person a written notice, to provide information, produce documents or to appear before an investigator to give evidence,
- (f) power to retain documents as evidence.

The Division also makes it an offence to obstruct an investigator and includes an updated provision relating to search warrants for searches by investigators of residential premises. The powers conferred on investigators are in addition to the powers conferred on them under the *Fair Trading Act 1987*.

### Division 2 Offences

Division 2 of Part 10 (sections 202–205) of the proposed Act re-enacts and updates sections 120A, 124, 127 and 128 of the 1987 Act. The Division also enables penalty notices to be issued for offences specified by the regulations under the proposed Act.

### Division 3 Mandatory appointment of agents for landlords

Division 3 of Part 10 (sections 206 and 207) of the proposed Act contains a scheme under which the Director-General may issue a mandatory direction to a landlord requiring the landlord to appoint an agent. Such a direction may prohibit a specified person from being appointed and cannot be given to a landlord who already has an agent. A direction can only be given if a landlord has engaged in serious or persistent breaches of the proposed Act or residential tenancy agreements.

### Division 4 Costs in certain court proceedings

Division 4 of Part 10 (section 208) of the proposed Act re-enacts section 120A of the 1987 Act.

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# consultation draft

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Residential Tenancies Bill 2009

Explanatory note

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## Part 11 Tenancy databases

### Division 1 Preliminary

Division 1 of Part 11 (sections 209 and 210) of the proposed Act defines words and expressions used in the Part and provides that the Part will not apply to entities who keep databases for their own purposes.

### Division 2 Tenancy database information

Division 2 of Part 11 (sections 211–218) sets out a scheme for the use of tenancy databases, as follows:

- (a) a landlord or landlord's agent must notify a prospective tenant if a residential tenancy database is used to decide whether to enter into a residential tenancy agreement with the prospective tenant and must also notify contact details of the database operator and details of information held on the database and how it may be changed or removed,
- (b) a prospective tenant must also be notified if a residential tenancy database is used and contains information about the tenant,
- (c) personal information about a person must only be listed on a residential tenancy database if the person has breached a residential tenancy agreement that has terminated and the person owes the landlord more than the amount of the rental bond or the Tribunal has ordered the termination of the agreement,
- (d) personal information about a person must also not be listed unless the person concerned has been given a copy of the information and any submissions about the proposed entry have been considered by the landlord or agent (unless the person cannot be found after reasonable inquiries),
- (e) a landlord or agent of a landlord who lists personal information in a residential tenancy database and who becomes aware that the information is inaccurate, incomplete, ambiguous or out-of-date must notify the database operator. The database operator must amend or remove the information,
- (f) a landlord or agent or database operator must give a person, on written request, a copy of information held about the person on a residential tenancy database,
- (g) the Tribunal may, on application by a person who claims that information about the person is inaccurate, incomplete, ambiguous or out-of-date, may order information in a residential tenancy database to be wholly or partly removed or amended in a specified way,
- (h) personal information about a person must not be kept on a residential tenancy database for longer than 3 years or a lesser period if the national privacy principles require the operator to remove the information within the lesser period.

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# consultation draft

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Residential Tenancies Bill 2009

Explanatory note

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## **Part 12 Miscellaneous**

Part 12 (proposed sections 219–227) of the proposed Act re-enacts and updates sections 120, 126, 130 and 133 of the 1987 Act. The Part also contains provisions relating to the following matters:

- (a) the appointment of agents by tenants (currently this is limited to certain kinds of tenants),
- (b) the functions of the Director-General, which are similar to those formerly conferred on the Tenancy Commissioner,
- (c) the review of the proposed Act as soon as possible after the period of 5 years from the date of assent to the proposed Act to determine whether the policy objectives of the proposed Act remain valid and the terms of the Act are appropriate for achieving them.

### **Schedule 1 Constitution and procedure of Rental Bond Board**

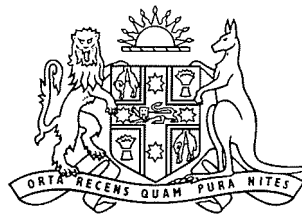
**Schedule 1** contains provisions relating to the constitution and procedure of the Board.

### **Schedule 2 Savings, transitional and other provisions**

**Schedule 2** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

### **Schedule 3 Amendment of Acts**

**Schedule 3** amends the Acts specified in the Schedule as a consequence of the enactment of the proposed Act.



New South Wales

# Residential Tenancies Bill 2009

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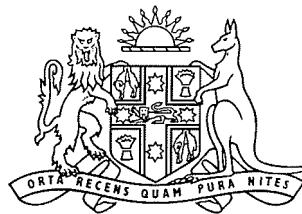
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consultation draft

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New South Wales

## Residential Tenancies Bill 2009

No , 2009

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### **A Bill for**

An Act with respect to rights and obligations of landlords and tenants, rents, rental bonds and other matters relating to residential tenancy agreements; and for other purposes.

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# consultation draft

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Clause 1 Residential Tenancies Bill 2009

Part 1 Preliminary

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### Division 1 General

#### 1 Name of Act

This Act is the *Residential Tenancies Act 2009*.

#### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

#### 3 Definitions

(1) In this Act:

**acceptable behaviour agreement**—see section 138.

**apprehended violence order** has the same meaning as it has in the *Crimes (Domestic and Personal Violence) Act 2007* and includes a provisional, interim and final apprehended violence order.

**approved form** means the form approved from time to time by the Director-General.

**Board** means the Rental Bond Board constituted under this Act.

**co-tenant** means a tenant who is one of 2 or more tenants under a residential tenancy agreement.

**Department** means the Department of Services, Technology and Administration.

**Director-General** means:

- (a) the Commissioner for Fair Trading, Department of Services, Technology and Administration, or
- (b) if there is no such position in the Department, the Director-General of the Department.

**exercise** a function includes perform a duty.

**fixed term agreement** means a residential tenancy agreement that provides for a tenancy for a fixed term.

**function** includes a power, authority or duty.

**give** includes cause to give.

**holding fee** means an amount paid or required to be paid to a person for not letting premises pending the making of a residential tenancy agreement.

**investigator** means an investigator appointed under section 18 of the *Fair Trading Act 1987*.

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## consultation draft

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Residential Tenancies Bill 2009

Clause 3

Preliminary

Part 1

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***landlord*** means:

- (a) the person who grants the right to occupy residential premises under a residential tenancy agreement, or
- (b) a successor in title to the residential premises whose interest is subject to the interest of the tenant, or
- (c) a tenant who has granted the right to occupy residential premises to a sub-tenant,

and includes a prospective landlord.

***landlord's agent*** means a person who acts as the agent of a landlord and who (whether or not the person carries on any other business) carries on business as an agent for:

- (a) the letting of residential premises, or
- (b) the collection of rents payable for any tenancy of residential premises.

**Note.** A person who acts as such an agent is required to be licensed under the *Property, Stock and Business Agents Act 2002*.

***record*** includes any book, account, document, paper and other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

***Registrar*** means the Registrar of the Tribunal.

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

***rental bond***—see section 157.

***residential premises*** means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a residence.

**Note.** Land on which there is no residence cannot be subject to a tenancy or other provisions under this Act.

***residential tenancy agreement***—see section 13.

***sign*** includes execution by a corporation in any manner permitted by law.

***social housing premises***—see section 136.

***social housing provider***—see section 136.

***social housing tenancy agreement***—see section 136.

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

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# consultation draft

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Clause 4 Residential Tenancies Bill 2009

Part 1 Preliminary

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***tenant*** means:

- (a) the person who has the right to occupy residential premises under a residential tenancy agreement, or
- (b) the person to whom such a right passes by transfer or operation of the law, or
- (c) a sub-tenant of a tenant,

and includes a prospective tenant.

***termination notice***—see section 80.

***termination order***—see section 80.

***Tribunal*** means the Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001*.

***water usage charge*** for residential premises means that part of a water charge that is based on the volume of water supplied to the premises.

- (2) Notes included in this Act do not form part of this Act.

## 4 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## 5 Repeals

The *Residential Tenancies Act 1987* and the *Landlord and Tenant (Rental Bonds) Act 1977* are repealed.

## Division 2 Application of Act

### 6 Act applies to existing and future residential tenancy agreements

This Act applies to residential tenancy agreements whether made before or after the commencement of this section.

### 7 Premises to which Act does not apply

This Act does not apply in respect of the following premises:

- (a) premises to which the *Landlord and Tenant (Amendment) Act 1948* applies,
- (b) premises used to provide residential care within the meaning of the *Aged Care Act 1997* of the Commonwealth,
- (c) serviced apartments,
- (d) premises used as a hotel or motel,
- (e) premises used as a backpackers' hostel,

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## consultation draft

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Residential Tenancies Bill 2009

Clause 8

Preliminary

Part 1

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- (f) a hospital or nursing home,
- (g) any part of a club used for the provision of temporary accommodation,
- (h) premises used for residential premises, if the predominant use of the premises is for the purposes of a trade, profession, business or agriculture.

### **8 Agreements to which Act does not apply**

- (1) This Act does not apply to the following agreements:
  - (a) occupation agreements to which the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies,
  - (b) residence contracts within the meaning of the *Retirement Villages Act 1999*,
  - (c) an agreement under which a person boards or lodges with another person,
  - (d) an agreement under which a person resides in refuge or crisis accommodation,
  - (e) leases and licences under the *Crown Lands Act 1989*, the *Western Lands Act 1901* or the *Crown Lands (Continued Tenures) Act 1989*,
  - (f) an agreement for the sale of land that confers a right to occupy residential premises on a party to the agreement,
  - (g) an agreement that arises under a term of a mortgage and confers a right to occupy residential premises on a party to the mortgage,
  - (h) an agreement made in good faith for the purpose of giving a person the right to occupy residential premises for a period of not more than 3 months for the purpose of a holiday,
  - (i) an agreement that arises under a company title scheme under which a group of adjoining or adjacent premises is owned or leased by a corporation each of whose shareholders has, by virtue of his or her shares, an exclusive right to occupy one or more of the residential premises,
  - (j) an agreement having a term, together with the term of any further agreement that may be granted under an option in respect of it, that exceeds 99 years.
- (2) This Act (other than Parts 8, 9 and 11) does not apply to residential tenancy agreements to which the *Residential Parks Act 1998* applies or to any moveable dwelling for which such an agreement is required.

Clause 9 Residential Tenancies Bill 2009

Part 1 Preliminary

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**9 Employee and caretaker arrangements**

- (1) An agreement or arrangement under which a person is given the right to occupy premises for the purpose of a residence in return for, or as part of remuneration for, carrying out work in connection with the premises or the person's employment is taken to be a residential tenancy agreement.
- (2) This section applies even if the premises are part of premises referred to in section 7 (other than premises to which the *Landlord and Tenant (Amendment) Act 1948* applies) or other premises exempted from this Act by the regulations.

**10 Application of Act to residents in shared households**

A person who occupies residential premises that are subject to a written residential tenancy agreement and is not named as a tenant in the agreement is a tenant for the purposes of this Act only if:

- (a) a tenant under that agreement transfers the tenancy to the person or the person is recognised as a tenant (see Part 4), or
- (b) the person is a sub-tenant of a tenant under a written residential tenancy agreement with that tenant.

**Note.** Boarders and lodgers are not covered by this Act (see section 7).

An occupier may be recognised as a tenant (see sections 77 and 79).

**11 Declaration by Tribunal**

- (1) The Tribunal may, on application by the Director-General or another person, make an order declaring that a specified agreement is, or is not, a residential tenancy agreement to which this Act applies or that specified premises are, or are not, premises to which this Act applies.
- (2) The Tribunal may allow the Director-General to intervene in, or support, an application by a person under this section.

**12 Exemptions from operation of Act**

- (1) The regulations may exempt from the operation of this Act or the regulations or any specified provision of this Act or the regulations any specified person, agreement or premises or any specified class of persons, agreements or premises.
- (2) An exemption may be unconditional or subject to conditions.

## Part 2 Residential tenancy agreements

### Division 1 General provisions relating to agreements

#### 13 Agreements that are residential tenancy agreements

- (1) A *residential tenancy agreement* is an agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence.
- (2) A residential tenancy agreement may be express or implied and may be oral or in writing, or partly oral and partly in writing.
- (3) An agreement may be a residential tenancy agreement for the purposes of this Act even though:
  - (a) it does not grant a right of exclusive occupation, or
  - (b) it grants the right to occupy residential premises together with the letting of goods.

**Note.** See section 8 for agreements that are not covered by this Act. Section 7 sets out premises not covered by this Act.

- (4) For the purpose of determining whether an agreement is a residential tenancy agreement, it does not matter that the person granted the right of occupation is a corporation if the premises are used (or intended for use) as a residence by a natural person.

#### 14 Landlord's obligation to ensure written residential tenancy agreement

- (1) The landlord under a residential tenancy agreement must ensure that the agreement is in writing.  
Maximum penalty: 20 penalty units.
- (2) This section does not:
  - (a) impose any obligation on a tenant to prepare a written residential tenancy agreement, or
  - (b) affect the enforceability of a residential tenancy agreement that is not in writing or is only partly in writing.
- (3) If a landlord fails to comply with this section:
  - (a) the rent under the residential tenancy agreement must not be increased during the first 6 months of the tenancy, and
  - (b) the landlord is not entitled to terminate the residential tenancy agreement under section 85 during the first 6 months of the tenancy.

**Note.** The Tribunal may order a landlord to enter into a written residential tenancy agreement (see section 16).

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**15   Standard residential tenancy agreements**

**(1)   Standard form may be prescribed**

The regulations may prescribe a standard form of residential tenancy agreement.

**(2)   The regulations may provide for the following:**

- (a)**   more than one form of standard form of residential tenancy agreement for use for different classes of residential premises, agreements or parties,
- (b)**   the addition of clauses to, or the omission or variation of clauses contained in, a standard form of residential tenancy agreement in specified circumstances,
- (c)**   the application of terms of standard forms of residential tenancy agreement to agreements entered into before the regulations prescribing those terms took effect.

**(3)   Terms to be consistent with Act**

A standard form of residential tenancy agreement must be consistent with this Act and the regulations.

**(4)   Variation of standard form**

A residential tenancy agreement for which a standard form is prescribed may include additional terms, but only if:

- (a)**   the terms do not contravene this Act or the regulations or any other Act, and
- (b)**   the terms are not inconsistent with the terms set out in the standard form.

**(5)   Residential tenancy agreement taken to include standard terms**

A residential tenancy agreement of a kind for which a standard form is prescribed is taken to include the terms of the standard form.

**(6)   This section is subject to this Act.**

**Note.** Section 20 allows terms otherwise included by this Act to be excluded or modified in residential tenancy agreements having a term exceeding 20 years.

**16   Written residential tenancy agreements—Tribunal orders**

- (1)**   The Tribunal may, on application by a tenant, order the landlord to prepare and enter into a written residential tenancy agreement.

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- (2) The order may:
  - (a) specify the terms of the agreement, and
  - (b) specify a commencement date for the agreement that occurred before the order was made.
- (3) The Tribunal may make an order under this section only if it is satisfied that the landlord and tenant are subject to an existing residential tenancy agreement that is not in writing or is only partly in writing and that the tenant is not holding over under a previous fixed term agreement.

### **17 Certain unexecuted residential tenancy agreements enforceable**

- (1) If a residential tenancy agreement has been signed by a tenant and given to the landlord or a person on the landlord's behalf and has not been signed by the landlord:
  - (a) acceptance of rent by or on behalf of the landlord without reservation, or
  - (b) any other act of part performance of the agreement by or on behalf of the landlord,gives to the document the same effect it would have if it had been signed by the landlord on the first day in respect of which rent was accepted or on the day on which such an act was first performed.
- (2) This section applies despite section 54A of the *Conveyancing Act 1919*.

### **18 Fixed term agreements to continue after end of term**

A fixed term agreement that continues after the day on which the term of the tenancy ends continues to apply:

- (a) on the same terms as immediately before the end of the tenancy, and
- (b) as if the term of the agreement were replaced by a periodic tenancy.

**Note.** A landlord and tenant may also enter a further agreement for a further fixed term tenancy.

## **Division 2 Terms of residential tenancy agreements**

### **19 Prohibited terms**

- (1) A residential tenancy agreement must not contain a term of a kind set out in this section or prescribed by the regulations for the purposes of this section.

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- (2) Terms having the following effects must not be included in a residential tenancy agreement:
- (a) that the tenant must have the carpet professionally cleaned, or pay the cost of such cleaning, at the end of the tenancy,
  - (b) that the tenant must take out a specified, or any, form of insurance,
  - (c) exempting the landlord from liability for any act or omission by the landlord, the landlord's agent or any person acting on behalf of the landlord or landlord's agent,
  - (d) that, if the tenant breaches the agreement, the tenant is liable to pay all or any part of the remaining rent under the agreement, increased rent, a penalty or liquidated damages,
  - (e) that, if the tenant does not breach the agreement, the rent is or may be reduced or the tenant is to be or may be paid a rebate of rent or other benefit.

**Note.** Section 15 also prohibits certain additional terms from being included in a residential tenancy agreement for which a standard form is prescribed.

### **20 Mandatory terms may be varied for long term leases**

- (1) A fixed term agreement for a tenancy of 20 years or more may:
- (a) provide that terms that would otherwise be included in the agreement by this Act (**mandatory terms**) do not apply, or are varied as provided by the agreement, and
  - (b) include terms that would otherwise be prohibited by this Act or the regulations.
- (2) Despite subsection (1), any such agreement must not exclude or modify any of the following:
- (a) any term included by this Act relating to the payment of rates, taxes and charges by the landlord,
  - (b) the prohibition against more than one rent increase a year under a fixed term agreement for a tenancy exceeding 2 years,
  - (c) any right under this Act to make an application to the Tribunal,
  - (d) the grounds on which a residential tenancy agreement may be terminated under this Act,
  - (e) any other term prescribed by the regulations for the purposes of this section.
- (3) The Tribunal may, on application by a tenant under a fixed term agreement for a tenancy of 20 years or more, declare that:
- (a) a mandatory term does form part of the agreement, or

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- (b) a prohibited term is not included in an agreement, or
  - (c) a mandatory or prohibited term included in the agreement is varied as specified by the declaration.
- (4) The Tribunal may make an order if it is of the opinion that a term included or varied under subsection (1) is unconscionable, unjust, harsh or oppressive.
- (5) This section has effect despite any other provision of this Act.

### **21 Inconsistent and prohibited terms void**

- (1) A term of a residential tenancy agreement is void to the extent to which it:
  - (a) is inconsistent with any term included in the agreement by this Act or the regulations, or
  - (b) is prohibited by this Act or the regulations.
- (2) The Tribunal may, on application by a landlord or a tenant, declare that a term of a residential tenancy agreement is void or partly void if satisfied that the term is inconsistent with any term included in the agreement by this Act or the regulations or is prohibited by this Act or the regulations.

### **22 Offence relating to terms of residential tenancy agreements**

A landlord must ensure that a written residential tenancy agreement:

- (a) contains any terms required to be included by this Act, and
- (b) does not contain any terms prohibited by this Act.

Maximum penalty: 20 penalty units.

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### **Part 3 Rights and obligations of landlords and tenants**

#### **Division 1 Pre-agreement matters**

##### **23 Limit on amounts payable by tenant before agreement**

- (1) A person must not require or receive from a tenant, before or when the tenant enters into the residential tenancy agreement, a payment other than the following:
  - (a) a holding fee,
  - (b) rent,
  - (c) a rental bond,
  - (d) an amount for the fee payable for registration of a residential tenancy agreement under the *Real Property Act 1900*.
- (2) Without limiting this section, a person must not require or receive from a tenant an amount for the costs of preparation of a written residential tenancy agreement.  
Maximum penalty: 20 penalty units.

##### **24 Holding fees**

- (1) A person must not require or receive from a tenant a holding fee unless the tenant's application for tenancy of the residential premises has been approved by the landlord.
- (2) A person who receives a holding fee must give the tenant a written receipt setting out the following:
  - (a) the amount paid,
  - (b) the address of the residential premises,
  - (c) the names of the landlord and the tenant.
- (3) If a tenant has paid a holding fee, the landlord must not enter into a residential tenancy agreement for the residential premises with any other person within 7 days of payment of the fee (or within such further period as may be agreed with the tenant) unless the tenant notifies the landlord that the tenant no longer wishes to enter into the residential tenancy agreement.
- (4) A holding fee may only be retained by the landlord if the tenant enters into a residential tenancy agreement or refuses to enter into the residential tenancy agreement.

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- (5) Despite subsection (4), a holding fee must not be retained by the landlord if the tenant refuses to enter into the residential tenancy agreement because of a misrepresentation or failure to disclose a material fact by the landlord or landlord's agent.

Maximum penalty: 20 penalty units.

- (6) If a residential tenancy agreement is entered into after payment of a holding fee, the fee is to be paid towards rent.

### **25 Disputes about holding fees**

- (1) A person who has paid, or required or received payment of, a holding fee may apply to the Tribunal for an order in relation to the payment or repayment of the fee.
- (2) A person may make an application under this section whether or not the prospective residential tenancy agreement was executed.

### **26 Disclosure of information to tenants**

- (1) A landlord or landlord's agent must not induce a tenant to enter into a residential tenancy agreement by any statement, representation or promise that the landlord or agent knows to be false, misleading or deceptive or by knowingly concealing a material fact of a kind prescribed by the regulations.
- (2) A landlord or landlord's agent must disclose the following to the tenant before the tenant enters into the residential tenancy agreement:
- (a) any proposal to sell the residential premises, if the landlord has prepared a contract for sale of the residential premises,
  - (b) that a mortgagee is taking action for possession of the residential premises, if the mortgagee has commenced proceedings in a court to enforce a mortgage over the premises.
- (3) A landlord or landlord's agent must give a tenant an information statement in the approved form before the tenant enters into the residential tenancy agreement.

Maximum penalty: 20 penalty units.

### **27 Names and addresses to be provided**

- (1) A landlord must give the tenant written notice of the following matters when or before the tenant enters into the residential tenancy agreement:
- (a) the name and business address of the landlord's agent (if any) and the name and telephone or other contact details of the landlord,
  - (b) if there is no landlord's agent, the business address, or residential address, of the landlord,

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- (c) if the landlord is a corporation, the name of the secretary or other responsible officer of the corporation and the business address of the corporation.
- (2) A landlord must notify the tenant in writing within 14 days of any change during the residential tenancy agreement in the information provided under this section.  
Maximum penalty: 10 penalty units.
- (3) Subsection (2) is a term of every residential tenancy agreement.

### **28 Tenant entitled to copy of residential tenancy agreement**

- (1) The landlord or landlord's agent must give the tenant a copy of the residential tenancy agreement when or before the tenant gives the signed copy of the agreement to the landlord or landlord's agent.
- (2) If the copy given under subsection (1) is not signed by the landlord, the landlord or landlord's agent must give the tenant a copy of the residential tenancy agreement signed by both the landlord and tenant, as soon as practicable after it is so signed.  
Maximum penalty: 20 penalty units.

### **29 Condition reports**

- (1) A condition report relating to the condition of residential premises:
  - (a) must be completed by or on behalf of a landlord before or when the residential tenancy agreement is given to the tenant for signing, and
  - (b) must be given in duplicate by the landlord or landlord's agent to the tenant before or when the tenant signs the residential tenancy agreement.
- (2) The tenant must complete and give one copy of the condition report to the landlord or landlord's agent not later than 7 days after receiving it and both the landlord and the tenant must retain a copy of the report.
- (3) At, or as soon as reasonably practicable after, the termination of a residential tenancy agreement, the landlord or landlord's agent and the tenant must complete the copy of the condition report retained by the landlord or the tenant under this section, in the presence of the other party.
- (4) It is not a breach of subsection (3) for the condition report to be completed in the absence of the other party if the party completing the report has given the other party a reasonable opportunity to be present when it is completed.

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- (5) A condition report is to be in the form prescribed by the regulations and may be included in a prescribed standard form of residential tenancy agreement.

## **30 Condition report evidence of condition of premises**

- (1) A condition report that is signed by both the landlord and the tenant is evidence, for the purposes of this Act, of the state of repair or general condition of the residential premises on the day specified in the report.
- (2) This section does not apply:
- (a) to any matter that could not have reasonably been discovered on a reasonable inspection of the premises, or
  - (b) to any statement in the report about which the tenant makes a written dissenting comment on the copy of the report completed by the tenant and retained by the landlord.

## **31 Disputes about condition reports**

A landlord or tenant may make an application to the Tribunal for an order under this Act in relation to a dispute about a condition report.

## **Division 2 Rent and other payments**

### **32 Kinds of payments that tenant may be required to pay for residential tenancy agreement**

A person must not require or receive from a tenant any payment for or in relation to renewing, extending or continuing a residential tenancy agreement other than the following:

- (a) rent,
- (b) a rental bond,
- (c) any other amounts or fees prescribed by the regulations.

Maximum penalty: 20 penalty units.

### **33 Payment of rent by tenant**

- (1) A tenant must pay the rent under a residential tenancy agreement on or before the day set out in the agreement.
- (2) A landlord must not require a tenant to pay more than 2 weeks' rent in advance under a residential tenancy agreement or to pay rent for a period of the tenancy before the end of the previous period for which rent has been paid.

**Note.** A tenant may pay more than 2 weeks' rent if the tenant wishes to do so.

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- (3) A landlord must not appropriate rent paid by the tenant for the purpose of any amount payable by the tenant other than rent.

Maximum penalty: 10 penalty units.

- (4) This section is a term of every residential tenancy agreement.

### **34 Acceptance of rent by landlord**

A landlord must accept payment of unpaid rent by a tenant if:

- (a) the landlord has given a termination notice on the ground of failure to pay rent under the residential tenancy agreement, and
- (b) the tenant has not vacated the residential premises.

Maximum penalty: 10 penalty units.

**Note.** A residential tenancy agreement must not be terminated, or possession of residential premises be recovered, on the ground of failure to pay rent if the tenant repays the rent or complies with an agreement to do so (see section 89).

### **35 Manner of payment of rent**

- (1) A landlord, landlord's agent or other person must not require a tenant to pay rent by a cheque or other negotiable instrument that is post-dated.

Maximum penalty: 10 penalty units.

- (2) A landlord or landlord's agent must permit a tenant to pay the rent by at least one means for which the tenant does not incur a cost and that is reasonably available to the tenant.

Maximum penalty: 10 penalty units.

- (3) A landlord and the tenant may, by agreement, change the manner in which rent is payable under the residential tenancy agreement.

- (4) This section is a term of every residential tenancy agreement.

### **36 Rent receipts**

- (1) If rent under a residential tenancy agreement is paid in person (other than by cheque), the person who receives the payment must, when the payment is made, give the person making the payment a rent receipt.

Maximum penalty: 10 penalty units.

- (2) If rent under a residential tenancy agreement is paid in person by cheque or by post, the person who receives the payment must, within 7 business days of the payment, give the person making the payment a rent receipt.

Maximum penalty: 10 penalty units.

- (3) A **rent receipt** is a receipt that contains the following matters:

- (a) the name of the person who receives the rent or on whose behalf the rent is received,

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- (b) the name of the person paying the rent or on whose behalf the rent is paid,
- (c) the address of the residential premises for which the rent is paid,
- (d) the period for which the rent is paid,
- (e) the date on which the rent is paid,
- (f) the amount of rent paid,
- (g) if the rent is in arrears or not at the date of payment.

### **37 Rent records**

- (1) A landlord or landlord's agent must keep a record of rent received under a residential tenancy agreement (a ***rent record***).
- (2) A rent record may be kept in any form, and must contain any particulars, prescribed by the regulations for the purposes of this section.
- (3) A landlord or landlord's agent must, within 7 days of a written request by the tenant, provide a written statement setting out the particulars of the rent record for a specified period.
- (4) A person must not make an entry in a rent record that the person knows is false or misleading in a material particular.  
Maximum penalty: 20 penalty units.
- (5) Subsection (3) is a term of every residential tenancy agreement.

### **38 Utility charges payable by tenant**

- (1) A tenant must pay the following charges for the residential premises:
  - (a) all charges for the supply of electricity, gas (except bottled gas) or oil to the tenant at the residential premises if the premises are separately metered,
  - (b) all charges for the supply of bottled gas to the tenant at the residential premises,
  - (c) all charges for pumping out a septic system used for the residential premises,
  - (d) any excess garbage or sanitary charges relating to the tenant's use of the residential premises,
  - (e) any other charges prescribed by the regulations.
- (2) This section is a term of every residential tenancy agreement.

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### **39 Water usage charges payable by tenant**

- (1) A tenant must pay the water usage charges for the residential premises, but only if:
  - (a) the premises are separately metered or the premises are not connected to a water supply service and water is delivered to the premises by vehicle, and
  - (b) the premises contain water efficiency measures prescribed by the regulations for the purposes of this section, and
  - (c) the charges do not exceed the amount payable by the landlord for water used by the tenant.
- (2) A tenant is not required to pay the water usage charges unless the landlord gives the tenant a copy of the part of the water supply authority's bill setting out the charges, or other evidence of the cost of water used by the tenant.
- (3) A landlord must give the tenant not less than 21 days to pay the water usage charges.
- (4) A tenant is not required to pay the water usage charges if the landlord fails to request payment from the tenant within 3 months of the issue of the bill for those charges by the water supply authority.
- (5) Subsection (4) does not prevent a landlord from taking action to recover an amount of water usage charges later than 3 months after the issue of a bill for those charges, if the landlord first sought payment of the amount within 3 months after the issue of the bill.
- (6) A landlord must ensure that the tenant receives the benefit of, or an amount equivalent to, any rebate received by the landlord in respect of any water usage charges payable or paid by the tenant.

**Note.** Tenants under social housing tenancy agreements are subject to different provisions in relation to the payment of charges for water usage (see Division 3 of Part 7).
- (7) This section is a term of every residential tenancy agreement.

### **40 Payment of rates, taxes and certain utility charges by landlord**

- (1) A landlord must pay the following charges for the residential premises:
  - (a) rates, taxes or charges payable under any Act (other than charges payable by the tenant under this Division),
  - (b) the installation costs and charges for initial connection to the residential premises of an electricity, water, gas, bottled gas or oil supply service,

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- (c) all charges for the supply of electricity, gas (except bottled gas) or oil to the tenant at the residential premises that are not separately metered,
  - (d) the costs and charges for the supply or hire of gas bottles for the supply of bottled gas at the commencement of the tenancy,
  - (e) all charges (other than water usage charges) in connection with a water supply service to separately metered residential premises,
  - (f) all charges in connection with a water supply service to residential premises that are not separately metered,
  - (g) all charges for the supply of sewerage services (other than for pump out septic services) or the supply or use of drainage services to the residential premises,
  - (h) any other charges prescribed by the regulations.
- (2) This section is a term of every residential tenancy agreement.

### **41 Rent increases**

- (1) The rent payable under a residential tenancy agreement may be increased only if:
  - (a) the tenant is given a written notice specifying the increased rent and the day from which it is payable, and
  - (b) the notice is given at least 60 days before the increased rent is payable.
- (2) A rent increase is not payable by a tenant unless the rent is increased in accordance with this section or the rent is increased by the Tribunal.
- (3) The residential tenancy agreement is varied to specify the increased rent from the date the rent is increased in accordance with this section.
- (4) Notice of a rent increase must be given in accordance with this section even if details of the rent increase are set out in the residential tenancy agreement.
- (5) Notice of a rent increase may be cancelled or varied (so as to reduce the increase) by a subsequent written notice given to the tenant by or on behalf of the landlord. Any such later notice takes effect from the date on which the earlier notice was to take effect.
- (6) Subsections (1)–(5) are terms of every residential tenancy agreement.
- (7) A landlord or landlord's agent must not contravene this section.  
Maximum penalty: 20 penalty units.

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- (8) The Tribunal must not make an order that a rent increase is not payable because this section has not been complied with unless an application for such an order is made not later than 12 months after the rent is increased.

**Note.** Notice of a rent increase arising from the cancellation or reduction of a rent rebate is not required to be given by a social housing provider (see section 141 (3)).

### **42 Rent increases under fixed term agreements**

- (1) The rent payable under a fixed term agreement for a tenancy not exceeding 2 years may be increased during the term of the tenancy only if the agreement sets out the amount of the increase or the method of determining the increase.
- (2) The rent payable under a fixed term agreement for a tenancy exceeding 2 years may be increased:
- (a) not more than once in any period of 12 months, and
  - (b) whether or not the agreement sets out the amount of the increase or the method of determining the increase.
- (3) A landlord or landlord's agent must not contravene this section.  
Maximum penalty: 20 penalty units.

### **43 Rent reductions**

- (1) The tenant may make a written request to the landlord at any time for a reduction in rent if the landlord reduces or withdraws any goods, services or facilities provided with the residential premises.
- (2) The rent payable under a residential tenancy agreement abates if residential premises under a residential tenancy agreement are:
- (a) otherwise than as a result of a breach of an agreement, destroyed or become wholly or partly uninhabitable, or
  - (b) cease to be lawfully usable as a residence, or
  - (c) appropriated or acquired by any authority by compulsory process.
- (3) The landlord and tenant may agree to reduce the rent payable for premises during periods when access to the residential premises is required to be given to prospective purchasers of the premises.
- (4) This section does not limit the rights of landlords and tenants to agree to reduce the rent payable under a residential tenancy agreement.
- (5) This section is a term of every residential tenancy agreement.

## **44 Tenant's remedies for excessive rent**

### **(1) Excessive rent orders**

The Tribunal may, on the application of a tenant, make any of the following orders:

- (a) an order that a rent increase under an existing or proposed residential tenancy agreement is excessive and that, from a specified day, the rent for residential premises must not exceed a specified amount,
- (b) an order that rent payable under an existing or proposed residential tenancy agreement is excessive, having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the residential premises and that, from a specified day, the rent for residential premises must not exceed a specified amount.

### **(2) Time limit for excessive rent increase applications**

An application for an order that a rent increase is excessive must be made not later than 30 days after notice of the increase is given.

### **(3) Applications on withdrawal of goods or services**

A tenant may make an application that rent is excessive, having regard to the reduction or withdrawal of any goods, services or facilities provided with the premises, even if those goods, services or facilities were provided under a separate or a previous contract, agreement or arrangement.

### **(4) Determination of excessive rent**

For the purposes of making an order under this section, the Tribunal may declare that amounts payable under an agreement under which goods or fittings in, or connected with, a tenant's occupation of the residential premises are let to the tenant are rent.

### **(5) The Tribunal may have regard to the following in determining whether a rent increase or rent is excessive:**

- (a) the general market level of rents for comparable premises (other than premises let by a government department, public authority or social housing provider) in the locality or a similar locality,
- (b) the landlord's outgoings under the residential tenancy agreement or proposed agreement,
- (c) any fittings, appliances or other goods, services or facilities provided with the residential premises,
- (d) the state of repair of the residential premises,

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- (e) the accommodation and amenities provided in the residential premises,
- (f) any work done to the residential premises by or on behalf of the tenant,
- (g) when the last increase occurred,
- (h) any other matter it considers relevant.

**(6) Effect of excessive rent order**

An order by the Tribunal specifying a maximum amount of rent:

- (a) has effect for the period (not exceeding 12 months) specified by the Tribunal, and
- (b) binds only the landlord and tenant under the residential tenancy agreement or proposed residential tenancy agreement under which the rent is payable.

**Note.** A tenant under a social housing tenancy agreement may also apply for an order that rent is excessive if a rent rebate is cancelled (see section 141 (1)).

**45 Remedies for reduction of rent on frustration of residential tenancy agreement**

- (1) The Tribunal may, on application by the landlord or tenant, make an order determining the amount of rent payable if the rent is abated under section 43 (2).
- (2) The Tribunal may order that:
  - (a) from a specified day, the rent for the residential premises must not exceed a specified amount, and
  - (b) the landlord must repay to the tenant any rent paid by the tenant since the specified day that is in excess of the specified amount.

**Note.** The residential tenancy agreement may also be terminated in these circumstances (see section 109).

**46 Contraventions of rent orders**

- (1) A person must not knowingly contravene an order of the Tribunal that rent must not exceed a specified amount.  
Maximum penalty: 20 penalty units.
- (2) A person must not demand, require or receive any rent from a tenant exceeding an amount specified by the Tribunal.  
Maximum penalty: 20 penalty units.
- (3) A court before which proceedings for an offence under this section have been brought, or the Tribunal, on application by a tenant, may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the

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tenant against whom the offence was committed an amount equal to the amount of any rent unlawfully received from the tenant.

### **47 Tenant's remedies for repayment of rent and excess charges**

#### **(1) Requests to landlord**

A tenant may make a written request to the landlord that the landlord repay to the tenant any rent, or other amounts, paid by the tenant that are not required to be paid under this Act or the residential tenancy agreement.

(2) A request may be made at any time during or after the termination of a residential tenancy agreement.

(3) A landlord must, within 14 days of a written request by a tenant, repay to the tenant the amount of any rent or other amount paid in excess of the amount payable by the tenant under this Act or the residential tenancy agreement.

#### **(4) Tribunal orders**

A tenant may apply to the Tribunal for an order for the repayment of rent or any other amount paid by the tenant if a written request by the tenant for payment is not complied with by the landlord within 14 days.

(5) The Tribunal may order that rent or any other amount be repaid to the tenant if it finds that the rent or amount was not required to be paid by the tenant under this Act or the residential tenancy agreement.

### **48 Landlord may recover certain rent expenses**

(1) A tenant must, at the written request of the landlord, pay to the landlord the following amounts:

- (a) the cost of replacing rent deposit books or rent cards lost by the tenant,
- (b) the amount of any fees paid to an authorised deposit-taking institution by the landlord as a result of funds of the tenant not being available for rent payment (such as fees for dishonoured cheques).

(2) This section has effect despite any other provision of this Division.

(3) This section is a term of every residential tenancy agreement.

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### **Division 3 Occupation and use of residential premises**

#### **49 Occupation of residential premises as residence**

- (1) A landlord must take all reasonable steps to ensure that there is no legal impediment to the occupation of the residential premises as a residence for the period of the tenancy.
- (2) A landlord must ensure that the tenant has vacant possession of any part of the residential premises to which the tenant has a right of exclusive possession on the day on which the tenant is entitled to occupy those premises under the residential tenancy agreement.
- (3) This section is a term of every residential tenancy agreement.

#### **50 Tenant's right to quiet enjoyment**

- (1) A tenant is entitled to quiet enjoyment of the residential premises without interruption by the landlord or any person claiming by, through or under the landlord or having superior title (such as a head landlord) to that of the landlord.
- (2) A landlord or landlord's agent must not interfere with, or cause or permit any interference with, the reasonable peace, comfort or privacy of the tenant in using the residential premises.
- (3) A landlord or landlord's agent must take all reasonable steps to ensure that the landlord's other tenants do not interfere with the reasonable peace, comfort or privacy of the tenant in using the residential premises.
- (4) A landlord or landlord's agent must not, during the currency of a residential tenancy agreement, contravene this section.  
Maximum penalty: 20 penalty units.
- (5) This section is a term of every residential tenancy agreement.

#### **51 Use of premises by tenant**

- (1) A tenant must not do any of the following:
  - (a) use the residential premises, or cause or permit the premises to be used, for any illegal purpose,
  - (b) cause or permit a nuisance,
  - (c) interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of any neighbour of the tenant,

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- (d) intentionally or negligently cause or permit any damage to the residential premises,
  - (e) cause or permit a number of persons to reside in the residential premises that exceeds any number specified in the residential tenancy agreement.
- (2) A tenant must do the following:
  - (a) keep the residential premises in a reasonable state of cleanliness,
  - (b) notify the landlord of any damage to the residential premises as soon as practicable after becoming aware of the damage.
- (3) On giving vacant possession of the residential premises, the tenant must do the following:
  - (a) remove all the tenant's goods from the residential premises,
  - (b) leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, as set out in any condition report applicable to the premises when the agreement was entered into,
  - (c) leave the residential premises in a reasonable state of cleanliness,
  - (d) remove or arrange for the removal from the residential premises of all rubbish,
  - (e) return to the landlord all keys, and other opening devices or similar devices, provided by the landlord to the tenant.
- (4) In this section:  
***residential premises*** includes everything provided with the residential premises (whether under the residential tenancy agreement or not) for use by the tenant.
- (5) This section is a term of every residential tenancy agreement.

### **52 Landlord's general obligations for residential premises**

- (1) A landlord must provide the residential premises in a reasonable state of cleanliness and fit for habitation by the tenant.
- (2) A landlord must not interfere with the supply of gas, electricity, water, telecommunications services or other services to the residential premises unless the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.
- (3) A landlord must comply with the landlord's statutory obligations relating to the health or safety of the residential premises.  
**Note.** Such obligations include obligations relating to swimming pools under the *Swimming Pools Act 1992*.
- (4) This section is a term of every residential tenancy agreement.

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### **53 Sale of residential premises**

- (1) A landlord must give the tenant written notice of the landlord's intention to sell the residential premises before preparing a contract for the sale of the premises.
- (2) A landlord or the agent of the landlord for the sale of the residential premises must make all reasonable efforts to agree with the tenant as to the days and times when the residential premises are to be periodically available for inspection by prospective purchasers.
- (3) A tenant must not unreasonably refuse to agree to days and times when the residential premises are to be periodically available for inspection by prospective purchasers.
- (4) This section is a term of every residential tenancy agreement.

### **54 Liability of tenant for actions of others**

- (1) A tenant is vicariously responsible to the landlord for any act or omission by any other person who is lawfully on the residential premises (other than a person who has a right of entry without the tenant's consent) that would have been a breach of the residential tenancy agreement if it had been an act or omission by the tenant.
- (2) This section is a term of every residential tenancy agreement.

## **Division 4 Landlord's rights to enter residential premises**

### **55 Access generally by landlord to residential premises without consent**

- (1) A landlord, the landlord's agent or any other person authorised by the landlord may enter residential premises during a residential tenancy agreement without the consent of the tenant only in the following circumstances:
  - (a) in an emergency,
  - (b) to carry out urgent repairs,
  - (c) to inspect the residential premises, on not more than 4 occasions in any period of 12 months, if the tenant has been given not less than 7 days notice on each occasion,
  - (d) to carry out or assess the need for necessary repairs (other than urgent repairs) to, or maintenance of, the residential premises, if the tenant has been given not less than 2 days notice on each occasion,

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- (e) to inspect a smoke alarm or install a smoke alarm in residential premises in accordance with a requirement under section 146A of the *Environmental Planning and Assessment Act 1979* (or carry out any other obligation under that section) if the tenant has been given not less than 2 days notice on each occasion,
  - (f) to value the property,
  - (g) if the landlord, landlord's agent or person has made a reasonable attempt to obtain entry with consent and has reasonable cause for serious concern about the health or safety of the tenant or any other person that the landlord, landlord's agent or person believes is on the residential premises,
  - (h) to show the premises to prospective tenants, on a reasonable number of occasions during the period of 14 days preceding the termination of the agreement, if the tenant is given reasonable notice on each occasion,
  - (i) to show the premises to prospective buyers or mortgagees, if the tenant is given not less than 24 hours notice on each occasion,
  - (j) if the landlord forms a reasonable belief that the residential premises have been abandoned,
  - (k) in accordance with an order of the Tribunal.
- (2) Subsection (1) does not apply to any part of premises to which the tenant does not have the right of exclusive occupation.
- (3) This section is a term of every residential tenancy agreement.

### **56 Entry with tenant's consent**

- (1) The landlord, the landlord's agent or any other person authorised by the landlord may enter the residential premises at any time during the currency of a residential tenancy agreement with the consent of the tenant.
- (2) This section is a term of every residential tenancy agreement.

### **57 Limits on entry by landlord or others without consent**

- (1) A landlord, the landlord's agent or other person who enters residential premises under a right to enter the premises without the consent of the tenant:
- (a) must enter the premises between the hours of 8.00 am and 8.00 pm, and
  - (b) must not enter on a Sunday or a public holiday, and

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- (c) must not stay on the residential premises longer than is necessary to achieve the purpose of the entry to the residential premises, and
  - (d) must, if practicable, notify the tenant of the proposed entry.
- (2) A person authorised by the landlord or landlord's agent must not enter residential premises under a right to enter the premises without the consent of the tenant unless:
  - (a) the person first obtains the written consent of the landlord or landlord's agent, and
  - (b) the person produces the consent to the tenant if the tenant is at the premises.
- (3) This section does not apply to entry:
  - (a) as agreed with the tenant, or
  - (b) in an emergency, or
  - (c) to carry out urgent repairs, or
  - (d) if the landlord forms a reasonable belief that the premises have been abandoned, or
  - (e) in accordance with an order of the Tribunal.
- (4) This section is a term of every residential tenancy agreement.

**58 Duty of tenant to give access to residential premises**

- (1) A tenant must permit a landlord, landlord's agent or other person exercising a right of access to the residential premises in accordance with this Division to have access to the premises.
- (2) A tenant must not, without reasonable excuse, contravene this section.  
Maximum penalty: 20 penalty units.
- (3) This section is a term of every residential tenancy agreement.

**59 Landlord must only enter premises in accordance with Division**

A landlord, the landlord's agent or other person authorised by the landlord must not enter the residential premises during the residential tenancy agreement, except in accordance with this Division.  
Maximum penalty: 20 penalty units.

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## 60 Landlord's remedies relating to access to premises

- (1) The Tribunal may, on application by a landlord, make any of the following orders:
  - (a) an order authorising the landlord or any other person to enter the residential premises for a purpose permitted under this Division,
  - (b) an order authorising the landlord or any other person to enter the residential premises for the purposes of showing the residential premises to prospective purchasers on a periodic basis,
  - (c) an order authorising the landlord or any other person to enter the residential premises for the purpose of determining whether the tenant has breached a term of the residential tenancy agreement.
- (2) The order may specify the days and times, and purposes for which, entry to the residential premises is authorised.

## 61 Tenant's remedies relating to access to premises

- (1) The Tribunal may, on application by a tenant, make an order specifying the days and times, and purposes for which, entry to the residential premises by a landlord, landlord's agent, agent for the sale of the residential premises or other persons is authorised.
- (2) The Tribunal may, on application by a tenant, order the landlord or the landlord's agent to pay compensation to the tenant for damage to the tenant's goods caused by any person in the exercise of a power of the landlord or landlord's agent to enter residential premises under this Act or the residential tenancy agreement.

## Division 5 Repairs to premises

### 62 Definitions

In this Division:

***residential premises*** includes everything provided with the premises (whether under the residential tenancy agreement or not) for use by the tenant.

***urgent repairs*** means any work needed to repair any one or more of the following:

- (a) a burst water service,
- (b) an appliance, fitting or fixture that uses water or is used to supply water that is broken or not functioning properly, so that a substantial amount of water is being wasted,
- (c) a blocked or broken lavatory system,
- (d) a serious roof leak,

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- (e) a gas leak,
  - (f) a dangerous electrical fault,
  - (g) flooding or serious flood damage,
  - (h) serious storm or fire damage,
  - (i) a failure or breakdown of the gas, electricity or water supply to the residential premises,
  - (j) a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating, cooling or laundering,
  - (k) any fault or damage that causes the residential premises to be unsafe or insecure,
  - (l) any other prescribed damage,
- but does not include work needed to repair premises not owned by the landlord or a person having superior title (such as a head landlord) to the landlord.

### **63 Landlord's general obligation**

- (1) A landlord must provide and maintain the residential premises in a reasonable state of repair, having regard to the age of, rent payable for and prospective life of the premises.
- (2) A landlord's obligation to provide and maintain the residential premises in a reasonable state of repair applies even though the tenant had notice of the state of disrepair before entering into occupation of the residential premises.
- (3) A landlord is not in breach of the obligation to provide and maintain the residential premises in a reasonable state of repair if the state of disrepair is caused by the tenant's breach of this Part.
- (4) This section is a term of every residential tenancy agreement.

### **64 Urgent repairs to residential premises**

- (1) A landlord must, not later than 14 days after being given a written notice from the tenant, reimburse the tenant for the reasonable costs of making urgent repairs to the residential premises.
- (2) A landlord is required to reimburse the costs only if:
  - (a) the state of disrepair did not result from a breach of the residential tenancy agreement by the tenant, and
  - (b) the tenant gave the landlord or the landlord's agent notice of the state of disrepair or made a reasonable attempt to do so, and
  - (c) the tenant gave the landlord or landlord's agent a reasonable opportunity to make the repairs, if notice was given, and

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- (d) the tenant has made a reasonable attempt to arrange for a licensed or otherwise properly qualified person nominated in the residential tenancy agreement to carry out the repairs, if such a person is so nominated, and
  - (e) the repairs were carried out, if appropriate, by licensed or otherwise properly qualified persons, and
  - (f) as soon as practicable after the repairs were carried out, the tenant gave the landlord or landlord's agent, or made a reasonable attempt to give the landlord or landlord's agent, a written notice setting out details of the repairs and the costs of the repairs, together with the receipts or copies of receipts for costs paid by the tenant.
- (3) The maximum amount that a tenant is entitled to be reimbursed under this section is the amount prescribed by the regulations.
- (4) Nothing in this section prevents a tenant, with the consent of the landlord, from making repairs to the residential premises and being reimbursed for the costs of those repairs.
- (5) This section is a term of every residential tenancy agreement.

### **65 Tenants remedies for repairs**

#### **(1) Orders for which tenant may apply**

The Tribunal may, on application by a tenant, make any of the following orders:

- (a) an order that the landlord carry out specified repairs,
- (b) an order that the landlord reimburse the tenant an amount for urgent repairs carried out by the tenant.

#### **(2) Orders for repairs**

The Tribunal may order that the landlord carry out specified repairs if it determines that the landlord has breached the obligation under this Act to maintain the residential premises in a reasonable state of repair, having regard to the age of, rent payable for and prospective life of the premises.

- (3) The Tribunal must not determine that a landlord has breached the obligation unless it is satisfied that:
  - (a) the landlord had notice of the need for the repair, and
  - (b) the landlord had failed to act with reasonable diligence to have the repair carried out.

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(4) **Reimbursement for urgent repairs**

The Tribunal may order that the landlord reimburse the tenant an amount for urgent repairs carried out by the tenant if it is satisfied that the landlord has failed to reimburse the tenant for the costs in accordance with this Division.

(5) **Payment of rent into Tribunal**

The Tribunal may order that all or part of the rent payable under a residential tenancy agreement be paid into the Tribunal until an order under this section has been complied with.

### **Division 6 Alterations and additions to residential premises**

#### **66 Tenant must not make alterations to premises without consent**

- (1) A tenant must not, without the landlord's written consent or unless the residential tenancy agreement otherwise permits, install a fixture or make any renovation, alteration or addition to the residential premises.
- (2) A landlord must not unreasonably withhold consent to a fixture, or to an alteration, addition or renovation that is of a minor or cosmetic nature.
- (3) A landlord may withhold consent to any other action by the tenant that is permitted under this section whether or not it is reasonable to do so.
- (4) A fixture installed by or on behalf of the tenant, or any renovation, alteration or addition to the residential premises by or on behalf of the tenant, is to be at the cost of the tenant, unless the landlord otherwise agrees.
- (5) This section is a term of every residential tenancy agreement.

#### **67 Removal of fixtures installed by tenant**

- (1) A tenant may, at the tenant's cost and before the tenant gives vacant possession of the residential premises, remove any fixture that was installed by the tenant in accordance with this Act or the residential tenancy agreement.
- (2) A tenant must notify the landlord of any damage caused by removing a fixture and must repair the damage or compensate the landlord for the landlord's reasonable expenses of repairing the damage.
- (3) Despite subsection (1), a tenant is not entitled to remove a fixture without the consent of the landlord if the fixture was installed at the landlord's expense or the landlord provided the tenant with a benefit equivalent to the cost of the fixture.
- (4) This section is a term of every residential tenancy agreement.

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### **68 Tenants' remedies for alterations**

- (1) The Tribunal may, on application by a tenant, make any of the following orders:
  - (a) an order that the tenant may install a fixture or make a renovation, alteration or addition to the residential premises without the consent of the landlord,
  - (b) an order that the tenant is entitled to remove a fixture without the consent of the landlord.
- (2) The Tribunal may order that the tenant may install a fixture or make a renovation, alteration or addition to the residential premises only if it is satisfied:
  - (a) that the landlord's failure to give consent is unreasonable, and
  - (b) if the consent is to a renovation, alteration or addition, that it is of a minor or cosmetic nature.
- (3) The Tribunal may determine that a failure to consent is not unreasonable in any of the following circumstances (but is not limited to those circumstances for such a determination):
  - (a) if the work involves structural changes,
  - (b) if the work is prohibited under any other law,
  - (c) if the work is not consistent with the nature of the property.

### **69 Landlords' remedies for alterations**

- (1) The Tribunal may, on application by a landlord, make any of the following orders:
  - (a) an order prohibiting the tenant from removing a fixture,
  - (b) an order that the tenant compensate the landlord for the cost of rectifying work done by or on behalf of the tenant on the residential premises.
- (2) The Tribunal may make an order under subsection (1) (b) if the Tribunal is satisfied that:
  - (a) the work was not done to a satisfactory standard, or
  - (b) the work, if not rectified, is likely to adversely affect the landlord's ability to let the residential premises to other tenants.
- (3) The Tribunal may make an order that the tenant compensate the landlord for the cost of rectifying work done by or on behalf of the tenant whether or not the landlord consented to the carrying out of the work.

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## **Division 7            Security and safety of residential premises**

### **70    Locks and other security devices**

- (1) A landlord must provide and maintain the locks or other security devices necessary to ensure that the residential premises are reasonably secure.
- (2) A landlord or landlord's agent must give to each tenant named in the residential tenancy agreement a copy of the key or any other opening device or information required to open a lock or security device for the residential premises or common property to which the tenant is entitled to have access.
- (3) The initial copies are to be provided free of charge but the landlord may recover from a tenant the cost of providing replacement or additional copies.
- (4) This section is a term of every residential tenancy agreement.

### **71    Changes of locks and other security devices**

- (1) A landlord or tenant may alter, remove or add or cause or permit the alteration, removal or addition of a lock or other security device of the residential premises only if:
  - (a) the other party agrees, or
  - (b) with a reasonable excuse.
- (2) Without limiting what is a reasonable excuse, it is a reasonable excuse that a lock or other security devices was altered, removed or added:
  - (a) in an emergency, or
  - (b) in accordance with an order of the Tribunal, or
  - (c) after the tenancy of a co-tenant was terminated.
- (3) If a lock or other security device is altered, removed or added by a landlord or the tenant without the consent of the other party, it is presumed, in the absence of evidence to the contrary, that it was altered, removed or added by the landlord or tenant without reasonable excuse.
- (4) A copy of the key or any other opening device or information required to open a lock or other security device that is altered, added or removed by a landlord or tenant must be given to the other party, unless:
  - (a) the other party agrees, or
  - (b) the Tribunal authorises a copy not to be given.

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- (5) A landlord or tenant who contravenes subsection (1) is guilty of an offence.

Maximum penalty: 20 penalty units.

- (6) This section is a term of every residential tenancy agreement.

### **72 Changes of locks and other security devices after avo**

- (1) This section applies if a tenant or occupant of residential premises becomes subject to an apprehended violence order that prohibits the person's access to the residential premises.

- (2) A remaining tenant or occupant of the premises may, without the consent of the landlord, alter, remove or add or cause or permit the alteration, removal or addition of a lock or other security device of the residential premises.

- (3) A copy of the key or any other opening device or information required to open a lock or other security device that is altered, added or removed or caused or permitted to be altered, added or removed by a tenant or occupant under this section must be given to the landlord.

- (4) This section is a term of every residential tenancy agreement.

### **73 Remedies for security of residential premises**

- (1) The Tribunal may, on application by a landlord or tenant, make any of the following orders if it thinks it reasonable in the circumstances to do so:

- (a) an order authorising the landlord or tenant to alter, remove or add or cause or permit the alteration, removal or addition of a lock or other security device,
- (b) an order authorising the landlord or tenant to refuse to give to the other party a copy of a key or any other opening device or information,
- (c) an order requiring a copy of a key or any other opening device or information to be given to the landlord or tenant.

- (2) The Tribunal may, on application by an occupant entitled under section 72 to alter, remove or add or cause or permit the alteration, removal or addition of a lock or other security device, make any order that the Tribunal may make under subsection (1) as if the occupant were a tenant.

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## **Part 4    Changes of tenant and landlord**

### **74    Transfer of tenancy or sub-letting by tenant**

- (1) A tenant may transfer the tenancy under a residential tenancy agreement to another person or sub-let the premises to another person, if the landlord gives written consent to the transfer or sub-letting.
- (2) The landlord must not charge for giving a consent to a transfer or sub-letting, other than for the reasonable expenses of giving consent.
- (3) This section is a term of every residential tenancy agreement.

### **75    Consent to transfer of tenancy or sub-letting**

- (1) **No requirement for reasonable refusal for whole transfer or sub-letting**

The landlord may withhold consent to a transfer or sub-letting relating to the whole tenancy or residential premises whether or not it is reasonable to do so.

- (2) **Consent must not be unreasonably withheld for partial transfer or sub-letting**

The landlord must not unreasonably withhold consent to a transfer of a tenancy or sub-letting of premises if the transfer results only in one or more tenants in addition to an original tenant under the residential tenancy agreement or the partial sub-letting of the residential premises occupied by the tenant.

- (3) Without limiting subsection (2), it is reasonable for the landlord not to consent if the landlord would not have accepted the proposed tenant as a tenant for a new residential tenancy agreement.
- (4) Subsections (1)–(3) are terms of every residential tenancy agreement.
- (5) **Remedy if landlord refuses consent**  
The Tribunal may, on application by a tenant, order that the tenant may transfer a tenancy or sub-let residential premises as referred to in subsection (2) if the Tribunal is of the opinion that the landlord's failure to consent is unreasonable.
- (6) In determining whether to make an order, the Tribunal may take into account (but is not bound by) the number of occupants permitted under the residential tenancy agreement.

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### **76 Notice of sale of residential premises by landlord**

- (1) This section applies if residential premises subject to a tenancy are sold.
- (2) The landlord must give the tenant a notice of the sale containing the following:
  - (a) the name of the purchaser,
  - (b) a direction that the tenant pay all future rent to the purchaser.

**Note.** For the effect of such a notice on requirements at law for an attornment, see section 125 of the *Conveyancing Act 1919*.

### **77 Recognition of certain persons as tenants**

- (1) The Tribunal may, on application by a person who is occupying residential premises, make an order recognising the person as a tenant under a residential tenancy agreement or join the person as a party to any proceedings relating to the premises, or both.
- (2) The Tribunal may make an order if:
  - (a) the sole tenant under the residential tenancy agreement to which the premises are subject has died, or
  - (b) the tenant no longer occupies the premises.
- (3) An order under this section may vest a tenancy over the residential premises in the occupant on such of the terms of the previous residential tenancy agreement as the Tribunal thinks appropriate, having regard to the circumstances of the case.
- (4) An application for an order under this section may be made at the same time as any other application or during proceedings before the Tribunal or independently of any such other application or proceedings.
- (5) If the tenant no longer occupies the premises, the Tribunal must not make an order under this section recognising a person as a tenant in respect of social housing premises if the landlord is the New South Wales Land and Housing Corporation or the Aboriginal Housing Office.

### **78 Death of co-tenant**

- (1) On the death of a co-tenant leaving one or more other co-tenants under a residential tenancy agreement, the remaining co-tenants may continue the tenancy or give the landlord a termination notice that has a termination date not earlier than 21 days after the day on which the notice is given.
- (2) If a tenancy is continued under this section, the remaining co-tenants are taken to be the only tenants under the residential tenancy agreement on and from the death of the deceased tenant.

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- (3) This section applies whether or not any fixed term tenancy of the residential tenancy agreement has ended.

**79 Change of tenants after avo**

**(1) Termination of tenancy**

On the making of a final apprehended violence order that prohibits a co-tenant from having access to the residential premises, the tenancy of that co-tenant under the residential tenancy agreement is terminated. Such a termination does not affect the tenancy of any co-tenant not subject to the order.

**(2) Tribunal may recognise occupant as tenant after avo**

The Tribunal may, on application by a remaining occupant or co-tenant, make an order recognising the remaining occupant as a tenant under the residential tenancy agreement, if another occupant or co-tenant or former occupant or co-tenant is subject to an apprehended violence order that prohibits the other person from having access to the residential premises.

- (3) An order under this section may vest a tenancy over the residential premises in the occupant on such of the terms of the previous residential tenancy agreement as the Tribunal thinks appropriate, having regard to the circumstances of the case.

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

### **Division 1 Termination of residential tenancy agreements generally**

#### **80 Definitions**

In this Part:

*break fee* means a break fee payable under this Part.

*termination date* means the day on which the residential tenancy agreement is terminated and by which vacant possession of the residential premises is to be given.

*termination notice* means a notice terminating a residential tenancy agreement.

*termination order* means an order terminating a residential tenancy agreement together with an order for possession of the residential premises.

#### **81 Circumstances of termination of residential tenancies**

**(1) Termination only as set out in Act**

A residential tenancy agreement terminates only in the circumstances set out in this Act.

**(2) Termination by notice and vacant possession**

A residential tenancy agreement terminates if a landlord or tenant gives a termination notice in accordance with this Act and the tenant gives vacant possession of the residential premises.

**(3) Termination by order of Tribunal**

A residential tenancy agreement terminates if the Tribunal makes an order terminating the agreement under this Act.

**(4) Other legal reasons for termination**

A residential tenancy agreement terminates if any of the following occurs:

- (a) a person having superior title (such as a head landlord) to that of the landlord becomes entitled to possession of the residential premises,
- (b) a mortgagee of the residential premises becomes entitled to possession of the premises to the exclusion of the tenant,
- (c) a person who succeeds to the title of the landlord becomes entitled to possession of the residential premises to the exclusion of the tenant,

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- (d) the tenant abandons the residential premises,
- (e) the tenant gives up possession of the residential premises with the landlord's consent,
- (f) the interests of the landlord and tenant become vested in the one person (merger),
- (g) disclaimer occurs (such as when the tenant's repudiation of the tenancy is accepted by the landlord).

### **82 Termination notices**

- (1) A termination notice must set out the following matters:
  - (a) the residential premises concerned,
  - (b) the day on which the residential tenancy agreement is terminated and by which vacant possession of the premises is to be given (the termination date),
  - (c) if the notice is not given under section 84, 85, 98 or 99, the ground for the notice,
  - (d) any other matters prescribed by the regulations.
- (2) A termination notice must be in writing and be signed by the party giving the notice or the party's agent.
- (3) A termination notice for a residential tenancy agreement under which a periodic tenancy is created may specify a day other than the last day of a period of the tenancy as the termination date.

### **83 Termination orders**

- (1) If the Tribunal makes an order terminating a residential tenancy agreement under this Act, it must also make an order for possession of the residential premises specifying the day on which the order takes or took effect.
- (2) An application to the Tribunal by a landlord for a termination order:
  - (a) must be made not later than 30 days after the termination date specified in the relevant termination notice, and
  - (b) must be made only if vacant possession of the premises is not given as required by the notice.

## **Division 2 Termination by landlord**

### **84 End of residential tenancy agreement at end of fixed term tenancy**

- (1) A landlord may, at any time, give a termination notice for a fixed term agreement that is to take effect at or after the end of the tenancy.

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- (2) The termination notice must specify a termination date that is not earlier than the end of the tenancy and not earlier than 30 days after the day on which the notice is given.
- (3) The Tribunal must, on application by a landlord, make a termination order if it is satisfied that a termination notice was given in accordance with this section and the tenant has not vacated the premises as required by the notice.
- (4) The Tribunal may, in determining the day on which vacant possession of the residential premises is to be given to the landlord, take into account the circumstances of the case.
- (5) This section does not apply to a residential tenancy agreement if the tenant has been in continual possession of the same residential premises for a period of 20 years and the term of the original tenancy has expired.

### **85 Termination of periodic tenancy**

- (1) A landlord may, at any time, give a termination notice for a residential tenancy agreement for a periodic tenancy.
- (2) The termination notice must specify a termination date that is not earlier than 90 days after the day on which the notice is given.
- (3) The Tribunal must, on application by a landlord, make a termination order if it is satisfied that a termination notice was given in accordance with this section and the tenant has not vacated the premises as required by the notice.
- (4) The Tribunal may, in determining the day on which vacant possession of the residential premises is to be given to the landlord, take into account the circumstances of the case.
- (5) This section does not apply to a residential tenancy agreement if the tenant has been in continual possession of the same residential premises for a period of 20 years or more.

### **86 Sale of premises**

- (1) A landlord may give a termination notice on the ground that the landlord has entered into a contract for the sale of the residential premises under which the landlord is required to give vacant possession of the premises.
- (2) The termination notice must specify a termination date that is not earlier than 30 days after the day on which the notice is given.
- (3) The landlord must not give a termination notice under this section during the currency of a tenancy of a fixed term agreement.

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- (4) The Tribunal may, on application by a landlord, make a termination order if it is satisfied that:
  - (a) the landlord has entered into a contract for the sale of the residential premises that is proceeding under which the landlord is required to give vacant possession of the premises, and
  - (b) termination notice was given in accordance with this section and the tenant has not vacated the premises as required by the notice.

### **87 Breach of agreement**

- (1) A landlord may give a termination notice on the ground that the tenant has breached the residential tenancy agreement.
- (2) The termination notice must specify a termination date that is not earlier than 14 days after the day on which the notice is given.
- (3) The termination notice may specify a termination date that is before the end of the tenancy of a fixed term agreement.
- (4) The Tribunal may, on application by a landlord, make a termination order if it is satisfied that:
  - (a) the tenant has breached the residential tenancy agreement, and
  - (b) the breach is, in the circumstances of the case, sufficient to justify termination of the agreement, and
  - (c) the termination notice was given in accordance with this section and the tenant has not vacated the premises as required by the notice.
- (5) In considering the circumstances of the case, the Tribunal may consider (but is not limited to considering) the following:
  - (a) the nature of the breach,
  - (b) any previous breaches,
  - (c) any steps taken by the tenant to remedy the breach,
  - (d) any steps taken by the landlord about the breach,
  - (e) the previous history of the tenancy.
- (6) The Tribunal may refuse to make a termination order if it is satisfied that the tenant has remedied the breach.

**Note.** Section 152 sets out additional matters to be considered if the residential tenancy agreement is a social housing tenancy agreement.

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### **88 Termination notices for non-payment of rent**

- (1) A termination notice given by a landlord on the ground of a breach of the residential tenancy agreement solely arising from failure to pay rent (a ***non-payment termination notice***) has no effect unless the rent has remained unpaid in breach of the agreement for not less than 14 days before the notice is given.
- (2) A non-payment termination notice is not ineffective because of any failure of the landlord or the landlord's agent to make a prior formal demand for payment of the rent.
- (3) A non-payment termination notice must inform the tenant that the tenant is not required to vacate the residential premises if the tenant pays all the rent owing or enters into, and fully complies with, a repayment plan agreed with the landlord.
- (4) A landlord may apply to the Tribunal for a termination order before the termination date specified in a non-payment termination notice. The Tribunal must not consider any such application until after the termination date.

### **89 Termination and repossession on ground of non-payment of rent**

- (1) The Tribunal must not issue a termination order after a non-payment termination notice is issued if the tenant pays all the rent owing or enters into, and fully complies with, a repayment plan agreed with the landlord.
- (2) If the tenant pays all the rent owing or enters into, and fully complies with, a repayment plan agreed with the landlord after the termination of a residential tenancy agreement solely on the ground of non-payment of rent and before the tenant vacates the residential premises, the termination on that ground, and any warrant for possession issued as a result of any order for possession, cease to have effect.
- (3) If a tenant repays all the rent owing or enters into, and fully complies with, a repayment plan agreed with the landlord, the landlord must notify:
  - (a) the Tribunal, if the landlord has applied to the Tribunal for a termination order on the ground of non-payment of rent and the application has not been finally dealt with, or
  - (b) the Sheriff, if a termination order has been made and a warrant for possession of the residential premises has not been issued or has been issued but has not been enforced by the Sheriff.

Maximum penalty: 20 penalty units.

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### 90 Serious damage or injury by tenant or other occupant

- (1) The Tribunal may, on application by a landlord, make a termination order if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the residential premises, has intentionally or recklessly caused or permitted:
  - (a) serious damage to the residential premises or any neighbouring property (including any property available for use by the tenant in common with others), or
  - (b) injury to the landlord, the landlord's agent, an employee or contractor of the landlord or the landlord's agent, or an occupier or person on neighbouring property or premises used in common with the tenant.
- (2) The termination order must specify that the order for possession takes effect immediately.
- (3) A landlord may make an application under this section without giving the tenant a termination notice.
- (4) The Tribunal may make a termination order whether or not the term of the tenancy of the residential tenancy agreement has ended.
- (5) In this section:  
***neighbouring property*** means:
  - (a) property adjoining or adjacent to the residential premises, or
  - (b) property owned by the landlord (wherever situated).

### 91 Use of premises for illegal purposes

- (1) The Tribunal may, on application by a landlord, make a termination order if it is satisfied that the tenant or any person who although not a tenant is occupying or jointly occupying the residential premises has intentionally or recklessly caused or permitted:
  - (a) the use of the residential premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others) for the purposes of the manufacture, sale, cultivation or supply of any prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
  - (b) the use of the residential premises for any other unlawful purposes and that the use is sufficient to justify the termination.
- (2) In considering whether to make a termination order on the ground specified in subsection (1) (b), the Tribunal may consider (but is not limited to considering) the following:
  - (a) the nature of the unlawful use,

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- (b) any previous unlawful uses,
  - (c) the previous history of the tenancy.
- (3) The termination order must specify that the order for possession takes effect immediately.
- (4) A landlord may make an application under this section without giving the tenant a termination notice.
- (5) The Tribunal may make a termination order whether or not any term of the tenancy of the residential tenancy agreement has ended.

**92 Tribunal may terminate residential tenancy agreement for threat, abuse, intimidation or harassment**

- (1) The Tribunal may, on application by a landlord, make a termination order if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the residential premises, has:
  - (a) seriously or persistently threatened or abused the landlord, the landlord's agent or any employee or contractor of the landlord or landlord's agent, or caused or permitted any such threats, abuse or conduct, or
  - (b) intentionally engaged, or intentionally caused or permitted another person to engage, in conduct in relation to any such person that would be reasonably likely to cause the person to be intimidated or harassed (whether or not any abusive language or threat has been directed towards the person).
- (2) The termination order must specify that the order for possession takes effect immediately.
- (3) A landlord may make an application under this section without giving the tenant a termination notice.
- (4) The Tribunal may make a termination order whether or not any term of the tenancy of the residential tenancy agreement has ended.

**93 Hardship to landlord**

- (1) The Tribunal may, on application by a landlord, make a termination order if it is satisfied that the landlord would, in the special circumstances of the case, suffer undue hardship if the residential tenancy agreement were not terminated.
- (2) The Tribunal may, if it thinks fit, also order the landlord to pay compensation to the tenant for the tenant's loss of the tenancy.
- (3) The tenant must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been reasonably avoided by the tenant.

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- (4) A landlord may make an application under this section without giving the tenant a termination notice.
- (5) The Tribunal may make a termination order whether or not any term of the tenancy of the residential tenancy agreement has ended.

### **94 Termination of long term tenancies**

- (1) The Tribunal may, on application by a landlord, make a termination order for a residential tenancy agreement:
  - (a) if the tenant has been in continual possession of the same residential premises for a period of 20 years, and
  - (b) if the tenant occupied the premises under a fixed term agreement, the term of the original tenancy has expired, and
  - (c) if the Tribunal is satisfied that it is appropriate to do so in the circumstances of the case.
- (2) A landlord may make an application under this section without giving the tenant a termination notice.
- (3) The Tribunal must not make a termination order under this section during the currency of the term of the tenancy of a residential tenancy agreement.
- (4) The Tribunal, in determining the day on which vacant possession of the residential premises is to be given to the landlord:
  - (a) may take into account the circumstances of the case, and
  - (b) must not order that vacant possession be given earlier than 90 days after the order is made.

### **95 Abandoned premises**

- (1) The Tribunal may, on application by a landlord, make an order declaring that the tenant abandoned the residential premises on a specified day.
- (2) The tenant is taken to have abandoned the residential premises on the specified day.
- (3) The landlord may take immediate possession of residential premises that have been abandoned by the tenant if there are no remaining occupants.

**Note.** The residential tenancy agreement is terminated if a tenant abandons the residential premises (see section 81 (4) (d)).

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- (4) In determining whether a tenant has abandoned the residential premises the Tribunal may consider (but is not limited to considering) the following:
- (a) the failure by the tenant to pay rent under the residential tenancy agreement,
  - (b) any evidence that the tenant no longer resides at the premises,
  - (c) any failure by the tenant to maintain the property as required under the residential tenancy agreement.

### **96 Landlord's remedies on abandonment**

- (1) The Tribunal may, on application by a landlord, order the tenant to pay the following amounts if the tenant abandons the residential premises:
- (a) a break fee, if the premises are abandoned before the end of the term of the tenancy of a fixed term agreement,
  - (b) an occupation fee, of an amount not exceeding the rent for a period of 14 days, for any day on which goods of the tenant remain on the premises.
- (2) The break fee for a fixed term agreement for a tenancy of less than 3 years is:
- (a) an amount equal to not more than 6 weeks' rent if less than half of the term of the tenancy had expired when the premises were abandoned, or
  - (b) an amount equal to not more than 4 weeks' rent in any other case.
- (3) The break fee for a fixed term agreement for a tenancy of 3 years or more is the amount set out in subsection (2) or, if an amount is specified in the agreement, the amount specified. An agreement must not specify a break fee exceeding the amount (if any) specified by the regulations.
- (4) The break fee for a periodic tenancy is an amount equal to 3 weeks' rent.
- (5) The tenant is not liable to pay any compensation or other additional amount (other than the break fee or occupation fee) for the early termination of the agreement.

### **97 Occupants remaining in residential premises**

- (1) This section applies if the tenant under a residential tenancy agreement no longer resides in the residential premises, whether or not the residential tenancy agreement has been terminated.
- (2) The landlord may give any remaining occupant of the residential premises a notice requiring the occupant to give vacant possession of the premises within a period of not less than 14 days.

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- (3) The Tribunal may, on application by a landlord, make an order for possession of the residential premises specifying the day on which the order for possession takes effect if it is satisfied that:
  - (a) notice was given in accordance with this section, and
  - (b) the occupant has not vacated the premises, and
  - (c) the tenant no longer resides in the premises.

### **Division 3            Termination by tenant**

#### **98    End of fixed term agreement at or before end of term of tenancy**

(1)    **Termination notice may be given**

A tenant may give a termination notice for a fixed term agreement at any time during the term of the tenancy.

- (2) The termination notice must specify a termination date that is not less than 14 days after the day on which the notice is given.

(3)    **Break fee payable for termination before end of fixed term**

The tenant must pay to the landlord a break fee if the termination notice specifies a termination date that is earlier than the end of the term of the tenancy.

- (4) The break fee for a fixed term agreement for a tenancy of less than 3 years is:

- (a) an amount equal to not more than 6 weeks' rent if less than half of the fixed term tenancy has expired on the termination date, or
- (b) an amount equal to not more than 4 weeks' rent in any other case.

- (5) The break fee for a fixed term agreement for a tenancy of 3 years or more is the amount set out in subsection (4) or, if an amount is specified in the agreement, the amount specified in the agreement. An agreement must not specify a break fee exceeding the amount (if any) specified by the regulations.

- (6) The tenant is not liable to pay any compensation or other additional amount (other than the break fee) for the early termination of the agreement and is not eligible for any refund of such a fee.

(7)    **Landlord's remedy**

The Tribunal may, on application by a landlord, order a tenant to pay to the landlord any applicable break fee under this section.

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### **99 Termination of periodic tenancy by tenant**

- (1) A tenant may, at any time, give a termination notice for a residential tenancy agreement for a periodic tenancy.
- (2) The termination notice must specify a termination date that is not earlier than 21 days after the day on which the notice is given.

### **100 Breach of agreement—termination notice by tenant**

- (1) A tenant may give a termination notice on the ground that the landlord has breached the residential tenancy agreement.
- (2) The termination notice must specify a termination date that is not earlier than 14 days after the day on which the notice is given.
- (3) The termination notice may specify a termination date that is before the end of the term of the tenancy of the residential tenancy agreement.
- (4) The Tribunal may, on application by a landlord made before the termination date, revoke a termination notice by a tenant if satisfied that the landlord has remedied the breach and that it is appropriate, in the circumstances of the case, to continue the tenancy.

**Note.** The tenant may apply directly to the Tribunal on the ground of breach by the landlord for a termination order without first giving notice (see section 105).

### **101 Rent increases during long-term fixed term leases—termination notice by tenant**

- (1) This section applies to a fixed term agreement for a tenancy of more than 2 years.
- (2) A tenant may give a termination notice on the ground that the rent has been increased.
- (3) The termination notice must specify a termination date that is not earlier than 21 days after the day on which the notice is given and must be given before the rent increase takes effect.
- (4) The termination notice may specify a termination date that is earlier than the end of the term of the tenancy.
- (5) The tenant is not liable to pay any compensation or other additional amount (other than rent due under the agreement) for the early termination of the agreement.

### **102 Early termination without compensation to landlord**

- (1) A tenant may give a termination notice on any of the following grounds:
  - (a) that the tenant has been offered, and accepted, accommodation in social housing premises,

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- (b) that the tenant has accepted a place in an aged care facility or requires care in such a facility,
  - (c) that the landlord proposes to sell the residential premises and did not disclose the proposed sale before entering into the residential tenancy agreement,
  - (d) that another co-tenant or occupant or former co-tenant or occupant is the subject of a final apprehended violence order that prohibits the person from having access to the residential premises.
- (2) The termination notice must specify a termination date that is not earlier than 14 days after the day on which the notice is given.
- (3) The termination notice may specify a termination date that is earlier than the end of the term of the tenancy of the residential tenancy agreement.
- (4) The tenant is not liable to pay any compensation or other additional amount for the early termination of the agreement.

### **103 Termination by co-tenant of own tenancy**

- (1) A co-tenant may give a termination notice to the landlord and each other co-tenant if the term of the tenancy of a residential tenancy agreement has ended or the tenancy is a periodic tenancy.
- (2) The termination notice must specify a termination date of not less than 21 days after the day on which the notice is given.
- (3) A co-tenant ceases to be a tenant under the residential tenancy agreement on the termination date if the co-tenant gives a termination notice in accordance with this section and vacates the residential premises.
- (4) The Tribunal may, on application by a co-tenant, make a termination order for the residential tenancy agreement if it is satisfied that a termination notice was given by another co-tenant in accordance with this section.

### **104 Termination of agreement or co-tenancies by Tribunal**

- (1) The Tribunal may, on application by a co-tenant, make any of the following orders:
  - (a) an order terminating the tenancy of the co-tenant or another co-tenant under the residential tenancy agreement from a date specified in the order,

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- (b) an order terminating the residential tenancy agreement,
  - (c) any necessary ancillary orders relating to the residential tenancy agreement or liabilities under that agreement.
- (2) The Tribunal may make an order under this section if it is of the opinion that it is appropriate to do so in the special circumstances of the case.
- (3) If the Tribunal terminates the tenancy of one or more, but not all, of the co-tenants under the residential tenancy agreement, the Tribunal must specify the day on which the tenants whose tenancies are terminated must vacate the residential premises.
- (4) The Tribunal may order a co-tenant under a residential tenancy agreement that is terminated under this section before the end of the term of the tenancy of the agreement to pay a break fee calculated in accordance with section 98.
- (5) The Tribunal may make a termination order whether or not any fixed term tenancy of the residential tenancy agreement has ended.
- (6) The Tribunal must give the landlord notice of an application under this section. The landlord has a right to be heard in the proceedings.

### **105 Breach of agreement—termination by Tribunal**

- (1) The Tribunal may, on application by a tenant, make a termination order if it is satisfied that:
  - (a) the landlord has breached the residential tenancy agreement, and
  - (b) the breach is, in the circumstances of the case, sufficient to justify termination of the agreement.
- (2) In considering the circumstances of the case, the Tribunal may consider (but is not limited to considering) the following:
  - (a) the nature of the breach,
  - (b) any previous breaches,
  - (c) any steps taken by the landlord to remedy the breach,
  - (d) any steps taken by the tenant about the breach,
  - (e) the previous history of the tenancy.
- (3) The Tribunal may refuse to make a termination order if it is satisfied that the landlord has remedied the breach.
- (4) A tenant may make an application under this section without giving the landlord a termination notice.
- (5) The Tribunal may make a termination order whether or not any term of the tenancy of the residential tenancy agreement has ended.

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### **106    Hardship to tenant—fixed term agreements**

- (1) The Tribunal may, on application by a tenant, make a termination order for a fixed term agreement if it is satisfied that the tenant would, in the special circumstances of the case, suffer undue hardship if the residential tenancy agreement were not terminated.
- (2) The Tribunal may, if it thinks fit, also order the tenant to pay compensation to the landlord for the landlord's loss of the tenancy.
- (3) The landlord must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been reasonably avoided by the landlord.
- (4) A tenant may make an application under this section without giving the landlord a termination notice.
- (5) The Tribunal may make a termination order whether or not any term of the tenancy of the residential tenancy agreement has ended.

### **107    Termination by Tribunal on landlord's application after termination notice given by tenant**

- (1) The Tribunal may, on application by a landlord, make a termination order if it is satisfied that:
  - (a) a termination notice was given by a tenant in accordance with this Division, and
  - (b) the tenant did not revoke the termination notice before the termination date, and
  - (c) the tenant has not vacated the residential premises as required by the notice.
- (2) The Tribunal may, in determining the day on which vacant possession of the residential premises is to be given to the landlord, take into account the circumstances of the case.

## **Division 4      Termination by events**

### **108    Death of tenant**

- (1) On the death of the sole tenant under a residential tenancy agreement, the landlord or the legal personal representative of the tenant may give a termination notice to the other party.
- (2) The termination notice may specify a termination date that is earlier than the end of any term of the tenancy of the residential tenancy agreement.

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- (3) The Tribunal may, on application by a landlord or the legal personal representative of the deceased tenant, make a termination order if it is satisfied that a termination notice was given in accordance with this section and that vacant possession of the residential premises has not been given as required by the notice.
- (4) The legal personal representative of a deceased tenant who is given a termination notice by the landlord may give vacant possession of the residential premises at any time before the termination date specified in the termination notice.
- (5) The estate of the deceased tenant is not liable to pay any rent for the period commencing when the legal personal representative gives vacant possession of the residential premises and ending on the termination date.

### **109 Agreement frustrated**

- (1) This section applies if residential premises under a residential tenancy agreement are, otherwise than as a result of a breach of an agreement, destroyed or become wholly or partly uninhabitable or cease to be lawfully usable as a residence or are appropriated or acquired by any authority by compulsory process.
- (2) The landlord or the tenant may give the other party a termination notice.
- (3) The termination notice may end the residential tenancy agreement on the date that the notice is given.
- (4) The termination notice may specify a termination date that is earlier than the end of any term of the tenancy of the residential tenancy agreement.
- (5) The Tribunal may, on application by a landlord or tenant, make a termination order if it is satisfied that a termination notice was given in accordance with this section and that this section applies to the residential premises.

## **Division 5 Miscellaneous**

### **110 Tenant may vacate at any time before end of termination notice given by landlord**

- (1) A tenant who is given a termination notice by the landlord, or who gives a termination notice, may give vacant possession of the residential premises at any time before the termination date.

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- (2) If a termination notice is given by a landlord, the tenant is not liable to pay any rent for the period commencing when the tenant gives vacant possession of the residential premises and ending on the termination date.
- (3) This section does not apply to a termination notice given under section 84 in respect of any period before the end of the tenancy under the residential tenancy agreement.

### **111 Disputes about termination**

- (1) A landlord or tenant may apply to the Tribunal for an order in relation to a dispute about a termination notice.
- (2) The Tribunal may, on application by a landlord or tenant, declare that a termination notice was or was not given in accordance with this Part.
- (3) Subsection (2) does not limit any other order the Tribunal may make on an application under this section.

### **112 Withdrawal of termination notices**

The party who gives a termination notice may, at any time, revoke the notice with the consent of all other parties to the residential tenancy agreement.

### **113 Defects in termination notices**

The Tribunal may make a termination order for a residential tenancy agreement or any other order even though there is a defect in the relevant termination notice or the manner of service of the notice:

- (a) if it thinks it appropriate to do so in the circumstances of the case, and
- (b) if it is satisfied that the person to whom the notice was given has been placed (by means of the order or otherwise) in the same position as if there were no defect.

### **114 Suspension of possession orders**

- (1) The Tribunal may suspend the operation of an order for possession of residential premises for a specified period if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused to the landlord and tenant by the suspension.
- (2) The Tribunal may impose an obligation on a tenant to pay a specified occupation fee for the period for which the order for possession is suspended.

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## **115 Retaliatory evictions**

- (1) The Tribunal may, on application by a tenant or when considering an application for a termination order or in relation to a termination notice:
  - (a) declare that a termination notice has no effect, or
  - (b) refuse to make a termination order,if it is satisfied that a termination notice given by the landlord was a retaliatory notice.
- (2) The Tribunal may find that a termination notice is a retaliatory notice if it is satisfied that the landlord was wholly or partly motivated to give the notice for any of the following reasons:
  - (a) the tenant had applied or proposed to apply to the Tribunal for an order,
  - (b) the tenant had taken or proposed to take any other action to enforce a right of the tenant under the residential tenancy agreement, this Act or any other law,
  - (c) an order of the Tribunal was in force in relation to the landlord and tenant.
- (3) A tenant may make an application to the Tribunal for a declaration under this section before the termination date and not later than 30 days after the termination notice is given to the tenant.

## **116 Apportionment of rent on termination**

The rent payable under a residential tenancy agreement accrues from day to day and on termination the appropriate amount is payable.

## **117 Acceptance of rent after termination notice**

- (1) A demand for, any proceedings for the recovery of, or acceptance of, rent payable under a residential tenancy agreement by a landlord does not operate as a waiver of any breach of the agreement or any termination notice by the landlord on the ground of breach of the agreement.
- (2) Any such action by a landlord is not evidence of the creation of a new tenancy.
- (3) This section does not apply to a termination notice given solely on the ground of failure to pay rent.

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### **118    Other notices**

To avoid doubt, a landlord or tenant who gives a termination notice may:

- (a) if the notice is revoked, give a further notice on the same or a different ground, or
- (b) if the notice is not revoked, give a further notice on a different ground.

## **Part 6 Recovery of possession of premises**

### **Division 1 Recovery of possession**

#### **119 Prohibition on certain recovery proceedings in courts**

A landlord or former landlord must not commence proceedings against a tenant or former tenant of the landlord in the Supreme Court, the District Court or the Local Court to obtain recovery of possession of residential premises subject to a residential tenancy agreement.

#### **120 Repossession of residential premises—offences**

- (1) A person must not enter residential premises for the purposes of taking possession of those premises before or after the end of a residential tenancy agreement unless:
  - (a) the person is acting in accordance with a warrant arising out of an order for possession of the Tribunal or a writ or warrant arising out of a judgment or order of a court, or
  - (b) the tenant has abandoned the premises or given vacant possession of the premises.

Maximum penalty: 200 penalty units.

**Note.** Under section 95 a landlord may apply to the Tribunal for an order declaring that a tenant has abandoned the residential premises.

- (2) A court that finds an offence under this section proven may, in addition to any other penalty it may impose, order that compensation be paid to the person against whom the offence was committed by the person who committed the offence or on whose behalf the offence was committed.
- (3) This section applies to a person who enters residential premises on his or her own behalf or on behalf of another person.

#### **121 Enforcement of orders for possession**

- (1) The Registrar may, on the application of a person in whose favour an order for possession was made, issue a warrant for possession of the residential premises concerned if the Registrar is satisfied that the order or a condition of suspension of the order has not been complied with.
- (2) An application for a warrant for possession may be made immediately, if the order for possession so provides or not more than 30 days after the date of the order or within such further period as the Registrar may permit.
- (3) Without limiting subsection (2), the Registrar may permit an application to be made more than 30 days after the date of the order if the delay in making the application is attributable to genuine attempts by the

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applicant to reach agreement with the tenant for reinstatement of the tenancy.

- (4) A warrant for possession is to be in the approved form and must authorise a sheriff's officer to enter specified residential premises and to give possession to the person specified in the warrant.

**Note.** See section 7A of the *Sheriff Act 2005* for provisions relating to the enforcement of warrants.

### 122 Mortgagee repossessions of rented properties

(1) **Application**

This section applies if a residential tenancy agreement is terminated because the mortgagee in respect of the residential premises becomes entitled to possession of the premises and the former tenant under that agreement is given notice to vacate the premises by the Sheriff.

**Note.** The Sheriff must give the former tenant not less than 30 days to vacate the residential premises (see section 7A of the *Sheriff Act 2005*).

(2) **Former tenant may withhold or recoup rent etc**

The former tenant who is holding over after termination of the residential tenancy agreement:

- (a) is not, during the period of 30 days following the date on which the tenant is given the notice to vacate, required to pay any rent, fee or other charge to occupy the residential premises, and
- (b) is, if the former tenant has paid any rent in advance for any part of that period, entitled to be repaid the amount of that rent.

(3) **Tribunal may order repayment to former tenant**

The Tribunal may, on application by the former tenant, order the repayment to the former tenant of any amount referred to in subsection (2).

(4) **Inspection of residential premises by prospective purchasers**

The mortgagee (or any person acting on behalf of the mortgagee) is, during the period in which the former tenant is holding over after termination of the residential tenancy agreement, entitled to enter the residential premises to show the premises to prospective purchasers on a reasonable number of occasions, but only if the former tenant:

- (a) is given reasonable notice of each such occasion, and
- (b) agrees to the date and time of the inspection.

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**(5) Mortgagee not prevented from doing certain things**

This section does not prevent the mortgagee from:

- (a) taking possession of the residential premises before the date specified in the notice to vacate if the former tenant voluntarily vacates the premises before that date, or
- (b) changing (by written notice given to the Sheriff and the former tenant) the date specified in the notice to vacate to a later date, or
- (c) entering into a new residential tenancy agreement with the former tenant in respect of the residential premises.

**(6) Relationship with other laws**

This section has effect despite the terms of any court order, contract or other agreement.

**123 Liability of tenant remaining in possession after termination**

- (1) A tenant who fails to comply with an order for possession of the Tribunal is liable to pay an occupation fee to the landlord for the period the tenant remains in possession of the residential premises after the date the tenant is required to vacate the premises.
- (2) The occupation fee payable is an amount equal to the rent that would have been payable for that period if the residential tenancy agreement had not been terminated.
- (3) The amount of the occupation fee may be deducted from the rental bond paid by the tenant for the residential premises.
- (4) The Tribunal may, on application by the landlord, order the tenant to pay to the landlord an amount of occupation fee.

**124 Notice of proposed recovery of premises by person with superior title**

- (1) This section applies if proceedings for the recovery of possession of residential premises are commenced before a court or the Tribunal (whether under this Act or otherwise) by a person (*the plaintiff*) who is not the landlord or former landlord under the agreement.
- (2) The court or Tribunal must not give judgment or make an order for possession, unless it is satisfied:
  - (a) as to whether or not there is a person in possession of the residential premises as a tenant under a residential tenancy agreement or a former tenant holding over after termination of a residential tenancy agreement, and
  - (b) that any such person has had reasonable notice of the proceedings brought by the plaintiff, if the plaintiff is not the landlord or former landlord under the residential tenancy agreement.

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- (3) Failure to comply with this section does not invalidate or otherwise affect the judgment or order.

### **125 Order for tenancy against person with superior title**

- (1) This section applies if proceedings for the recovery of possession of residential premises are commenced before a court or the Tribunal (whether under this Act or otherwise) by a person (*the plaintiff*) who is not the landlord or former landlord under the agreement.
- (2) An application may be made under this section by a person who is or was, when the proceedings were commenced, in possession of the residential premises as:
- (a) a tenant under a residential tenancy agreement, or
  - (b) a former tenant holding over after termination of a residential tenancy agreement.
- (3) The application may be made to:
- (a) the court or Tribunal before which the proceedings are pending, or
  - (b) if the proceedings have been completed—the Tribunal,
- and must be made within 30 days after the applicant was given notice of the proceedings or (if no notice was given) within a reasonable time after the completion of the proceedings and before possession of the premises is recovered.
- (4) The court or Tribunal may, on such an application, and if it thinks it appropriate to do so in the special circumstances of the case, make an order vesting a tenancy over the residential premises in the applicant.
- (5) The plaintiff is to be the landlord under the tenancy and the tenancy is to be on such terms and conditions as the court or Tribunal thinks fit, having regard to the circumstances of the case.
- (6) Such an application or order may be made before possession of the premises is recovered, even though:
- (a) notice was not given to the applicant of the proceedings brought by the plaintiff, or
  - (b) the proceedings brought by the plaintiff have been completed.

## **Division 2 Goods left on residential premises**

### **126 Application and interpretation**

- (1) This Division applies to goods left behind on residential premises by a tenant or an occupant of the premises after giving vacant possession of the premises or abandoning the premises.

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(2) In this Division:

**disposal notice** means a notice given under section 127.

**perishable goods** means goods or rubbish to which this Division applies that may be disposed of under section 128.

**personal document** means:

- (a) a birth certificate, passport or other identity document, or
- (b) bank books or other financial statements or documents, or
- (c) photographs and other personal memorabilia, or
- (d) documents, including computer records, containing personal information, or
- (e) licences or other documents conferring authorities, rights or qualifications, or
- (f) any other document, or class of document, prescribed by the regulations for the purposes of this definition.

### 127 Disposal notices

- (1) The landlord or landlord's agent must give the former tenant notice that the goods will be disposed of after 14 days or 90 days (in the case of personal documents) after the day on which the notice is given unless they are first claimed.
- (2) Notice may be given in any of the following ways:
  - (a) in writing in any manner permitted under this Act,
  - (b) by post to the former tenant or the former tenant's legal personal representative at the last forwarding address known to the landlord,
  - (c) orally in person or by telephoning the former tenant.
- (3) Notice may be given by posting a notice in a prominent position on the residential premises if the landlord is unable to give notice to the former tenant in a manner set out in subsection (2).
- (4) This section does not apply to perishable goods.

### 128 Perishable goods and rubbish

A landlord or landlord's agent may remove and destroy or otherwise dispose of goods that the landlord or landlord's agent reasonably believes are perishable, and any rubbish, at any time after vacant possession of the residential premises is given or residential premises are abandoned.

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### **129    Storage of goods**

The landlord or landlord's agent may remove goods from residential premises and store them in a safe place pending disposal or collection of the goods in accordance with this Division.

### **130    Disposal of non-perishable goods (other than personal documents)**

- (1) The landlord or landlord's agent may dispose of goods (other than personal documents) in accordance with this section if the former tenant or other person entitled to possession of the goods fails to collect or make arrangements to collect the goods within 14 days of a disposal notice being given in accordance with this Division or within such further period as may be agreed.
- (2) The landlord or landlord's agent may dispose of any such goods as follows:
  - (a) by donating them to a charitable organisation,
  - (b) in any other lawful manner (including sale) that the landlord thinks fit.
- (3) The landlord or landlord's agent must keep a written record of goods disposed of under this section.

### **131    Disposal of personal documents**

- (1) The landlord or landlord's agent may dispose of goods that are personal documents in accordance with this section if the former tenant or other person entitled to possession of the documents fails to collect or make arrangements to collect the documents within 90 days of a disposal notice being given in accordance with this Division or within such further period as may be agreed.
- (2) The landlord or landlord's agent may dispose of personal documents as follows:
  - (a) by returning them to the issuing authority,
  - (b) in any other lawful manner that the landlord or landlord's agent thinks fit.
- (3) The landlord or landlord's agent must not dispose of personal documents in any manner that results in personal information about a tenant or other person becoming publicly available.

### **132    Collection of goods by former tenants or persons entitled to goods**

- (1) A person who is entitled to possession of goods may claim the goods at any time before they are disposed of.

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- (2) The landlord or landlord's agent must deliver up the goods to a person who claims them if the landlord or landlord's agent is satisfied that the person is entitled to the goods.
- (3) The landlord or landlord's agent must not require a person who claims goods to pay any amount to obtain them, other than an occupation fee in accordance with this section.
- (4) The landlord or landlord's agent may require a former tenant or person who claims goods to pay an occupation fee not exceeding 14 days' rent for each day that goods are left on the residential premises or stored by or on behalf of the landlord, if the quantity of goods left on the premises by a former tenant or occupant is sufficient to prevent the landlord from renting the premises.

### **133 Landlord may seek Tribunal direction**

- (1) This section applies if the tenant abandons the residential premises or dies.
- (2) The Tribunal may, on application by a landlord, make any one or more of the following orders:
  - (a) an order authorising the removal, destruction or disposal of goods,
  - (b) an order authorising the sale of goods,
  - (c) an order directing that notice of any action or proposed action in relation to goods be given to the former tenant, the legal personal representative of a former tenant or any other person,
  - (d) an order as to the manner of sale of goods,
  - (e) an order as to the payment of the proceeds of sale of goods,
  - (f) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) A landlord or landlord's agent must deal with goods in accordance with an order of the Tribunal under this section and not in accordance with the other provisions of this Division relating to disposal of goods.
- (4) This section does not apply to perishable goods.

### **134 Orders by Tribunal relating to goods**

- (1) The Tribunal may, on application by the former tenant or a person who has an interest in goods, make any of the following orders:
  - (a) an order requiring the landlord to pay compensation for goods disposed of by the landlord or landlord's agent otherwise than in accordance with this Division,

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- (b) an order requiring the landlord to pay compensation for goods damaged after being left on the residential premises and before being claimed by the person entitled to them,
  - (c) an order that the landlord or landlord's agent deliver goods into the former tenant's or other person's possession,
  - (d) an order requiring the landlord or landlord's agent to pay the proceeds of sale, or an amount equivalent to the value of the goods, to the former tenant or person,
  - (e) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (2) The Tribunal may also, on an application under subsection (1) or by a landlord, order the tenant or other person to pay an occupation fee of not more than 14 days' rent.
- (3) An application for an order under subsection (1) (a) must be made not later than 30 days after the applicant becomes aware that the goods were disposed of otherwise than in accordance with this Division.

### **135 Effect of disposal of goods**

- (1) A purchaser of goods sold by a landlord or landlord's agent in accordance with this Division acquires a good title to the goods freed and discharged of any interest of the former tenant or any other person who would otherwise have an interest in the goods.
- (2) A person does not incur any liability in respect of the removal, destruction, disposal or sale of goods in accordance with this Division.

## Part 7 Social housing tenancy agreements

### Division 1 Preliminary

#### 136 Definitions

In this Part:

**rent rebate** means an amount waived or remitted, in accordance with a rent rebate scheme administered by a social housing provider, from rent payable to a social housing provider.

**social housing premises** means residential premises under a social housing tenancy agreement.

**social housing provider** means any of the following:

- (a) the New South Wales Land and Housing Corporation,
- (b) the Aboriginal Housing Office,
- (c) a registered community housing provider within the meaning of the *Housing Act 2001*,
- (d) an organisation for the time being registered under Part 5 of the *Aboriginal Housing Act 1998*,
- (e) an organisation prescribed by the regulations.

**social housing tenancy agreement** means a residential tenancy agreement where the landlord is a social housing provider.

#### 137 Application of Part

In the event of any inconsistency between a provision of this Part and any other provision of this Act, this Part prevails to the extent of the inconsistency.

### Division 2 Acceptable behaviour agreements

#### 138 Acceptable behaviour agreements for tenants

- (1) The New South Wales Land and Housing Corporation may, by notice in writing given to a tenant under a social housing tenancy agreement under which it is the landlord, request the tenant to give a written undertaking (an **acceptable behaviour agreement**), in the terms specified in the notice, not to engage in specified anti-social behaviour on any of the following:
  - (a) the social housing premises to which the agreement relates,
  - (b) any property adjoining or adjacent to those premises (including any property that is available for use by the tenant in common with others).

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- (2) The operation of an acceptable behaviour agreement extends to the behaviour of any other person occupying (or jointly occupying) the social housing premises with the consent of the tenant (a ***lawful occupier***). Accordingly, if any such lawful occupier engages in any anti-social behaviour that is specified in the agreement, the tenant is taken to have engaged in the behaviour and breached the agreement.
- (3) The Corporation may request a tenant to enter into an acceptable behaviour agreement only if the Corporation is of the opinion that, based on:
  - (a) the history of the tenancy concerned, or
  - (b) the history of any prior tenancy under a social housing tenancy agreement entered into by the tenant and the Corporation,the tenant, or a lawful occupier of the premises to which the tenancy relates, is likely to engage in anti-social behaviour on those social housing premises or any property adjoining or adjacent to those premises (including any property that is available for use by the tenant in common with others).
- (4) In making a request that a tenant enter into an acceptable behaviour agreement, the Corporation must inform the tenant that if:
  - (a) the tenant fails or refuses to enter into an acceptable behaviour agreement as requested, or
  - (b) the tenant, after entering into such an agreement, seriously or persistently breaches the terms of the agreement,the Corporation may give a termination notice for the tenancy agreement entered into by the Corporation and the tenant.
- (5) An acceptable behaviour agreement is of no effect unless the Corporation has complied with subsection (4) in relation to the agreement.
- (6) In this section, a reference to ***anti-social behaviour*** includes a reference to emission of excessive noise, littering, dumping of cars, vandalism and defacing of property.

### Division 3      Water usage charges, rent and other payments

#### 139    Social housing tenants to pay charges for water

##### (1)    Charges payable

A tenant under a social housing tenancy agreement must pay to the landlord any charges, determined in accordance with guidelines approved by the Minister administering the *Housing Act 2001*, in respect of water usage by the tenant.

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**(2) Guidelines for payment of charges**

The guidelines may provide for the determination of the charges by reference to any of the following:

- (a) actual usage or estimated usage,
  - (b) the income of the tenant,
  - (c) the rent payable by the tenant (whether with or without rent rebate).
- (3) The guidelines may include other matters, including a requirement that charges in respect of water usage be paid by the tenant in advance.
- (4) The guidelines are to be made publicly available.
- (5) A copy of the guidelines is to be provided, on request, to any tenant under a social housing tenancy agreement free of charge and to other persons either free of charge or on payment of reasonable copying charges.
- (6) The guidelines may be amended or replaced from time to time.
- (7) Section 39 does not apply to a social housing tenancy agreement.

**140 Payment of debts by social housing tenants**

A tenant under a social housing tenancy agreement who incurs or has incurred a debt to the landlord in connection with that agreement or a prior social housing tenancy agreement:

- (a) must enter into arrangements with the landlord, in accordance with any reasonable request of the landlord, for the payment of that debt, and
- (b) must comply with those arrangements (including such arrangements entered into during the term of a prior social housing tenancy agreement) and with any variations to those arrangements that may be agreed to by the landlord and tenant.

**141 Cancellation or reduction of rent rebates**

- (1) A tenant under a social housing tenancy agreement whose rent rebate is cancelled may apply to the Tribunal for an order declaring that the rent payable under the agreement (or a proposed social housing tenancy agreement for premises already occupied by the tenant) is excessive.
- (2) The tenant may do so not later than 30 days after the cancellation of the rent rebate takes effect.
- (3) A landlord under a social housing tenancy agreement is not required to give notice to the tenant of an increase in rent arising from the cancellation or reduction of a rent rebate.

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- (4) Subsections (1) and (2) are in addition to any other provision of this Act.  
**Note.** For remedies relating to excessive rents, see section 44.

### **Division 4      Fixed term agreements**

#### **142    Extension of social housing tenancies**

- (1) This section applies to a social housing tenancy agreement that is a fixed term agreement under which the landlord is the New South Wales Land and Housing Corporation or the Aboriginal Housing Office.
- (2) The landlord may, if the term of the tenancy of the agreement has ended, by written notice given to the tenant declare that the agreement is subject to a term of the tenancy specified in the notice from the date specified in the notice.
- (3) At the end of any such further term of the tenancy:
  - (a) any term of the agreement that provides for the continuation of the agreement applies, or
  - (b) section 18 applies.
- (4) A declaration may be made under this section in relation to an agreement on more than one occasion.

### **Division 5      Termination of social housing tenancy agreements—additional grounds**

#### **143    Termination notice may be given on ground that tenant not eligible for social housing**

A landlord under a social housing tenancy agreement may give a termination notice to the tenant on the ground that the landlord has determined, as the result of an assessment carried out under this Division, that the tenant is not eligible to reside in the class of social housing premises to which the agreement applies (the *eligibility ground*).

#### **144    Eligibility assessments of social housing tenants**

- (1) In carrying out an assessment of the eligibility of a tenant under a social housing tenancy agreement to reside in the class of social housing premises concerned, the landlord is to apply the criteria approved by the Minister administering the *Housing Act 2001* for the purposes of this section.
- (2) Any such criteria may differ from the criteria used to assess a person's eligibility to commence residing in that class of social housing premises.

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- (3) The criteria used for the purposes of an assessment must not relate to whether or not the tenant has complied with any term of the agreement.
- (4) The landlord may request the tenant to provide any information that is reasonably required to enable the landlord to determine whether the tenant meets the criteria for the purposes of an assessment under this section.
- (5) If the tenant refuses to provide any such information to the landlord, the landlord may determine, without further inquiry, that the tenant is not eligible to reside in the class of social housing premises concerned.
- (6) In the case of a fixed term agreement, an assessment may not be carried out earlier than 6 months before the end of the term of the tenancy.
- (7) The criteria referred to in this section are to be made publicly available.
- (8) A copy of the criteria is to be provided, on request, to any tenant under a social housing tenancy agreement free of charge and to other persons either free of charge or on payment of reasonable copying charges.

### **145 Review of decision to give notice on ground that tenant not eligible for social housing**

#### **(1) Notice to be given before termination notice**

Before giving a termination notice to a tenant under a social housing tenancy agreement on the eligibility ground, the landlord is to advise the tenant of the decision to do so by notice in writing.

#### **(2) Right to review**

A notice given under this section must:

- (a) contain particulars of the reasons why the tenant is no longer considered eligible to reside in the social housing premises, and
  - (b) state that the tenant may apply to the landlord for a review of the decision within 30 days after the notice is given and give particulars of how such an application may be made, and
  - (c) state that the tenant is entitled to make representations to the landlord in writing, or (if the tenant wishes) orally, as to why the agreement should not be terminated.
- (3) The tenant may, in accordance with the notice:
- (a) apply to the landlord for a review of the decision, and
  - (b) make representations in writing, or (if the tenant wishes) orally, to the landlord as to why the agreement should not be terminated.

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- (4) If the tenant applies to the landlord for a review under this section, the landlord is to review the decision, in accordance with any procedures approved by the Minister administering the *Housing Act 2001* for the purposes of this section, and consider any representations made by the tenant.

(5) **Decision of landlord following review**

After the review is carried out, the landlord may:

- (a) give a termination notice on the eligibility ground, or
- (b) advise the tenant, by notice in writing, that the landlord has decided not to give the termination notice.

(6) **Procedural fairness taken to have been observed**

If the landlord complies with this section, the landlord is taken to have complied with any rules of procedural fairness required to be observed by the landlord before giving a termination notice to the tenant on the eligibility ground.

**146 Time periods to be observed in giving termination notice on ground that tenant not eligible for social housing**

- (1) A termination notice of a social housing tenancy agreement is not to be given by a landlord to a tenant on the eligibility ground before the later of the following:
  - (a) the end of the 30-day period within which the tenant may apply for a review under this Division of the decision to give the termination notice,
  - (b) the end of any such review carried out in respect of that decision.
- (2) The termination notice must specify a termination date:
  - (a) in the case of a fixed term agreement—that is not earlier than the end of the term of the tenancy and not earlier than 60 days after the day on which the notice is given, or
  - (b) in any other case—that is not earlier than 60 days after the day on which the notice is given.

**147 Termination by Tribunal on eligibility ground**

- (1) The Tribunal must, on application by the landlord under a social housing tenancy agreement, terminate the agreement if it is satisfied that:
  - (a) any notice required to be given, or any review required to be carried out, was given or carried out in accordance with this Division before giving the termination notice on the eligibility ground, and

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- (b) a termination notice has been given in accordance with this Division, and
  - (c) the landlord has determined, as a result of an assessment under this Division, that the tenant is not eligible to reside in the class of social housing premises to which the agreement applies.
- (2) In deciding whether or not to make an order, the Tribunal is not to review the eligibility of the tenant to reside in the class of social housing premises to which the agreement applies.

**148 Termination notice may be given on ground that tenant offered alternative social housing premises**

A landlord under a social housing tenancy agreement may give a termination notice to the tenant on the ground that the landlord has offered to enter into a new social housing tenancy agreement with the tenant in respect of alternative premises to the premises the subject of the existing social housing tenancy agreement (the *alternative premises ground*) and the tenant has failed to accept, or has rejected, the offer.

**149 Review of decision to give termination notice on ground that tenant offered alternative social housing premises**

**(1) Notice to be given before termination notice**

Before giving a termination notice to the tenant on the alternative premises ground, the landlord is to advise the tenant of the decision to do so by notice in writing.

- (2) The landlord may make the offer to enter into a new social housing tenancy agreement and give notice of the decision at the same time.

**(3) Right to review**

A notice given under this section must:

- (a) contain particulars of the reasons why the landlord wishes the tenant to move to alternative premises, and
- (b) state that the tenant may apply to the landlord for a review of the decision within 14 days after the notice is given and give particulars of how such an application may be made, and
- (c) state that the tenant is entitled to make representations to the landlord in writing, or (if the tenant wishes) orally, as to why the existing agreement should not be terminated.

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- (4) The tenant may, in accordance with the notice:
- (a) apply to the landlord for a review of the decision, and
  - (b) make representations in writing, or (if the tenant wishes) orally, to the landlord as to why the existing agreement should not be terminated.

- (5) If the tenant applies to the landlord for a review under this section, the landlord is to review the decision, in accordance with any procedures approved by the Minister administering the *Housing Act 2001* for the purposes of this section, and consider any representations made by the tenant.

(6) **Decision of landlord following review**

After the review is carried out, the landlord may:

- (a) give a termination notice on the alternative premises ground, or
- (b) advise the tenant, by notice in writing, that the landlord has decided not to give the termination notice, or
- (c) make a new offer to the tenant to enter into a new social housing tenancy agreement in respect of alternative premises that differ from those the subject of the offer in respect of which the review was carried out.

(7) **Right to second review if new offer made**

If a new offer is made under subsection (6) (c), subsections (1)–(6) apply in relation to giving a termination notice in connection with the new offer. Accordingly, the landlord is required to give a second notice, and the tenant is entitled to a second review, under this section. However, the landlord is not required to give any further notice, and the tenant is not entitled to any further review, under this section in relation to giving a termination notice following a second review.

(8) **Procedural fairness taken to have been observed**

If the landlord complies with this section, the landlord is taken to have complied with any rules of procedural fairness required to be observed by the landlord before giving a termination notice on the alternative premises ground.

**150 Time periods to be observed in giving termination notice on ground that tenant offered alternative social housing premises**

- (1) A termination notice of a social housing tenancy agreement is not to be given to the tenant on the alternative premises ground before the later of the following:
- (a) the end of the 14-day period within which the tenant may apply for any review of the decision to give the termination notice,

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- (b) the end of any such review carried out in respect of that decision.
- (2) However, if the landlord and tenant enter into a new social housing tenancy agreement before the end of that 14-day period or any such review, the termination notice may be given on or after the day on which they enter into the new agreement.
- (3) The termination notice must specify a termination date that is not earlier than 30 days after the day on which the notice is given, unless it specifies an earlier day to which the tenant has consented.
- (4) The termination notice is ineffective unless the alternative premises in connection with which the termination notice is given are available for occupation no later than 7 days before the termination date.
- (5) In the case of a social housing tenancy agreement that is a fixed term agreement, the termination notice is not ineffective merely because the termination date is earlier than the day on which the term of the tenancy ends.

### **151 Termination by Tribunal on alternative premises ground**

- (1) The Tribunal must, on application by the landlord under a social housing tenancy agreement, terminate the agreement if it is satisfied that:
  - (a) any notice required to be given, or any review required to be carried out, was given or carried out in accordance with this Division before giving the termination notice on the alternative premises ground, and
  - (b) a termination notice has been given in accordance with this Division, and
  - (c) the landlord has offered to enter into a new social housing tenancy agreement with the tenant in respect of alternative premises to the premises the subject of the existing agreement, and
  - (d) alternative premises (which may or may not be the same as the alternative premises in connection with which the notice was given) are available for occupation by the tenant.
- (2) In deciding whether or not to make an order, the Tribunal is not to review the landlord's reasons for making the offer concerned.

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Part 7            Social housing tenancy agreements

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**152    Termination by Tribunal of social housing tenancy agreements for breach**

- (1) In determining whether to terminate a social housing tenancy agreement on the ground of a breach by the tenant, the Tribunal is to have regard to such of the following matters as may be relevant:
  - (a) any serious adverse effects the tenancy has had on neighbouring residents or other persons,
  - (b) whether any breach of the agreement was a serious one, and whether, given the behaviour or likely behaviour of the tenant, a failure to terminate the agreement would subject, or continue to subject, neighbouring residents or any persons or property to unreasonable risk,
  - (c) the landlord's responsibility to its other tenants,
  - (d) whether the tenant, wilfully or otherwise, is or has been in breach of an order of the Tribunal,
  - (e) the history of the tenancy concerned, including any prior tenancy of the tenant arising under a social housing tenancy agreement.
- (2) This section does not limit any other matters that may be considered by the Tribunal under any other provision of this Act.

**153    Termination notice—acceptable behaviour agreements**

- (1) The New South Wales Land and Housing Corporation may give a termination notice of a social housing tenancy agreement to the tenant on either of the following grounds:
  - (a) the tenant has failed or refused to enter into an acceptable behaviour agreement as requested by the Corporation,
  - (b) the tenant has seriously or persistently breached the terms of an acceptable behaviour agreement.
- (2) The termination notice must specify a termination date that is not earlier than 14 days after the day on which the notice is given.
- (3) The termination notice may specify a termination date that is earlier than the end of any term of the tenancy of the social housing tenancy agreement.

**154 Termination by Tribunal on behaviour ground**

The Tribunal may, on application by the New South Wales Land and Housing Corporation, terminate the social housing tenancy agreement if it is satisfied that termination notice has been given in accordance with this Division and the tenant:

- (a) has failed or refused to enter into an acceptable behaviour agreement as requested by the Corporation, or
- (b) has entered into such an agreement and has failed to satisfy the Tribunal that the tenant has not seriously or persistently breached the terms of that agreement.

**155 Operation of Division**

This Division is in addition to, and does not limit, any other right conferred on a landlord of a social housing tenancy agreement as a landlord under any other provision of this Act.

**Division 6 Exemption**

**156 Head leases involving social housing providers**

- (1) A residential tenancy agreement is exempted from the operation of this Act if:
  - (a) under the agreement, the landlord (the *head landlord*) lets the premises to a tenant who is a social housing provider, and
  - (b) the agreement is in writing and the agreement states that this section applies to the agreement.
- (2) If the tenant ceases to be a social housing provider during the currency of the term of the residential tenancy agreement, the exemption under this section does not cease to have effect until 6 months after the date the tenant ceases to be a social housing provider.

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## consultation draft

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Clause 157      Residential Tenancies Bill 2009

Part 8            Rental bonds

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### Part 8      Rental bonds

#### Division 1      Preliminary

##### 157      Definitions

In this Part:

***claim notice*** means a notice given under section 164.

***claim notice period*** means the period specified in a claim notice within which any proceedings affecting the rental bond must be notified to the Director-General.

***deposit period*** means the period within which a rental bond must be deposited with the Director-General.

***landlord*** includes a park owner or a person who grants or proposes to grant the right to occupy residential premises within the meaning of the *Residential Parks Act 1998* and includes a former landlord or park owner.

***rental bond*** means an amount of money paid or payable by the tenant or another person as security against any failure by a tenant to comply with the terms of a residential tenancy agreement.

***Rental Bond Interest Account*** means the Account established under section 186.

***residential premises*** includes residential premises within the meaning of the *Residential Parks Act 1998*.

***residential tenancy agreement*** includes a residential tenancy agreement or a residential site agreement within the meaning of the *Residential Parks Act 1998*.

***tenant*** includes a resident or proposed resident within the meaning of the *Residential Parks Act 1998* and includes a former tenant or resident.

##### 158      Mortgagee in possession may exercise functions

A mortgagee who becomes entitled to possession of residential premises may exercise any functions of a landlord under this Part.

#### Division 2      Payment and deposit of rental bonds

##### 159      Payment of bonds

- (1) A landlord, landlord's agent or any other person, must not require or receive from a tenant or another person a rental bond of an amount exceeding 4 weeks' rent under the residential tenancy agreement for which the bond was paid (as in force when the agreement was entered into).

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- (2) A landlord, landlord's agent or any other person, must not require or receive from a tenant or another person an amount of rental bond before the tenant executes the residential tenancy agreement.
- (3) A person who receives payment of a rental bond must provide the tenant, or person paying the bond, with a receipt for the bond but is not required to do so if details of the payment are recorded on the residential tenancy agreement.
- (4) A person who contravenes this section is guilty of an offence.  
Maximum penalty: 20 penalty units.

### **160 Other security may not be required**

- (1) A landlord, landlord's agent or any other person, must not require or receive from a tenant or another person anything other than a rental bond as security for any failure by a tenant to comply with the terms of a residential tenancy agreement.  
Maximum penalty: 20 penalty units.
- (2) This section does not apply to an undertaking:
  - (a) given to a landlord by the Director-General of the Department of Human Services (or the New South Wales Land and Housing Corporation on behalf of that Director-General), or a person authorised in writing for the purposes of this section by that Director-General, and
  - (b) that provides that, subject to specified conditions, the landlord will be indemnified up to a specified amount against loss or damage arising from any breach of a residential tenancy agreement by a specified tenant.

### **161 One rental bond for each agreement**

- (1) A landlord, landlord's agent or any other person, must not require or receive more than one rental bond for a residential tenancy agreement.
- (2) A landlord, landlord's agent or any other person, must not require or receive from a tenant or another person a rental bond or additional amounts of rental bond if:
  - (a) a rental bond was paid (and not claimed) for residential premises under a residential tenancy agreement, and
  - (b) one or more of the tenants under that agreement continue to occupy the residential premises under one or more successive residential tenancy agreements.  
Maximum penalty: 20 penalty units.

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## consultation draft

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Clause 162 Residential Tenancies Bill 2009

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### **162 Deposit of rental bonds**

- (1) A landlord, landlord's agent or other person who receives a rental bond must deposit an amount equal to that amount with the Director-General within the deposit period together with a notice in the approved form.
- (2) A rental bond may, if the landlord and tenant agree, be paid by instalments commencing on the signing of the residential tenancy agreement.
- (3) The deposit periods for a rental bond (other than a bond paid by instalments) are as follows:
  - (a) for a bond paid to a landlord or person other than a landlord's agent—10 working days after the bond is paid or such other period as may be prescribed by the regulations,
  - (b) for a bond paid to a landlord's agent—10 working days after the end of the month in which the bond is paid or such other period as may be prescribed by the regulations.
- (4) The deposit periods for a rental bond paid by instalments are as follows:
  - (a) if the total amount of the bond is paid within 3 months of the first instalment being paid—10 working days after the total bond is paid,
  - (b) if the total amount is not paid within 3 months of the first instalment being paid, for any instalments paid within that period—3 months after the first instalment is paid or 10 working days after each instalment is paid (whichever occurs later),
  - (c) if one or more instalments are paid after 3 months of the first instalment being paid—10 working days after each instalment is paid.
- (5) A person who contravenes this section is guilty of an offence.  
Maximum penalty: 20 penalty units.
- (6) This section does not apply if:
  - (a) the rental bond is refunded or becomes refundable, or
  - (b) the rental bond becomes the subject of proceedings before the Tribunal or a court in relation to a residential tenancy agreement.

### **Division 3 Release of rental bonds**

#### **163 Claims for rental bonds**

- (1) A claim may be made to the Director-General for the payment of a rental bond by:
  - (a) the tenant or an agent of the tenant, or

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- (b) the landlord or an agent of the landlord, or
  - (c) jointly by the landlord and the tenant or agents for them.
- (2) A claim is to be made in the approved form.
- (3) A claim must not be made before the termination of a residential tenancy agreement unless:
  - (a) it is made jointly by or on behalf of the landlord and all the tenants, or
  - (b) it is made by or on behalf of the landlord and directs that the rental bond be paid to all the tenants, or
  - (c) it is made by or on behalf of all the tenants and directs that the rental bond be paid to the landlord.

### **164 Notice to be given to other party**

- (1) This section applies if a claim for the whole or part of a rental bond is made by a landlord or a tenant without the consent of all the other parties to a residential tenancy agreement.
- (2) The Director-General must give written notice of the claim to all of the other parties to the residential tenancy agreement as known to the Director-General.
- (3) A notice under this section may be addressed to one or more parties to the residential tenancy agreement.
- (4) The notice must also be given to the Director-General of the Department of Human Services if the whole or part of the rental bond was paid by or on behalf of that Department.
- (5) The notice must state that the Director-General will pay the claim unless notified in writing by a party within 14 days that the claim is the subject of proceedings before the Tribunal or a court.

### **165 Notice to tenants of claims against tenants**

- (1) A landlord, landlord's agent or a person on behalf of a landlord who makes a claim for payment of a rental bond without the consent of the tenant must provide the tenant with:
  - (a) a copy of a completed condition report about the residential premises at the end of the residential tenancy agreement, and
  - (b) copies of any estimates, quotes, invoices or receipts for work for which the rental bond is claimed.
- (2) The documents must be provided within 7 days of the claim being made.

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- (3) The documents must also be provided to the Director-General of the Department of Human Services if the whole or part of the rental bond was paid by or on behalf of that Department.
- (4) A person who, without reasonable excuse, contravenes this section is guilty of an offence.  
Maximum penalty: 20 penalty units.

### **166 Matters that may be subject of rental bond claim**

- (1) A landlord is entitled to claim from the rental bond for the residential tenancy agreement any of the following:
  - (a) the cost of repairs to, or the restoration of, the residential premises or goods leased with the premises, as a result of damage (other than fair wear and tear) caused by the tenant or an invitee of the tenant,
  - (b) any rent or other charges owing and payable under the residential tenancy agreement or this Act,
  - (c) the cost of cleaning any part of the premises not left reasonably clean by the tenant,
  - (d) the cost of replacing locks or other security devices altered, removed or added by the tenant without the consent of the landlord.
- (2) This section does not limit the matters for which the landlord may claim from the rental bond for a residential tenancy agreement.

### **167 Payment where no dispute**

The Director-General must pay the amount of a claim for rental bond if:

- (a) the claim is made jointly by or on behalf of the landlord and tenant, or
- (b) the claim is made by or on behalf of the landlord and directs the payment of an amount to the tenant, or
- (c) the claim is made by or on behalf of a tenant and directs the payment of an amount to the landlord, or
- (d) the claim is made by or on behalf of the landlord or the tenant for payment to the party by or on whose behalf the claim is made and the Tribunal or another party to the agreement fails to notify the Director-General of a dispute within the claim notice period.

**168 Disputed rental bond claims**

- (1) This section applies if the Director-General is notified in writing by a party within the claim notice period or before payment of a claim for a rental bond that a claim for the payment of an amount of rental bond is the subject of proceedings before the Tribunal or a court.
- (2) The Director-General may pay the claim only in the following circumstances:
  - (a) if the party who disputes the claim gives the Director-General written notice of the party's consent to payment of the claim,
  - (b) in accordance with an order of the Tribunal or court,
  - (c) if any applicable order of the Tribunal or court has been satisfied,
  - (d) if the proceedings are withdrawn.
- (3) If any applicable order of the Tribunal or a court has been wholly or partly satisfied before a claim for an amount of rental bond is paid, any amount of rental bond no longer required to satisfy the order must be paid to the party who would, but for the claim, be entitled to the amount.
- (4) The Director-General must not pay an amount of a claim until proceedings affecting the claim are finally determined if, before any amount is paid, the Director-General is given written notice by a party to a residential tenancy agreement of an appeal against a relevant decision of the Tribunal or a court.
- (5) A payment by the Director-General of an amount under this section in accordance with an order of the Tribunal or a court is for all purposes taken to be a payment by the person subject to the order.

**169 Appeals may be made despite payment**

A person may appeal against a decision of the Tribunal or a court affecting the payment of an amount of rental bond even though the Director-General has paid an amount of rental bond under this Division.

**170 Payment to other persons**

The Director-General may pay an amount of rental bond that is payable to a person by the Director-General to another person if directed to do so by the firstmentioned person.

**171 Payment to Director-General of Department of Human Services**

Any amount of rental bond payable to a tenant under this Division is payable instead to the Director-General of the Department of Human Services, to the extent that the amount of the bond was paid on behalf of the tenant by that Director-General or the New South Wales Land and Housing Corporation.

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Clause 172      Residential Tenancies Bill 2009

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**172    Director-General not required to pay excess amount**

The Director-General is not required to pay an amount of rental bond under this Division to the extent that the amount claimed exceeds the amount of rental bond held by the Director-General for the particular residential tenancy agreement.

**173    Payment of interest by Director-General on rental bond amounts**

- (1) The Director-General must pay interest on an amount of rental bond paid if the regulations provide for the payment of interest.
- (2) The regulations may prescribe the rate and manner of payment of any such interest.
- (3) No other interest is payable on an amount of rental bond.

**174    Repayment of bond to former co-tenant**

- (1) This section applies if the tenancy of a co-tenant is terminated and the residential tenancy agreement continues in force in relation to one or more other co-tenants.
- (2) The remaining co-tenant or co-tenants must, within 14 days of a request by a former co-tenant, pay to the former co-tenant an amount equal to the rental bond (if any) paid by the former co-tenant for the residential tenancy agreement.
- (3) If a final apprehended violence order is in force prohibiting a former co-tenant from having access to the residential premises, the remaining tenant or tenants are not required to pay the amount referred to in subsection (2) within the period required by that subsection.
- (4) This section does not apply if the liabilities of the former co-tenant under the residential tenancy agreement exceed the amount of rental bond paid by the former co-tenant.

**175    Powers of Tribunal**

- (1) The Tribunal may, on application by a landlord or tenant or any other person (including a former co-tenant) who has an interest in the payment of a rental bond, make an order as to the payment of the amount of the rental bond.
- (2) The Tribunal may make an order under this section whether or not the amount of a rental bond has been paid by the Director-General.
- (3) An application for an order under this section must be made not later than 12 months after a rental bond became payable.

**176 Proof of deposit of bond**

A certificate purporting to be a certificate given by the Director-General stating that no rental bond has been deposited with, or that no rental bond was or is held on deposit by, the Director-General in relation to a tenancy of specified residential premises during a specified period is admissible in any proceedings and is prima facie evidence of the matters stated.

**Division 4 Rental Bond Board**

**177 Constitution of Rental Bond Board**

- (1) There is constituted by this Act a corporation with the name Rental Bond Board.
- (2) The Board is subject to the direction and control of the Minister in the exercise of its functions.
- (3) The Board has the functions conferred or imposed on it by or under this or any other Act.
- (4) The Board is, for the purposes of any Act, a NSW government agency.
- (5) The Board cannot employ any staff.

**Note.** Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Board to exercise its functions.

**178 Members of Rental Bond Board**

- (1) The Board is to consist of the following 5 members:
  - (a) the Director-General of the Department of Services, Technology and Administration,
  - (b) the Director-General of the Department of Human Services,
  - (c) the Secretary of the Treasury,
  - (d) 2 members appointed by the Minister who have, in the opinion of the Minister, experience in real estate or tenancy matters.
- (2) The Director-General of the Department of Services, Technology and Administration is to be the Chairperson of the Board.
- (3) Schedule 1 contains provisions about the membership and procedures of the Board.

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## consultation draft

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### **179    Delegation**

- (1) The Board may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Board if the delegate is authorised to do so by the Board.
- (3) In this section:  
*authorised person* means:
  - (a) a member of staff of the Department, or
  - (b) a person, or a person of a class, prescribed by the regulations.

### **Division 5      Functions of Board relating to residential accommodation**

#### **180    Joint ventures for residential accommodation**

- (1) The Board may, with the approval of the Minister and the concurrence of the Treasurer, enter into a joint venture (including a partnership and any other association) with other persons or bodies, whether or not incorporated.
- (2) The joint venture is to be for the purpose of the development (including the acquisition, management, leasing and disposal) of land for or in connection with the provision of residential accommodation.

#### **181    Joint venture powers**

- (1) The Board may, for the purposes of such a joint venture, with the approval of the Minister:
  - (a) form, or participate in the formation of a private corporation,
  - (b) purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, any private corporation,
  - (c) make advances of money or provide other financial accommodation to any person or body (whether or not incorporated) participating in the joint venture or acting for or on behalf of the joint venture,
  - (d) do any other things that are necessary or convenient for, or incidental to, the joint venture.
- (2) A corporation in which the Board has a controlling interest because of its shareholding in the capital of the company is not and does not represent the Crown.

**182 Investment in residential accommodation unit trusts**

- (1) The Board may invest money in units in a residential accommodation unit trust and may, with the approval of the Minister, underwrite the issue of units in such a trust.
- (2) A residential accommodation unit trust is a unit trust providing for participation by unit holders in income and profits arising from the development of property that wholly or partly comprises residential accommodation.
- (3) Development of property includes the acquisition, holding, management, leasing and disposal of property.

**183 Guarantees etc by Board**

- (1) The Board may, with the approval of the Minister:
  - (a) guarantee the due performance of an obligation incurred by a person or body in connection with a scheme for the provision of residential accommodation,
  - (b) make good a loss incurred by a person or body in connection with a scheme for the provision of residential accommodation,
  - (c) indemnify a person or body against a liability incurred under a guarantee (provided by the person or body) of the kind which the Board could provide under this section, and
  - (d) enter into and give effect to an agreement to do anything which the Board is authorised to do under this section.
- (2) The following are examples of schemes for the provision of residential accommodation:
  - (a) a joint venture which the Board enters into under this Part,
  - (b) a residential accommodation unit trust in which the Board is empowered to invest under this Part.
- (3) A permissible method of making good a loss involving such a residential accommodation unit trust is investment in units in the trust.

**184 Finance**

- (1) Amounts may be paid from the Rental Bond Interest Account to meet expenditure by the Board under this Division.
- (2) Amounts may also be paid from the Rental Bond Account to meet so much of that expenditure as is attributable to the provision of financial accommodation (including advances).

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- (3) Interest and other income accruing to the Board in connection with any investment made, financial accommodation provided or joint venture entered into under this Part must be paid into the Rental Bond Interest Account.

### Division 6      Financial matters

#### 185    Rental Bond Account

- (1) There is to be established a Rental Bond Account into which is to be paid:
- (a) all rental bonds paid to the Director-General, and
  - (b) any other money payable to the Account under this or any other Act.
- (2) There is to be paid from the Rental Bond Account:
- (a) the amount of any rental bonds payable under this Act, and
  - (b) money for the purpose of investment of the Account, and
  - (c) any other money that is payable from the Account under this or any other Act.

#### 186    Rental Bond Interest Account

- (1) There is to be established a Rental Bond Interest Account (the *Interest Account*) into which is to be paid:
- (a) all income from any investment of the Rental Bond Account, and
  - (b) the income from any investment of the Interest Account, and
  - (c) any other money payable to the Interest Account under this or any other Act.
- (2) There is to be paid from the Interest Account:
- (a) money for the purpose of investment of the Interest Account, and
  - (b) the costs of, or expenses incurred in, administering this Act, and
  - (c) half the costs of, or expenses incurred in, administering the Tenancy, Social Housing, Retirement Villages and Residential Parks Divisions of the Tribunal, and
  - (d) grants or loans for the purposes set out in subsection (3), and
  - (e) any other money that is payable from the Interest Account or the Rental Bond Account under this or any other Act.

**Note.** Amounts may be paid out of the Rental Bond Interest Account for the purposes of expenditure under Division 5 of this Part (related to the provision of residential accommodation).

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- (3) The Director-General may make a grant or loan, on the recommendation of the Board and with the approval of the Minister, from the Interest Account for the following purposes:
- (a) establishing and administering tenancy advisory services,
  - (b) schemes for the provision of residential accommodation,
  - (c) education about tenancy laws and the rights and obligations of landlords and tenants,
  - (d) research into matters relevant to the relationship of landlord and tenant,
  - (e) other activities for the benefit of landlords and tenants.
- (4) Subsection (3) also applies to landlords and tenants under the *Residential Parks Act 1998* and to advisory services for those landlords and tenants.

## **Part 9 Powers of Tribunal**

### **Division 1 General powers of Tribunal**

#### **187 Orders that may be made by Tribunal**

- (1) The Tribunal may, on application by a person under this Act, make one or more of the following orders:
  - (a) an order that restrains any action in breach of a residential tenancy agreement,
  - (b) an order that requires an action in performance of a residential tenancy agreement,
  - (c) an order for the payment of an amount of money,
  - (d) an order as to compensation,
  - (e) an order that a party to a residential tenancy agreement perform such work or take such other steps as the order specifies to remedy a breach of the agreement,
  - (f) an order that requires payment of part or all of the rent payable under a residential tenancy agreement into the Tribunal until the whole or part of the agreement has been performed or any application for compensation has been determined,
  - (g) an order that requires rent paid into the Tribunal to be paid towards the cost of remedying a breach of the residential tenancy agreement or towards the amount of any compensation,
  - (h) an order directing a landlord, landlord's agent or tenant to comply with a requirement of this Act or the regulations,
  - (i) a termination order or an order for the possession of premises,
  - (j) an order directing a landlord or landlord's agent to give a former tenant or person authorised by a former tenant access to residential premises for the purpose of recovering goods of the former tenant or fixtures that the former tenant is entitled to remove.
- (2) Without limiting the Tribunal's power to make an order as to compensation, such an order may include:
  - (a) compensation for loss of rent, and
  - (b) compensation for any other breach of a residential tenancy agreement.
- (3) An order under subsection (1) (a) or (b) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.

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## consultation draft

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- (4) The Tribunal must not make an order for:
- (a) the payment of an amount that exceeds the amount prescribed by the regulations for the purposes of this section, or
  - (b) the performance of work or the taking of steps the cost of which may or will exceed the amount prescribed by the regulations for the purposes of this section.

**Note.** This Act also confers other order-making powers on the Tribunal, including other specific powers to make termination orders, to declare that premises have been abandoned, to make orders about holding fees and to make various orders about rental bonds.

### **188 General order-making power of Tribunal**

The Tribunal may, in any proceedings before it, make any one or more of the following orders:

- (a) an order that the Tribunal may make under this Act,
- (b) an order that varies or sets aside, or stays or suspends the operation of, any order made in proceedings or earlier proceedings,
- (c) any ancillary order the Tribunal thinks appropriate,
- (d) an interim order.

### **189 Application of provisions relating to Tribunal**

- (1) A provision of this Act that enables a landlord or tenant to apply for an order by the Tribunal and the Tribunal to make an order also applies, where appropriate, to a former landlord or a former tenant.
- (2) To avoid doubt, this Part also applies to matters that arise by virtue of jurisdiction conferred on the Tribunal by the *Residential Parks Act 1998*.

## **Division 2 Powers of Tribunal relating to breaches of residential tenancy agreements**

### **190 Applications relating to breaches of residential tenancy agreements**

- (1) A landlord or a tenant may apply to the Tribunal for an order in relation to a breach of a residential tenancy agreement not later than 30 days after the landlord or tenant becomes aware of the breach.
- (2) An application may be made:
  - (a) during the currency of or after the end of a residential tenancy agreement, and
  - (b) whether or not a termination notice has been given or a termination order made.

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- (3) A landlord's agent may make an application on behalf of a landlord.

**191 Matters for consideration by Tribunal in applications relating to security breaches**

- (1) This section applies to proceedings before the Tribunal relating to a breach of Division 7 of Part 3.
- (2) For the purposes of determining whether a landlord has provided residential premises that are reasonably secure, the Tribunal may consider (but is not limited to considering) the following matters:
- (a) the physical characteristics of the premises and adjoining areas,
  - (b) the requirements of insurance companies for allowing the tenant to obtain insurance for property of the tenant kept at the premises,
  - (c) the likelihood of break-ins or unlawful entry or risks to the tenant's personal safety.
- (3) For the purposes of determining whether compensation is payable to a tenant for a breach of the obligation to provide residential premises that are reasonably secure, the Tribunal must consider (but is not limited to considering) the actions taken, or that should reasonably have been taken, by the tenant and the landlord for the security of the premises.

### **Division 3 Powers of Director-General in proceedings**

**192 Director-General may represent tenant**

In any proceedings before the Tribunal, a tenant may, despite any other law, be represented by the Director-General or by a legal practitioner or agent for the Director-General.

**193 Director-General may take or defend proceedings**

- (1) If a tenant, not being a corporation, has made a complaint to the Director-General and the Director-General:
- (a) after investigating the complaint, is satisfied that the tenant may have a right to take or defend proceedings before the Tribunal, and
  - (b) is of the opinion that it is in the public interest that the Director-General should take or defend those proceedings on behalf of the tenant,
- the Director-General may, with the consent of the tenant, take or defend those proceedings on behalf of and in the name of the tenant.
- (2) If the Minister so directs and the tenant consents, the Director-General must take or defend proceedings before the Tribunal on behalf of a tenant.

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### **194 Conduct of proceedings by Director-General**

If the Director-General takes or defends proceedings before the Tribunal on behalf of a tenant:

- (a) the Director-General is to have the conduct of those proceedings on behalf of the tenant, may appear personally or by a legal practitioner or agent and may do all things that are necessary or expedient to give effect to an order or a decision of the Tribunal, and
- (b) the Director-General is liable to pay the costs (if any) of the tenant, and
- (c) the tenant is liable to pay any other amount that the Tribunal orders the tenant to pay.

### **195 Intervention by Director-General**

- (1) Without limiting any other provision of this Division, the Director-General may, if of the opinion that it would be in the public interest to do so, or, at the direction of the Minister must, intervene, and has a right to be heard personally or by legal practitioner or agent, in any proceedings arising under any Act before the Tribunal.
- (2) The Director-General, on intervening in any proceedings, becomes a party to the proceedings and has all the rights of such a party.

Clause 196      Residential Tenancies Bill 2009

Part 10          Enforcement

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## **Part 10 Enforcement**

### **Division 1 Powers of investigators**

#### **196 Powers of entry and other powers**

- (1) An investigator may exercise the powers conferred by this section for the purposes of:
  - (a) ascertaining whether the provisions of this Act or the regulations are being complied with, or
  - (b) obtaining evidence, documents or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.
- (2) An investigator may enter and inspect at any reasonable time any residential premises.
- (3) An investigator may enter any premises and may do any one or more of the following:
  - (a) require any person on those premises to produce any documents in the possession or under the control of the person in written form and inspect those documents,
  - (b) take copies of or extracts from, or make notes from, any such documents and, for that purpose, take temporary possession of any such documents,
  - (c) take such photographs, films and audio, video and other recordings as the investigator considers necessary,
  - (d) require any person on those premises to answer questions or otherwise furnish information in relation to a contravention of this Act or the regulations,
  - (e) require the owner or occupier of those premises to provide the investigator with such assistance and facilities as are reasonably necessary to enable the investigator to exercise the functions of an investigator under this Division.
- (4) An investigator is not entitled to enter a part of premises used for residential purposes except:
  - (a) with the consent of the occupier, or
  - (b) under the authority of a search warrant.
- (5) An investigator may not exercise in any premises a function conferred by this Division unless the investigator produces a certificate of identification if requested to do so by a person apparently in charge of those premises or apparently in charge of any work being performed on those premises.

**197 Power of investigator to obtain information, documents and evidence**

If an investigator believes on reasonable grounds that a person is capable of giving information, producing documents, or giving evidence in relation to a matter that constitutes, or may constitute, an offence under this Act or the regulations, the investigator may, by written notice given to the person, require the person:

- (a) to provide an investigator, by writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and given to the investigator within the time and in the manner specified in the notice, with any such information, or
- (b) to produce to an investigator, in accordance with the notice, any such documents, or
- (c) to appear before an investigator at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.

**198 Obstruction of investigator**

- (1) A person must not:
  - (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an investigator under this Division, or
  - (b) provide information or give evidence in purported compliance with a requirement made or question asked by an investigator under this Division knowing the information or evidence to be false or misleading in a material particular, or
  - (c) wilfully delay, hinder or obstruct an investigator in the exercise of the investigator's functions under this Division.

Maximum penalty: 100 penalty units or 6 months imprisonment, or both.

- (2) Despite any other provision of this Division, a natural person is excused from answering any question, providing any information, giving evidence or producing or permitting the inspection of a document in accordance with this Division on the ground that the answer, information, evidence or document may tend to incriminate the person.

**199 Taking possession of documents to be used as evidence**

- (1) If an investigator takes possession of any documents under this Division for the purpose of obtaining evidence or protecting evidence from destruction, they may be retained by the investigator until the completion of proceedings (including proceedings on appeal) in which they may be evidence.

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## consultation draft

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Clause 200      Residential Tenancies Bill 2009

Part 10          Enforcement

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- (2) The person from whom the documents are taken must be provided, within a reasonable time after the documents are taken, with a copy of the documents certified by an investigator as a true copy.

### 200 Search warrants

- (1) An investigator may apply to an issuing officer for the issue of a search warrant for premises if the investigator believes on reasonable grounds:
- (a) that a provision of this Act or the regulations is being or has been contravened on the premises, or
  - (b) that there is on the premises evidence of a contravention of this Act or the regulations.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an investigator named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
- (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:  
**issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### 201 Application of Fair Trading Act 1987

The powers conferred on an investigator by this Division are in addition to any powers conferred on an investigator under the *Fair Trading Act 1987*.

## Division 2      Offences

### 202 Nature of proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.
- (2) Proceedings for an offence under section 120 (1) may also, with the consent of the Minister, be dealt with by the Supreme Court in its summary jurisdiction.

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## consultation draft

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Residential Tenancies Bill 2009

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- (3) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act is 50 penalty units or such other amount as may be prescribed by the regulations.
- (4) Proceedings for an offence against this Act may be brought within the period of 3 years that next succeeds the commission of the offence or, only with the consent of the Attorney General, at any time.

### **203 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

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Clause 204      Residential Tenancies Bill 2009

Part 10          Enforcement

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- (10) In this section, ***authorised officer*** means a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

### **204 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

### **205 Aiding and abetting etc**

A person who:

- (a) aids, abets, counsels or procures, or
- (b) induces, or attempts to induce, whether by threats or promises or otherwise, or
- (c) is in any way, directly or indirectly, knowingly concerned in, or party to,

the commission of an offence against this Act or the regulations is taken to have committed that offence and is punishable accordingly.

## **Division 3      Mandatory appointment of agents for landlords**

### **206 Appointment of landlord's agents**

- (1) The Director-General may, by written notice given to a landlord:
  - (a) direct the landlord to appoint, at the landlord's expense, a landlord's agent to manage a tenancy under a residential tenancy agreement between the landlord and a specified person, and
  - (b) direct that the landlord's affairs in relation to the tenancy be conducted through the agent.
- (2) A notice may specify the minimum period for which such an appointment is to be made and may specify persons who must not be appointed by the landlord.

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## consultation draft

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- (3) A landlord's agent who is appointed by a landlord who has been given a direction must give written notice to the Director-General:
  - (a) of the appointment, and
  - (b) if the person ceases to be the landlord's agent.
- (4) The Director-General must not give a direction under this section unless the Director-General is satisfied that the landlord has engaged in persistent or serious breaches of this Act or residential tenancy agreements (whether or not in relation to the residential premises affected by the direction).
- (5) The Director-General must not give a direction under this section if the landlord has appointed a landlord's agent.
- (6) The Director-General may, by further written notice given to the landlord, revoke or vary a direction given under this section.
- (7) A landlord must not, without reasonable excuse, fail to comply with a direction under this section.  
Maximum penalty: 20 penalty units.

### **207 Review by Administrative Decisions Tribunal**

A landlord may apply to the Administrative Decisions Tribunal for a review of a decision of the Director-General to give a direction under this Division.

## **Division 4 Costs in certain court proceedings**

### **208 Costs in court proceedings**

If a court in any proceedings is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not warranted in the circumstances of the case because this Act makes adequate provision for the enforcement by the Tribunal of the rights concerned, the court must order the plaintiff to pay the defendant's costs in such amount as the court determines.

Clause 209 Residential Tenancies Bill 2009

Part 11 Tenancy databases

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## Part 11 Tenancy databases

### Division 1 Preliminary

#### 209 Definitions

In this Part:

**agent** of a landlord means a person acting on behalf of a landlord and includes a landlord's agent.

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

**list** personal information about a person 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 the 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 rental 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 a termination order—the order has been suspended, the warrant for possession has lapsed or the parties have entered into a new residential tenancy agreement.

**personal information** means:

- (a) an individual's name, or
- (b) information or an opinion, whether true or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

**residential premises** includes residential premises within the meaning of the *Residential Parks Act 1998*.

**residential tenancy agreement** includes a residential tenancy agreement or a residential site agreement within the meaning of the *Residential Parks Act 1998*.

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# consultation draft

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***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) used, or intended to be used, by landlords or agents of landlords for checking a person's tenancy history to decide whether a residential tenancy agreement should be entered into with the person.

***tenant*** includes a resident or proposed resident within the meaning of the *Residential Parks Act 1998*.

## **210 Application of Part**

This Part does not apply to a residential tenancy database kept by an entity (including a government department or a department of a government of another State or Territory) for use only by that entity or its staff.

## **Division 2 Tenancy database information**

### **211 Notice of database and listing**

- (1) This section applies if:
  - (a) a person (the ***applicant***) applies to a landlord, whether or not through an agent of the landlord, to enter into a residential tenancy agreement, and
  - (b) the landlord or, if the application is made through an agent, the agent uses a residential tenancy database to decide 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 of the following:
  - (a) the residential tenancy database the landlord or agent uses to decide whether a residential tenancy agreement should be entered into with a person,
  - (b) the reason the landlord or agent uses the residential tenancy database is for checking an applicant's tenancy history,
  - (c) how persons may contact the database operator that operates the residential tenancy database and obtain information from the operator.

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Clause 212 Residential Tenancies Bill 2009

Part 11 Tenancy databases

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- (3) Subsection (2) applies whether or not the landlord or agent intends to use the residential tenancy 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 that subsection was given to the applicant not more than 7 days before the application was made.
- (5) If the landlord or agent uses the residential tenancy database for checking whether personal information about the applicant is in the database and personal information about the applicant is in the database, 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) that personal information about the applicant is in the database, and
  - (b) details of the information, and
  - (c) how and in what circumstances the applicant can have the information removed or amended under this Part.

### **212 Listing can be made only for particular breaches by particular persons**

A landlord or agent of a landlord must not list personal information about a person in a residential tenancy database unless:

- (a) the person was named in a residential tenancy agreement that has terminated or the person's co-tenancy was terminated, and
- (b) the person breached the agreement, and
- (c) because of the breach, the person owes the landlord an amount that is more than the rental bond for the agreement or the Tribunal has made a termination order, and
- (d) the personal information is only about the breach and is accurate, complete and unambiguous.

### **213 Further restriction on listing**

- (1) A landlord or agent of a landlord must not list personal information about a person in a residential tenancy database unless:
  - (a) the landlord or agent has:
    - (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

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- (b) the landlord or agent has given the person a reasonable opportunity 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) the landlord or agent has considered any submissions made.
- Maximum penalty: 20 penalty units.
- (2) This section does not apply if the landlord or agent cannot locate the person after making reasonable inquiries.
  - (3) Subsection (1) (b) and (c) do not apply to information that, at the time of the listing, is publicly available.

### **214 Ensuring quality of listing—landlord’s and agent’s obligation**

- (1) This section applies if a landlord or agent of a landlord 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 that keeps the database:
  - (a) that the information is inaccurate, incomplete, ambiguous or out-of-date,
  - (b) if the information is inaccurate, incomplete or ambiguous—how the information must be amended to make it accurate, complete and unambiguous.
- (3) The landlord or agent must keep a copy of the notice for 1 year after it was given.

### **215 Ensuring quality of listing—database operator’s obligation**

- (1) This section applies if a landlord or agent of a landlord who has listed personal information about a person in a residential tenancy database gives the database operator that operates the database written notice 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 of the notice being given.
- Maximum penalty: 20 penalty units.

Clause 216      Residential Tenancies Bill 2009

Part 11          Tenancy databases

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**216    Provision of copies of listed personal information**

- (1) A landlord or agent of a landlord 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, without payment of a fee, within 14 days after the request is made.  
Maximum penalty: 20 penalty units.
- (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: 20 penalty units.
- (3) If a database operator charges a fee for giving personal information under subsection (2):
  - (a) the fee must not be excessive, and
  - (b) subsection (2) applies only if the fee has been paid.
- (4) This section does not require a landlord, agent or database operator to give a person personal information if the landlord, agent or operator has previously given the information to the person under this section.

**217    Disputes about listings**

(1)    **Application**

This section applies if:

- (a) a landlord or agent of a landlord lists personal information about a person in a residential tenancy database, and
- (b) the person claims that the personal information is inaccurate, incomplete, ambiguous or out-of-date.

(2)    **Orders by Tribunal**

The Tribunal may, on application by a person, order personal information about the person in a residential tenancy database to be wholly or partly removed or amended in a stated way.

(3)    **Orders affecting other persons**

If the Tribunal makes an order directing a person other than a landlord or agent to amend a residential tenancy database, the Tribunal must give a copy of the order to the person or order a party to the proceedings to give a copy of the order to the person.

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## consultation draft

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### **218 Limit on period of listing**

- (1) A database operator must not keep personal information in the operator's residential tenancy database for longer than:
  - (a) if the national privacy principles require the operator to remove the personal information within a stated period of less than 3 years—the stated period, or
  - (b) in any other case—3 years.
- (2) However, this section does not apply to a person's name if it is necessary to keep the name in the residential tenancy database for the purposes of other personal information about the person in the database that is not required to be removed under this section or another law.
- (3) This section does not limit the operation of this Act or any other law that requires the removal of the personal information.
- (4) In this section:  
***national privacy principles*** means the principles stated in the *Privacy Act 1988* of the Commonwealth.

Clause 219 Residential Tenancies Bill 2009

Part 12 Miscellaneous

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## Part 12 Miscellaneous

### 219 Contracting out prohibited

- (1) The provisions of this Act have effect despite any stipulation to the contrary in any agreement, contract or arrangement and no residential tenancy agreement, contract or other agreement or arrangement, whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of this section, operates to annul, vary or exclude any of the provisions of this Act.
- (2) A person must not enter into any agreement, contract or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.
- (3) A landlord's agent must not enter into any agreement, contract or arrangement with the intention, either directly or indirectly, of obtaining exclusion from or indemnity for personal liability for any act on behalf of the landlord that renders the landlord's agent liable for an offence under this Act.

Maximum penalty: 20 penalty units.

### 220 Contracts Review Act 1980

Nothing in this Act limits the operation of the *Contracts Review Act 1980*.

### 221 Tenants' agents

- (1) A tenant may appoint a person as the tenant's agent for the purpose of receiving notices or documents given under the residential tenancy agreement or this Act.
- (2) The tenant may appoint the agent in the residential tenancy agreement or at any time during the tenancy by written notice given to the landlord or the landlord's agent.
- (3) An appointment may be revoked at any time by written notice given to the landlord or the landlord's agent.
- (4) A landlord, landlord's agent or the Tribunal (if aware of the appointment) must give to the tenant's agent any notices or other documents required to be given to the tenant under the residential tenancy agreement or this Act.
- (5) Any such notice or document is taken to have been given to the tenant if it is given to the tenant or the tenant's agent.

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## consultation draft

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Residential Tenancies Bill 2009

Clause 222

Miscellaneous

Part 12

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### **222 Functions of Director-General**

- (1) The Director-General has the following functions:
  - (a) to investigate and carry out research into matters relating to or affecting tenancies of residential premises or landlords or tenants,
  - (b) to investigate suspected contraventions of this Act or the regulations,
  - (c) to prosecute any offence under this Act or the regulations,
  - (d) to take other appropriate action to enforce this Act or the regulations,
  - (e) to investigate and report on any matters, or make inquiries into any matters, referred to the Director-General by the Minister or the Tribunal in connection with this Act or the regulations,
  - (f) to distribute information (in English or any other language) for the public about this Act, tenancies, residential tenancy agreements and services provided under this Act by the Tribunal and other persons,
  - (g) any other function conferred or imposed by or under this Act on the Director-General.
- (2) The Director-General may delegate to a person any of the Director-General's functions under this Act, other than this power of delegation.

### **223 Service of notices or other documents**

- (1) A notice or other document that is authorised or required by this Act or the regulations to be given to or served on any person may be given or served by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person or the mail box at the person's residential or business address personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate:
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate

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## consultation draft

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Clause 224      Residential Tenancies Bill 2009

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- or to an address specified by the body corporate for the giving or service of documents, or
- (ii) sending it by facsimile transmission to the facsimile number of the body corporate, or
  - (c) in the case of a government department:
    - (i) leaving it at, or by sending it by post to, any office of the government department, or
    - (ii) sending it by facsimile transmission to the facsimile number of the government department, addressed to the head of the government department.
  - (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.
  - (3) If there is more than one landlord or tenant under a residential tenancy agreement, a notice required to be served on a tenant or landlord under the agreement is taken to be served on all the tenants or landlords under the agreement if it is served on one of the tenants or landlords.

### **224 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made for or with respect to the following matters:
  - (a) a standard form or forms of residential tenancy agreement,
  - (b) a standard form or forms of condition report.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

### **225 Exclusion of personal liability**

A matter or thing done or omitted to be done by the Director-General, an investigator, a member of the Board or any person acting under the direction of the Director-General or a member of the Board does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the Director-General, investigator, member of the Board or person so acting personally to any action, liability, claim or demand.

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## consultation draft

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Residential Tenancies Bill 2009

Clause 226

Miscellaneous

Part 12

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### **226 Savings and transitional provisions**

Schedule 2 contains savings and transitional provisions.

### **227 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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# consultation draft

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Residential Tenancies Bill 2009

Schedule 1      Constitution and procedure of Rental Bond Board

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## Schedule 1      Constitution and procedure of Rental Bond Board

(Section 178 (3))

### Part 1      General

#### 1      Definitions

In this Schedule:

***appointed member*** means a member appointed by the Minister under section 178 (1) (d).

***Chairperson*** means the Chairperson of the Board.

***member*** means any member of the Board.

### Part 2      Constitution

#### 2      Terms of office of members

Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### 3      Remuneration

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### 4      Deputies

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a deputy has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a member who is the Chairperson the member's functions as Chairperson.

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# consultation draft

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Residential Tenancies Bill 2009

Constitution and procedure of Rental Bond Board

Schedule 1

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## **5 Vacancy in office of member**

- (1) The office of an appointed member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time.

## **6 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **7 Disclosure of pecuniary interests**

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

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## consultation draft

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### Residential Tenancies Bill 2009

#### Schedule 1      Constitution and procedure of Rental Bond Board

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- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.

#### **8 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

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- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

### **Part 3 Procedure**

#### **9 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

#### **10 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being.

#### **11 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

#### **13 Transaction of business outside meetings or by telephone etc**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

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- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

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## Schedule 2      Savings, transitional and other provisions

(Section 226)

### Part 1      General

#### 1      Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2      Provisions consequent on enactment of this Act

#### 2      Definitions

In this Part:

***existing residential tenancy agreement*** means a residential tenancy agreement in force immediately before the repeal of the former Act.

***former Act*** means the *Residential Tenancies Act 1987*.

***former Board*** means the Rental Bond Board constituted under the 1977 Act.

***1977 Act*** means the *Landlord and Tenant (Rental Bonds) Act 1977*.

#### 3      Application of Act to existing residential tenancy agreements

- (1) The terms included in a residential tenancy agreement by this Act are included in any existing residential tenancy agreement on the repeal of the former Act.

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- (2) This Act applies to any such agreement despite the terms of the agreement.
- (3) This clause is subject to this Schedule and the regulations.

#### **4 Previous actions etc not affected**

Nothing in this Act affects:

- (a) the validity of any action done or payment made before the repeal of the former Act in pursuance of a term of an existing residential tenancy agreement that contravenes, is ineffective or is void because of this Act, or
- (b) any right or remedy which a landlord or a tenant under an existing residential tenancy agreement would have had but for this Act in relation to such an action or payment or any breach of the agreement that occurred before the commencement of section 5.

#### **5 Application to previous breaches**

The former Act continues to apply in relation to breaches of an existing residential tenancy agreement that occurred before the repeal of the former Act.

#### **6 Termination of residential tenancy agreements**

The former Act continues to apply in relation to any termination notice given before the repeal of the former Act or other action, or proceedings commenced before that repeal, relating to the termination of an existing residential tenancy agreement or goods left on residential premises by a tenant or former tenant or occupant or former occupant.

#### **7 Possession of residential premises**

The former Act continues to apply in relation to the enforcement of a termination of a residential tenancy agreement that occurred before the repeal of the former Act and in relation to the recovery of possession of residential premises consequential on any such termination.

#### **8 New Board same legal entity as former Board**

The former Board is for all purposes (including the rules of private international law) a continuation of, and the same legal entity as, the Rental Bond Board constituted under this Act.

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## 9 Appointed members to continue in office

- (1) In this clause:  
*existing appointed member* means a member of the former Board appointed under section 6 (1) (d) of the 1977 Act, and holding office as such a member, immediately before the repeal of that Act.
- (2) Subject to clause 5 of Schedule 1, an existing appointed member continues in office as a member of the Board after the repeal of the 1977 Act for the remainder of the person's appointment (as specified in the member's instrument of appointment to the Board when last appointed under the 1977 Act).
- (3) Any such member, if eligible for reappointment, may be reappointed.

## 10 Existing delegations

A delegation, in force immediately before the repeal of the 1977 Act by the former Board to the Director-General of a function under the 1977 Act for which there is a corresponding equivalent function under this Act, continues in force as if it were a delegation under this Act of the corresponding equivalent function.

## 11 Bonds deposited under 1977 Act

- (1) This clause applies to an amount of rental bond deposited under the 1977 Act and not paid out before the commencement of Part 8.
- (2) The amount is taken to have been deposited under this Act and is to be dealt with accordingly.
- (3) Without limiting subclause (2), any claim for payment of any such amount made and not finally dealt with before the commencement of Part 8 of this Act is taken to have been made under this Act.

## 12 Existing Accounts

- (1) The Rental Bond Account established under section 185 is a continuation of, and the same fund as, the Rental Bond Account established under the 1977 Act.
- (2) The Rental Bond Interest Account established under section 186 is a continuation of, and the same fund as, the Rental Bond Interest Account established under the 1977 Act.

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### **13 Existing tenancy databases**

- (1) Part 11 of this Act does not apply to a residential tenancy database maintained and used immediately before the commencement of this clause until 3 months after that commencement.
- (2) This clause is subject to the regulations.

### **14 Payment of water charges**

Section 39 (1) (b) does not apply in respect of an existing residential tenancy agreement until 12 months after the commencement of that provision.

## **Schedule 3      Amendment of Acts**

### **3.1    Consumer, Trader and Tenancy Tribunal Act 2001 No 82**

**[1]    Section 5 Establishment of Consumer, Trader and Tenancy Tribunal**

Omit “*Residential Tenancies Act 1987*” from the note.

Insert instead “*Residential Tenancies Act 2009*”.

**[2]    Section 52 Compliance with order of Tribunal**

Omit “section 52 of the *Residential Tenancies Act 1987*” from section 52 (2) (b).

Insert instead “section 46 of the *Residential Tenancies Act 2009*”.

**[3]    Schedule 1 Divisions of the Tribunal**

Omit “the *Landlord and Tenant (Rental Bonds) Act 1977*” from clause 1 (e) (iii).

Insert instead “Part 8 of the *Residential Tenancies Act 2009*”.

**[4]    Schedule 1, clause 1 (h)**

Omit the paragraph. Insert instead:

- (h) the ***Tenancy Division***, in which the Tribunal’s jurisdiction is to be exercised in respect of any matter arising under the *Residential Tenancies Act 2009* (other than matters that relate to residential parks or to social housing premises within the meaning of Part 7 of that Act),

**[5]    Schedule 1, clause 1 (i)**

Omit “*Residential Tenancies Act 1987* or the *Landlord and Tenant (Rental Bonds) Act 1977* (or both) that relate to social housing premises, within the meaning of the *Residential Tenancies Act 1987*”.

Insert instead “*Residential Tenancies Act 2009* that relate to social housing premises within the meaning of that Act”.

### **3.2    Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11**

**[1]    Section 55 Restrictions on borrowings by co-operative housing societies**

Omit section 55 (1) (b).

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**[2] Section 55 (2) (c) (ii)**

Omit “(b),”.

**3.3 Crimes (Domestic and Personal Violence) Act 2007 No 80**

**Section 35 Prohibitions and restrictions imposed by apprehended violence orders**

Insert after the note at the end of the section:

**Note.** Section 79 of the *Residential Tenancies Act 2009* terminates the tenancy of a co-tenant under a residential tenancy agreement if a final apprehended violence order is made that prohibits the co-tenant from having access to the residential premises under the agreement. Section 72 of that Act enables the remaining tenants and occupants to change locks and security devices if such an order is made.

**3.4 Fines Act 1996 No 99**

**Schedule 1 Statutory provisions under which penalty notices issued**

Omit “*Landlord and Tenant (Rental Bonds) Act 1977*, section 15A”.

**3.5 Holiday Parks (Long-term Casual Occupation) Act 2002 No 88**

**Section 30 Enforcement of orders for possession**

Omit section 30 (2)–(6).

**3.6 Housing Act 2001 No 52**

**Section 58E Certain termination provisions do not apply to termination under this Act**

Omit “Part 5 of the *Residential Tenancies Act 1987* does”.

Insert instead “Parts 5–7 of the *Residential Tenancies Act 2009* do”.

**3.7 Hunter Water Act 1991 No 53**

**Section 25 Interference with works**

Omit “*Residential Tenancies Act 1987*” from section 25 (2).

Insert instead “*Residential Tenancies Act 2009*”.

### **3.8 Land Acquisition (Just Terms Compensation) Act 1991 No 22**

#### **Section 34 Former owner's right to occupy land until compensation paid etc**

Omit "*Residential Tenancies Act 1987*" from section 34 (3).

Insert instead "*Residential Tenancies Act 2009*".

### **3.9 Landlord and Tenant Act 1899 No 18**

#### **Section 1B Exclusion of certain agreements from operation of Act**

Omit "*Residential Tenancies Act 1987*".

Insert instead "*Residential Tenancies Act 2009*".

### **3.10 Property, Stock and Business Agents Act 2002 No 66**

#### **[1] Section 190 Application of money for purposes of certain Acts**

Omit section 190 (1). Insert instead:

- (1) The following amounts are also payable from the Statutory Interest Account:
  - (a) such contributions towards the costs, charges and expenses of the administration of the *Residential Tenancies Act 2009*, the *Retirement Villages Act 1999*, the *Fair Trading Act 1987*, the *Strata Schemes Management Act 1996*, the *Community Land Management Act 1989* and the *Residential Parks Act 1998* as may be authorised by the Director-General with the consent of the Minister,
  - (b) half the costs of, or expenses occurred in, administering the Tenancy, Social Housing, Retirement Villages and Residential Parks Divisions of the Consumer, Trader and Tenancy Tribunal,
  - (c) such contributions towards the costs of, or expenses occurred in, administering the Strata and Community Schemes Division of the Consumer, Trader and Tenancy Tribunal as may be authorised by the Director-General with the consent of the Minister,
  - (d) such additional contributions for the purposes set out in paragraphs (a)–(c) as the Minister may approve.
- (1A) If an Act referred to in subsection (1) or the *Consumer, Trader and Tenancy Tribunal Act 2001*, is not administered by the Minister, the Minister must agree with the other Minister

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administering that Act as to the contributions payable under that subsection in respect of costs and expenses occurred in respect of the Act concerned.

### 3.11 Public Authorities (Financial Arrangements) Act 1987 No 33

#### Section 28 Part not to apply in certain cases

Omit “of the Rental Bond Board to make a grant or loan under section 20 (4), or to provide money under section 21, of the *Landlord and Tenant (Rental Bonds) Act 1977*” from section 28 (1) (a).

Insert instead “to make a grant or loan under section 186 (3) of the *Residential Tenancies Act 2009*”.

### 3.12 Public Sector Employment and Management Act 2002 No 43

#### Schedule 1 Divisions of the Government Service

Omit “*Landlord and Tenant (Rental Bonds) Act 1977*” from Column 1 of Part 3.

Insert instead “*Residential Tenancies Act 2009*”.

### 3.13 Real Property Act 1900 No 25

#### Section 53 Land under the provision of this Act—how leased

Omit “*Residential Tenancies Act 1987*” from section 53 (5).

Insert instead “*Residential Tenancies Act 2009*”.

### 3.14 Residential Parks Act 1998 No 142

#### [1] Section 3 Definitions

Omit “*Landlord and Tenant (Rental Bonds) Act 1977* in relation to a lease or proposed lease” from the definition of **rental bond** in section 3 (1).

Insert instead “*Residential Tenancies Act 2009*”.

#### [2] Section 5 Application of Act

Omit the note to section 5 (3).

#### [3] Section 123 Enforcement of orders for possession

Omit section 123 (2)–(6).

### 3.15 Retirement Villages Act 1999 No 81

**[1] Section 4 Definitions**

Omit “*Residential Tenancies Act 1987*” from paragraph (c) of the definition of ***residence right*** in section 4 (1).

Insert instead “*Residential Tenancies Act 2009*”.

**[2] Section 4 (1), definition of “residential tenancy agreement”**

Omit “*Residential Tenancies Act 1987*”.

Insert instead “*Residential Tenancies Act 2009*”.

**[3] Section 4 (1), definition of “residential tenancy agreement”, note**

Omit the note.

**[4] Section 4 (1), definition of “tenant”**

Omit “*Residential Tenancies Act 1987*”.

Insert instead “*Residential Tenancies Act 2009*”.

**[5] Section 5 Meaning of “retirement village”**

Omit “*Residential Tenancies Act 1987*” from section 5 (3) (h).

Insert instead “*Residential Tenancies Act 2009*”.

**[6] Section 13 Effect of Act on other legislation**

Omit “the *Landlord and Tenant (Rental Bonds) Act 1977*” from section 13 (2).

Insert instead “Part 8 of the *Residential Tenancies Act 2009*”.

**[7] Section 140 Enforcement of orders for possession**

Omit section 140 (3)–(7).

**[8] Section 174 Letting or subletting of premises**

Omit “*Residential Tenancies Act 1987*” wherever occurring in section 174 (2) (a) and the note to section 174 (2).

Insert instead “*Residential Tenancies Act 2009*”.

**[9] Section 178 No assignment or subletting**

Omit “*Residential Tenancies Act 1987*” from section 178 (2).

Insert instead “*Residential Tenancies Act 2009*”.

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**[10] Section 199 Contracting out prohibited**

Omit “*Residential Tenancies Act 1987*” from section 199 (4).

Insert instead “*Residential Tenancies Act 2009*”.

**[11] Section 202 Costs of administration**

Omit section 202 (1). Insert instead:

- (1) Contributions are to be made to meet the costs of the administration of this Act from the Property Services Statutory Interest Account established under the *Property, Stock and Business Agents Act 2002*, in accordance with section 190 of that Act.

### 3.16 Sheriff Act 2005 No 6

#### Section 7A

Insert after section 7:

**7A Powers of Sheriff when executing writs and warrants for possession of land**

- (1) A sheriff’s officer executing a writ or warrant for possession of land may do any of the following:
  - (a) enter the premises and take all reasonably necessary steps to enforce the writ or warrant,
  - (b) use such force as is reasonably necessary to enforce the writ or warrant,
  - (c) obtain the assistance of a police officer.
- (2) A police officer may, at the request of a sheriff’s officer, assist the sheriff’s officer to enforce the writ or warrant.
- (3) The Sheriff must give the occupier of land subject to a writ of possession of land or a writ for the levy of property that relates to land not less than 30 days notice to deliver up possession of the land.
- (4) Subsection (3) does not apply if the execution of the writ has been previously stayed by a court.
- (5) In this section:

***writ or warrant for possession of land*** means:

  - (a) a writ of possession of land, or
  - (b) a writ for the levy of property that relates to land, or

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- (c) a warrant for possession of residential premises under the *Residential Tenancies Act 2009*, or
- (d) a warrant for possession of residential premises under the *Residential Parks Act 1998*, or
- (e) a warrant for possession of residential premises under the *Retirement Villages Act 1999*, or
- (f) a warrant for possession of a site under the *Holiday Parks (Long-term Casual Occupation) Act 2002*.

### **3.17 Strata Schemes Management Act 1996 No 138**

#### **Section 222 Proceedings before Tribunal**

Omit section 222 (2).

### **3.18 Sydney Water Act 1994 No 88**

#### **Section 44 Protection of works**

Omit “*Residential Tenancies Act 1987*” from section 44 (2).

Insert instead “*Residential Tenancies Act 2009*”.

### **3.19 Transport Administration Act 1988 No 109**

#### **Schedule 6B Special provisions for underground rail facilities**

Omit “*Residential Tenancies Act 1987*” from clause 5 (2).

Insert instead “*Residential Tenancies Act 2009*”.