

RESIDENTIAL TENANCIES BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Landlord and Tenant (Amendment) Bill 1987 is cognate with this Bill.

The objects of this Bill are—

- (a) to set out the basic rights and obligations of landlords and tenants under residential tenancy agreements made after the commencement of the proposed Act;
- (b) to preserve the rights of tenants who are protected under the Landlord and Tenant (Amendment) Act 1948;
- (c) to apply the proposed Act, with appropriate modifications, to existing residential tenancy agreements;
- (d) to maintain the rights of tenants to apply to the Residential Tenancies Tribunal to have rent increases and certain rents declared excessive and to have a new rent set by the Tribunal;
- (e) to maintain existing provisions prohibiting the payment by tenants of amounts (other than rent, rental bonds and prescribed fees or amounts) for residential premises;
- (f) to set out the procedure for the termination of residential tenancy agreements and the recovery of possession of residential premises;
- (g) to confer on the Tribunal jurisdiction in respect of various other matters; and

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- (h) to repeal the Residential Tenancies Tribunal Act 1986 and re-enact and consolidate the provisions of that Act with other provisions relating to landlords and tenants under residential tenancy agreements.
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PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the provisions of the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 defines certain expressions for the purposes of the proposed Act. Important definitions include the following:

“landlord”, which means the person who grants the right to occupy residential premises under a residential tenancy agreement, and includes the person’s heirs, executors, administrators and assigns;

“rent”, which means an amount payable by a tenant under a residential tenancy agreement in respect of a period of the tenancy;

“residential premises”, which—

- (a) means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a place of residence; and
- (b) includes a movable dwelling or the site on which a movable dwelling is situated or intended to be situated (or both the movable dwelling and the site), if the movable dwelling is used or intended to be used as a place of residence;

“residential tenancy agreement”, which means any 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—

- (a) whether or not the right is a right of exclusive occupation;
- (b) whether the agreement is express or implied; and
- (c) whether the agreement is oral or in writing, or partly oral and partly in writing,

and includes such an agreement granting the right to occupy residential premises together with the letting of goods;

“tenant”, which means the person who has the right to occupy residential premises under a residential tenancy agreement, and includes the person’s heirs, executors, administrators and assigns.

Clause 4 states that the proposed Act binds the Crown.

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Clause 5 sets out the residential tenancy agreements to which the proposed Act applies. The proposed Act applies to agreements made after the commencement of the clause. It applies, with the limitations set out in Parts 1 and 2 of Schedule 2, to oral, written and partly oral and partly written agreements made before the commencement of the clause.

Clause 6 sets out certain residential tenancy agreements to which the proposed Act will not apply, including tenancies arising under a contract of sale or purchase or a mortgage or from the fact that a person is the owner of a company title property, or if the tenant is a boarder or lodger, or agreements to let holiday premises. Certain kinds of premises are also excluded from the operation of the proposed Act, including premises protected under the Landlord and Tenant (Amendment) Act 1948, hotels, motels, educational institutions, hospitals, nursing homes and clubs.

Clause 7 provides that the proposed Act applies to movable dwellings and sites on which movable dwellings are situated or intended to be situated only in the manner and to the extent specified by the regulations. The clause also applies the proposed Act to sites for movable dwellings which are rented by a person who does not intend to use the site for his or her own residential purposes. The purpose of this is to ensure that a tenant of such a person who then occupies the site obtains all the rights of a tenant under the proposed Act.

PART 2—RESIDENTIAL TENANCY AGREEMENTS

Clause 8 enables a standard form or forms of residential tenancy agreement to be prescribed. The standard form may set out terms contained in Part 3 of the proposed Act and is to include a condition report.

Clause 9 requires every residential tenancy agreement to be in or to the effect of the standard form, if a form is prescribed, and provides that the agreement is void to the extent to which it is not in the standard form. The terms contained in the standard form are not to be varied and, to the extent that they are so varied, are deemed not to have been varied. The right to occupy residential premises is not removed by the clause even though some of the agreement may be void.

Clause 10 allows additional terms to be inserted in the standard form if they do not contravene the proposed Act or any other Act or do not affect the operation of the terms contained in the standard form.

Clause 11 makes a term of a residential tenancy agreement void to the extent to which the term is inconsistent with a term included by Part 3 of the proposed Act.

Clause 12 makes the costs of preparation of a residential tenancy agreement payable in equal shares by the landlord and the tenant. The clause also provides that a written statement of the costs of preparation of a residential tenancy agreement and any other charges is to be given to a prospective tenant before he or she signs the residential tenancy agreement. If the written statement is not given, the landlord is guilty of an offence. Regulations may be made prescribing the maximum amount payable by a tenant for the costs of preparation and other charges.

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Clause 13 enables a residential tenancy agreement, signed by the tenant but not by the landlord, to have effect as if the agreement had been signed by the landlord where the landlord or a person on behalf of the landlord accepts rent without reservation or performs any other act of part performance of the agreement.

Clause 14 provides for the continuation of a residential tenancy agreement that creates a tenancy for a fixed term which has continued after the time it should have terminated and which has no provision in its terms for continuation. The agreement will continue as a periodic tenancy on the same terms.

Clause 15 applies the rules of law relating to mitigation of loss or damage on breach of a contract to a breach of a residential tenancy agreement. The intention of this clause is to resolve any doubt as to whether the rules apply to a residential tenancy agreement.

Clause 16 enables a landlord or a tenant under a residential tenancy agreement to apply to the Tribunal in the event of a breach of the agreement or a dispute under the agreement. The clause also enables the Tribunal to make orders (including orders to require the performance of the agreement or to restrain a breach of the agreement, orders to perform work, orders as to payment of rent to the Tribunal and orders as to compensation).

PART 3—LANDLORDS AND TENANTS

DIVISION 1—*Rights and obligations*

Clause 17 makes it a term of every residential tenancy agreement that the landlord shall give each tenant a copy of the agreement at or before the time it is signed by the tenant and a copy of the fully executed agreement as soon as practicable. The clause makes it an offence for a landlord to contravene or fail to comply with the clause.

Clause 18 makes it a term of every residential tenancy agreement that the tenant shall pay the rent on or before the day set out in the agreement.

Clause 19 makes it a term of every residential tenancy agreement that the landlord shall pay certain statutory charges and costs relating to the residential premises.

Clause 20 makes it a term of every residential tenancy agreement that there is no legal impediment, of which the landlord is or ought to be aware, to occupation of the residential premises as a residence for the period of the tenancy.

Clause 21 makes it a term of every residential tenancy agreement that the tenant shall have vacant possession of the residential premises (other than premises to which the tenant does not have a right of exclusive occupation) on the day on which the tenant is entitled to occupy those premises under the agreement.

Clause 22 sets out, as a term of every residential tenancy agreement, the rights of the tenant to quiet enjoyment and occupation of the residential premises. The tenant is entitled to quiet enjoyment of the residential premises and to occupation of the premises not interrupted by the landlord. The landlord's obligation is not to interfere or cause or permit any interference with the reasonable peace, comfort or privacy of the tenant. The clause makes it an offence for a landlord or a landlord's agent to contravene or fail to comply with the clause.

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Clause 23 makes it a term of every residential tenancy agreement that the tenant shall not use the residential premises for any illegal purpose, shall not cause or permit a nuisance and shall not cause or permit any interference with the reasonable peace, comfort or privacy of neighbours.

Clause 24 sets out, as a term of every residential tenancy agreement, the circumstances in which a landlord, the landlord's agent or any other person authorised in writing by the landlord may enter residential premises. The circumstances include emergencies, inspection on 7 days' notice, inspection for the purpose of repairs on 2 days' notice, to show the premises to prospective purchasers, mortgagees or tenants, or at any time with the tenant's consent. Entry is to be between 8.00 a.m. and 8.00 p.m. on days other than Sundays or public holidays. The clause makes it an offence for a person to enter residential premises except as permitted by the clause.

Clause 25 makes it a term of every residential tenancy agreement that the landlord shall provide the residential premises in a reasonable state of cleanliness and fit for habitation and shall provide and maintain the residential premises in a reasonable state of repair.

Clause 26 sets out, as a term of every residential tenancy agreement, the tenant's obligations with respect to the maintenance of the residential premises. The tenant is to keep the premises in a reasonable state of cleanliness, is to notify the landlord of any damage, is not intentionally or negligently to cause any damage to the premises and, at the termination of the tenancy, is to leave the premises as nearly as possible in the same condition, fair wear and tear excepted, as set out in any condition report forming part of the residential tenancy agreement.

Clause 27 sets out, as a term of every residential tenancy agreement, the tenant's obligations with respect to the affixing of fixtures and the making of other alterations to the residential premises. A tenant shall not affix or remove a fixture or make any renovation, alteration or addition to premises except with the landlord's written consent, which shall not be unreasonably withheld or refused. If damage is caused by removing a fixture, the tenant must, at the landlord's request, repair the damage or compensate the landlord for the landlord's reasonable expenses in repairing the damage. A landlord who does not consent to the removal of a tenant's fixture must compensate the tenant for its value.

Clause 28 makes it a term of every residential tenancy agreement that the landlord shall reimburse the tenant for any reasonable costs (up to \$800 or such other amount as may be prescribed) incurred by the tenant in making urgent repairs to the residential premises. This term is subject, among other things, to the need for repairs having arisen otherwise than as a result of a breach of the agreement by the tenant and the repairs being carried out, where appropriate, by licensed or properly qualified persons.

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Clause 29 makes it a term of every residential tenancy agreement that the landlord shall provide and maintain locks or other security devices necessary to ensure that the residential premises are reasonably secure and that neither the landlord nor the tenant shall alter, remove or add any lock or other security device, except with reasonable excuse or the consent of the other party. It is also a term that a copy of the key or any other opening device or information required to open a lock or other security device altered, removed or added by a landlord or tenant is to be given to the other party unless the party consents to not being given a copy or the Tribunal authorises a copy not to be given. The clause makes it an offence to alter, remove or add any lock or other security device without consent or reasonable excuse. The clause enables the Tribunal to make certain orders with respect to locks and other security devices.

Clause 30 makes the tenant vicariously responsible for any act or omission by a person who is lawfully on the residential premises that would have been a breach of the agreement if it had been an act or omission by the tenant.

Clause 31 provides that a tenant under a residential tenancy agreement who is unable to deal with notices or other documents may appoint an agent for the purpose of receiving those notices or documents. The Tribunal or a landlord or landlord's agent notified of such an appointment is required to give notices or documents to the agent and any notices or documents not given to the agent shall be deemed not to have been given to the tenant.

Clause 32 imposes an obligation on a landlord and a new landlord to give the tenant notice in writing of the name and residential address of the landlord or the new landlord. Notice of a change of name or address must be given to the tenant not later than 14 days after a current landlord becomes aware of the change. The clause makes it a term of every residential tenancy agreement that a corporate tenant must give notice of any change in its registered office.

DIVISION 2—Change of landlord or tenant

Clause 33 makes it a term of every residential tenancy agreement that the tenant may, with the landlord's consent, assign the tenant's interest or sub-let the residential premises. The consent of the landlord must not be unreasonably withheld or refused and the landlord may not make any charge for giving such consent, other than for reasonable expenses.

Clause 34 provides for attornment on the sale of residential premises. Attornment is an acknowledgement by the tenant of the purchaser as landlord.

Clause 35 enables a person who is not a tenant under a residential tenancy agreement to apply to the Tribunal to be recognised as a tenant under a residential tenancy agreement in the event of the death or absence of the tenant. Such a person may also apply to be joined as a party to proceedings. The Tribunal may recognise the person as a tenant under the agreement or may vest a tenancy in the person on the terms and conditions that applied under the previous residential tenancy agreement and are appropriate.

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PART 4—RENTS

DIVISION 1—*General matters*

Clause 36 makes it an offence to require or receive from a tenant or a prospective tenant a reservation fee.

Clause 37 makes it an offence for a person to require or receive any consideration in relation to entering into, renewing, extending or continuing a residential tenancy agreement, other than rent, a rental bond and such fees or other amounts as may be prescribed.

Clause 38 makes it an offence to require rent in advance of more than 2 weeks (if the rent is \$300 per week or less) or 4 weeks (if the rent is more than \$300 per week) under a residential tenancy agreement. The clause also makes it an offence to require rent to be paid before the end of any period for which rent is paid up to.

Clause 39 makes it an offence to require a post-dated cheque or other post-dated negotiable instrument in payment of rent under a residential tenancy agreement.

Clause 40 provides that rent receipts containing certain particulars must be issued. A receipt is not required if rent is paid into an account at a bank, building society or other similar body.

Clause 41 requires the landlord or the landlord's agent to keep a record of rent received for a period of not less than 12 months after receipt of the rent. It also makes it an offence knowingly to make a false entry in such a record.

Clause 42 renders void terms of residential tenancy agreements that operate to increase the rent, make all rent payable or impose a penalty in the event of a breach by a tenant.

Clause 43 nullifies the effect of any term of a residential tenancy agreement that purports to charge a higher rent, to be reduced on compliance with the agreement, than is actually intended to be paid by the tenant.

DIVISION 2—*Rent increases and excessive rents*

Clause 44 provides that the Division applies to a rent increase even though it is provided for in a residential tenancy agreement.

Clause 45 provides that the rent payable under a residential tenancy agreement shall not be increased without 60 days' notice. A landlord may not increase rent under a fixed term residential tenancy agreement during the currency of the term unless provision for the increase is made in the agreement. The effect of giving a notice is to vary the agreement as from the day the rent increase takes effect. It makes it an offence to contravene or fail to comply with the clause.

Clause 46 gives a tenant the right to apply, not later than 30 days after being given notice of a rent increase, to the Tribunal for an order declaring that the rent increase is excessive.

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Clause 47 gives a tenant the right to apply to the Tribunal for an order declaring that rent is excessive where goods, services or facilities provided with the residential premises have been reduced or withdrawn. Applications under this clause and clause 46 may be made in relation to a residential tenancy agreement or a proposed residential tenancy agreement for residential premises already occupied by the tenant.

Clause 48 sets out the matters that the Tribunal may have regard to in determining whether a rent increase or rent is excessive, including the general market level of rents for comparable premises, the value of the residential premises, outgoings, work done by the tenant and other matters.

Clause 49 provides that, if the Tribunal determines that a rent increase or rent is excessive, it may make an order that the rent not exceed a specified amount. Such an order has effect for one year or any shorter period specified in the order and binds only the parties to the residential tenancy agreement or proposed residential tenancy agreement.

Clause 50 enables the Tribunal to declare agreements which let fittings or goods in connection with residential premises to be part of the residential tenancy agreement for the purposes of making a rent order.

Clause 51 enables the Tribunal to make an interim order having the effect of suspending payment of a rent increase or rent where an application is made to the Tribunal for an order that a rent increase or rent is excessive.

Clause 52 makes it an offence to demand, require or receive any rent in excess of the amount specified in an order made by the Tribunal.

PART 5—TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS

DIVISION 1—*Termination generally*

Clause 53 sets out the only circumstances in which a residential tenancy agreement terminates. These include the giving of a notice of termination followed by the delivery up of vacant possession of the residential premises or an order by the Tribunal terminating the agreement, the making of an order by the Tribunal terminating the agreement, entitlement to possession of a person having superior title to that of the landlord, the taking of possession by a mortgagee, the abandonment of the premises by the tenant and the delivering up of vacant possession of the premises by the tenant, with the prior consent of the landlord.

Clause 54 states that rent accrues from day to day and on termination the appropriate amount is payable.

Clause 55 states that a demand for or acceptance of rent by a landlord does not operate as a waiver of a breach of the residential tenancy agreement or notice of termination given by the landlord.

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DIVISION 2—*Notices of termination*

Clause 56 enables a landlord to give notice of termination of a residential tenancy agreement on the ground that the landlord has (after entering into the agreement) entered into a contract for the sale of the residential premises. The period of notice is not to be less than 30 days. The clause does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term. The Tribunal is empowered under clause 65 to refuse to terminate an agreement if such a sale is not proceeding.

Clause 57 enables a landlord or a tenant to give notice of termination of a residential tenancy agreement on the ground that the other party has breached a term of the agreement. The period of notice is not to be less than 14 days. If the breach is a failure to pay rent, the rent must be unpaid for not less than 14 days before the notice is given.

Clause 58 enables a landlord to give notice of termination of a residential tenancy agreement without specifying any ground for the termination. The period of notice is not to be less than 60 days. The clause does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

Clause 59 enables a tenant to give notice of termination of a residential tenancy agreement without specifying any ground for the termination. The period of notice is not to be less than 21 days unless the landlord otherwise consents. The clause does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

Clause 60 enables a landlord or a tenant to give notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term without specifying any ground for the termination. The period of notice is not to be less than 14 days or the period remaining until the end of the term, whichever results in the later day of termination.

Clause 61 provides that, in the event of the residential premises being destroyed, rendered wholly or partly uninhabitable or ceasing to be lawfully usable, the rent is to abate and the landlord or the tenant may give immediate notice of termination to the other party. A notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term may be given under the clause even though the term has not ended.

Clause 62 saves a notice of termination of a residential tenancy agreement that creates a periodic tenancy from being ineffective because the day for delivery up of vacant possession of the residential premises is earlier than would otherwise have been required at law or is not the last day of a period of the tenancy.

Clause 63 provides for the form of a notice of termination given by a landlord or a tenant.

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DIVISION 3—Termination of residential tenancy agreements by Tribunal

Clause 64 provides that a landlord may, not later than 30 days after notice of termination has been given and if vacant possession has not been delivered up, apply to the Tribunal for an order terminating the residential tenancy agreement. The Tribunal must make the order if the notice is given in accordance with the proposed Act, if any ground for the notice is established and, in the case of a breach of the agreement, if the breach is sufficient to justify termination or if the Tribunal is satisfied that the tenant has seriously or persistently breached the agreement or that it is appropriate to make the order. If the Tribunal makes an order terminating the agreement, the Tribunal must also make an order for possession of the residential premises.

Clause 65 enables the Tribunal to suspend the operation of an order if it is satisfied that it is desirable to do so, after considering the relative hardship likely to be caused to the landlord and the tenant. The clause also sets out the circumstances in which the Tribunal may refuse to make an order under clause 64 terminating a residential tenancy agreement and an order for possession of the residential premises.

Clause 66 enables the Tribunal to disregard a defect in a notice of termination given under the proposed Act.

Clause 67 provides that an application for termination under clause 68, 69 or 70 may be made whether or not notice of termination has been given.

Clause 68 enables the Tribunal, on application by a landlord, to make an order terminating a residential tenancy agreement and an order for possession of the residential premises if it is satisfied that the tenant has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit, serious damage to the premises or injury to the landlord, the landlord's agent or any person in occupation of or permitted on adjoining or adjacent premises.

Clause 69 enables the Tribunal, on application by a landlord, to make an order terminating a residential tenancy agreement and an order for possession of the residential premises if it is satisfied that the landlord would suffer undue hardship if required to terminate the agreement under any other provision of the proposed Act. The Tribunal may also order compensation to be paid to the tenant for loss of the tenancy.

Clause 70 enables the Tribunal, on application by a tenant, to make an order terminating a residential tenancy agreement and an order for possession of the residential premises if it is satisfied that the landlord has breached the agreement and the breach is such as to justify termination of the agreement.

DIVISION 4—Recovery of possession of residential premises

Clause 71 prohibits a landlord from taking proceedings to recover possession of residential premises other than before the Tribunal. The clause does not prevent a person who is not a landlord from taking proceedings for the recovery of possession of residential premises in a court.

Clause 72 prohibits entry for the purpose of recovery of possession of residential premises otherwise than in accordance with an order of a court or the Tribunal. In proceedings for an offence against the clause, a court may order compensation to be paid to the person against whom the offence was committed.

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Clause 73 provides for the enforcement of orders for possession of residential premises to be carried out by sheriff's officers after a warrant has been issued by the Chairperson or other member. A sheriff's officer enforcing an order for possession is empowered to seek the assistance of a member of the police force and to take all reasonably necessary steps to enforce the order. The clause makes it an offence to hinder or obstruct a sheriff's officer in the exercise of functions conferred by the clause.

Clause 74 makes a tenant remaining in possession of residential premises after termination of an agreement contrary to an order for possession liable to pay compensation for loss caused by failure to comply with the order and to pay an occupation fee.

Clause 75 prevents an order for possession of residential premises from being made by a court or the Tribunal unless it is satisfied that any person in possession of the premises (not being the immediate or former tenant of the person applying for the order) has been given reasonable notice of the proceedings.

Clause 76 enables a court or the Tribunal, on application by the person in possession of the residential premises (not being the immediate or former tenant of the person applying for the order for possession), to vest a tenancy in that person, either before or after an order for possession is made.

DIVISION 5—*Abandoned premises and goods*

Clause 77 enables the Tribunal to make an order, on application by a landlord, declaring that residential premises were abandoned by a tenant on a specified day.

Clause 78 entitles a landlord to apply to the Tribunal for compensation from the tenant for any loss caused to the landlord by the tenant's abandonment of the residential premises.

Clause 79 enables a landlord to apply to the Tribunal for orders as to goods abandoned by a tenant. A purchaser of the goods acquires a good title to the goods and the landlord is not liable in respect of the removal, destruction, disposal or sale of the goods, if done in accordance with the clause.

PART 6—THE RESIDENTIAL TENANCIES TRIBUNAL OF NEW SOUTH WALES

The provisions of this Part (subject to minor amendments) were contained in the Residential Tenancies Tribunal Act 1986.

DIVISION 1—*Constitution of the Tribunal*

Clause 80 constitutes the Tribunal and provides for the appointment of a Chairperson who is, or is qualified to be, a Magistrate and for the appointment of other full-time members who are, or are eligible to be, admitted as barristers or solicitors. Part-time members may also be appointed.

Further provisions relating to the members of the Tribunal are contained in Schedule 1 to the proposed Act.

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Clause 81 provides for the employment and functions of the Registrar and Deputy Registrars and other staff of the Tribunal.

Clause 82 gives members of the Tribunal the same protection and immunity as Justices under the Justices Act 1902.

DIVISION 2—Jurisdiction and functions of the Tribunal

Clause 83 states that the Tribunal has the jurisdiction conferred on it by the proposed Act or any other Act, including jurisdiction in respect of rental bonds.

Clause 84 enables the Chairperson of the Tribunal to delegate the exercise of part of the jurisdiction of the Tribunal to the Registrar or a Deputy Registrar. It also enables the Registrar to delegate functions to a Deputy Registrar.

Clause 85 sets out the kinds of orders which can be made by the Tribunal in proceedings which have been commenced before the Tribunal and the monetary limit on those orders.

DIVISION 3—Hearings

Clause 86 is a procedural provision setting out the manner in which applications are to be made to the Tribunal.

Clause 87 provides for the fixing of times and places for the holding of proceedings before the Tribunal by the Chairperson of the Tribunal, the Registrar or a Deputy Registrar. The Tribunal shall allow witnesses to be called and examined and submissions to be made. Proceedings before the Tribunal may be held in the absence of a party and more than one application may be heard at one time.

Clause 88 enables an applicant to proceed against persons having joint liability by serving only one of the persons with documents in the proceedings. The clause also gives a legal personal representative the right to bring proceedings as if the representative were bringing proceedings in the representative's own right.

Clause 89 provides that the Tribunal may, on the request of an applicant or of its own motion with the consent of the applicant, amend an application.

Clause 90 provides for the withdrawal of applications made to the Tribunal and enables an order for costs to be made against an applicant who withdraws an application.

Clause 91 provides that the Tribunal may adjourn proceedings before it.

Clause 92 provides that the Tribunal may stay proceedings before it.

Clause 93 sets out the procedure in proceedings before the Tribunal. The constitution of the Tribunal at each sitting and arrangements for sittings are to be determined by the Chairperson of the Tribunal and proceedings are to be heard and determined by one member sitting alone. The Tribunal will not be bound by the rules of evidence and is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

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Clause 94 provides that a party shall present his or her own case. An exception is to be made so as to allow parties to be represented by other persons where it appears to the Tribunal that the party would otherwise be unfairly disadvantaged or it appears to the Tribunal to be a matter of necessity or if one party is represented by the Commissioner for Consumer Affairs. The Tribunal may approve of a party being represented only if the Tribunal is satisfied that any other party will not be unfairly disadvantaged.

Clause 95 enables the Commissioner for Consumer Affairs, by a barrister, solicitor or agent, to represent a tenant in proceedings before the Tribunal.

Clause 96 enables the Commissioner for Consumer Affairs, after investigating a complaint or on the direction of the Minister, to take or defend proceedings on behalf of and in the name of a tenant.

Clause 97 sets out the manner in which the Commissioner for Consumer Affairs may take or defend proceedings.

Clause 98 enables the Commissioner for Consumer Affairs to intervene in proceedings before the Tribunal.

Clause 99 enables the Tribunal to extend the time for the doing of anything under the proposed Act, even though the relevant period of time has expired.

Clause 100 provides for the manner or form of procedure for taking any step in proceedings before the Tribunal to be decided by the Tribunal where the manner or form is not already prescribed.

Clause 101 enables the Registrar or a Deputy Registrar, at the direction of the Tribunal or at the request of a party to the proceedings, to issue a summons requiring a person to give evidence or produce a record. A person summoned at the direction of the Tribunal is entitled to be paid such fees and allowances as are prescribed. The Chairperson and any other members of the Tribunal are also given the powers of a Justice under the Justices Act 1902 to issue a warrant for the arrest of and to detain a witness who fails to comply with a summons.

Clause 102 provides that the Tribunal may set aside a summons if satisfied that the request for the summons was frivolous, vexatious or misconceived or that the request for any other reason amounted to an abuse of the process of the Tribunal.

Clause 103 enables the member before whom proceedings are being held to administer an oath to a witness before the Tribunal. A witness will have the same protection and liabilities as a witness before a Local Court.

Clause 104 provides for the use of evidence given in other proceedings, the adoption of findings, decisions or judgments by other courts or tribunals and the use of a report by the Commissioner for Consumer Affairs in proceedings before the Tribunal.

Clause 105 empowers the Tribunal to inspect and retain records and statements produced before it.

Clause 106 sets out the procedure for the referral of a question with respect to a matter of law to the Supreme Court by the Tribunal.

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Clause 107 gives a party who is dissatisfied with the decision of the Tribunal with respect to a matter of law a right to appeal to the Supreme Court against the decision.

Clause 108 provides that the Tribunal may dismiss proceedings which it is satisfied are frivolous, vexatious, misconceived or lacking in substance and may order costs to be paid by the person who brought the proceedings.

Clause 109 provides that the Tribunal must not make an order unless it has brought, or done its best to bring, the parties to a settlement.

Clause 110 enables a party to proceedings before the Tribunal to apply, with the approval of the Registrar or a Deputy Registrar, for an order varying or setting aside an order made in the proceedings.

Clause 111 states that an order of the Tribunal is final and that no appeal shall lie in respect of such an order. This is subject to clauses 107 and 110.

Clause 112 provides that orders for the payment of money shall be deemed to be judgments of the appropriate court. This means that they will be enforceable in the same way as a judgment of the court.

Clause 113 provides that costs shall not be allowed to or against any party to proceedings before the Tribunal except as permitted by clauses 108 and 110 or where one or more of the parties to such proceedings are represented by a barrister or a solicitor.

Clause 114 provides that the Tribunal must state orally or in writing its reasons for any order or decision made in proceedings before it. A copy of the reasons may be obtained from the Registrar.

Clause 115 makes it an offence wilfully to contravene or fail to comply with an order or a decision of the Tribunal. The clause does not apply to contravention of a rent order (for which an offence will be created by clause 52) or an order for the payment of money which is to be enforced by civil action.

Clause 116 makes it an offence to wilfully insult or wilfully interrupt or disobey the directions of the Tribunal or wilfully misbehave during proceedings before it. The clause enables the Tribunal to direct a person to remove himself or herself from proceedings before it.

Clause 117 empowers the Tribunal to refer the conduct of a landlord's agent to the registrar of the Council of Auctioneers and Agents or to the Commissioner for Consumer Affairs, or both.

PART 7—MISCELLANEOUS

Clause 118 confers certain functions on the Commissioner for Consumer Affairs. These include investigating and carrying out research into matters relating to or affecting the relationship between landlords and tenants and investigating and attempting to resolve complaints by landlords and tenants.

Clause 119 enables the Commissioner for Consumer Affairs to delegate the exercise of any of the Commissioner's functions under the proposed Act.

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Clause 120 provides that 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 the clause, operates to annul, vary or exclude any of the provisions of the proposed Act. It makes it an offence to enter into an agreement, contract or arrangement with the intention of defeating, evading or preventing the operation of the proposed Act.

Clause 121 makes it an offence, except in certain circumstances, to disclose any information obtained in connection with the administration or execution of the proposed Act.

Clause 122 allows references in Acts and instruments to the Residential Tenancies Tribunal to be construed as references to the Residential Tenancies Tribunal of New South Wales.

Clause 123 provides that the signature of the Chairperson or a member of staff of the Tribunal authorised by the Chairperson is sufficient to authenticate a document requiring authentication by the Tribunal.

Clause 124 is an evidentiary provision which precludes proof of the constitution of the Tribunal or of the appointment of, or the holding of office by, any member of the Tribunal from being required in any legal proceedings. It also provides that proceedings for an offence (other than in the Supreme Court for an offence under clause 72 (1) or 115) against the proposed Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 125 sets out the maximum penalties for the offences created by the proposed Act. The clause also sets out the value of a penalty unit. A reference to a penalty unit is a reference to an amount of money equal to the amount obtained by multiplying \$100 by that number of penalty units.

Clause 126 provides that nothing in the proposed Act limits the operation of the Contracts Review Act 1980.

Clause 127 makes directors and managers of corporations liable for contraventions by the corporations of the proposed Act if they knowingly authorised or permitted the contraventions but does not affect the liability of the corporations. The clause does not apply to directors and managers of statutory corporations.

Clause 128 makes it an offence to aid, abet, counsel or procure, induce or attempt to induce a person to contravene a provision of the proposed Act referred to in clause 125 (1) or to be in any way a party to such a contravention by a person or to conspire with others to contravene a provision of the proposed Act.

Clause 129 stipulates that the costs of the administration of the proposed Act in any year shall not, as far as practicable, exceed the amount of contributions paid for that purpose into the Residential Tenancies Program Account.

Clause 130 sets out the manner of service of documents on tenants and landlords and the Tribunal under the proposed Act.

Clause 131 enables certain offences under the proposed Act to be dealt with by the issue of penalty notices.

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Clause 132 exempts the New South Wales Land and Housing Corporation from certain provisions of the proposed Act.

Clause 133 sets out the regulation making power under the proposed Act. Regulations may be made as to condition reports, the provision of information to the tenant by the landlord at the time of entering into a residential tenancy agreement, the maximum charge for preparation of a residential tenancy agreement, the execution of a residential tenancy agreement by a prospective tenant suffering under a disability, abandoned goods, residential tenancy agreements relating to movable dwellings and their sites, standard forms of residential tenancy agreements, the service of documents on persons other than landlords and tenants, the procedure of the Tribunal, the duties of the Registrar and fees to be paid under the proposed Act. The regulations may create an offence, may impose a penalty not exceeding 5 penalty units (\$500) and may be general or specific in application and may exempt persons, agreements or premises from the operation of part or all of the proposed Act.

Clause 134 repeals the Residential Tenancies Tribunal Act 1986.

Clause 135 adds a notice given under clause 131 to the definition of "penalty notice" for the purposes of Part IVB (Penalty notices) of the Justices Act 1902. This has the effect of enabling the provisions of that Act relating to penalty notices and enforcement orders to be applied to offences under the proposed Act.

Clause 136 repeals section 4A (Act applies to certain claims by lessees) of the Consumer Claims Tribunals Act 1974 which applies that Act to claims by lessors and lessees in relation to rental bonds. These matters are to be dealt with by the Tribunal.

Clause 137 gives effect to the Schedule of savings, transitional and other provisions.

Schedule 1 makes provision with respect to the age, terms of office, remuneration, vacancies in the office, superannuation rights, and the rights to re-appointment to positions, of members of the Tribunal.

Schedule 2 sets out the application of certain provisions of the proposed Act to residential tenancy agreements that commenced before the commencement of clause 5 and makes provision to ensure that any rights or remedies or recovery proceedings commenced before that time are not affected by the proposed Act. A function exercised or any other act, matter or thing done or authorised under the Residential Tenancies Tribunal Act 1986 is to be deemed to have been exercised under the corresponding provision in the proposed Act. The Schedule further provides for the continuity of the Tribunal and saves the Residential Tenancies Tribunal Regulation 1986. A regulation making power to enable any other necessary savings or transitional provisions to be made is also contained in the Schedule.
