

# Landlord and Tenant (Rental Bonds) Act 1977 No 44

[1977-44]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Consumer, Trader and Tenancy Tribunal Act 2001 No 82](#) (not commenced)
- **See also**  
[Property, Stock and Business Agents Bill 2001](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Landlord and Tenant (Rental Bonds) Act 1977 No 44



New South Wales

An Act to constitute a Rental Bond Board; to confer and impose on the Board certain powers, authorities, duties and functions; to require lessors of residential premises to deposit rental bonds with the Board; to provide for the payment out of rental bonds; to enable the investment of rental bonds and the investment and expenditure of interest on rental bonds; and to amend the [Consumer Claims Tribunals Act 1974](#).

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [Landlord and Tenant \(Rental Bonds\) Act 1977](#).

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**authorised officer** means:

- (a) an inspector appointed under the [Financial Institutions \(New South Wales\) Act 1992](#), or
- (b) an authorised officer within the meaning of the [Landlord and Tenant \(Amendment\) Act 1948](#), or
- (c) a person appointed by the Board to be an authorised officer for the purposes of

this Act, or

(d) an investigator appointed under section 18 of the [Fair Trading Act 1987](#).

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

**caravan** means any vehicle without motive power constructed or adapted for the purposes of habitation, and includes any such vehicle which is not fitted with wheels but which is so constructed that it is capable of being fitted with wheels.

**functions** includes responsibilities, powers, authorities and duties.

**lease** means a lease or sub-lease of residential premises and includes:

- (a) a contract for the letting of residential premises, whether the contract is express or implied or is made orally, in writing or by deed,
- (b) a contract for the letting of residential premises together with goods, and
- (c) a tenancy of residential premises the existence of which is presumed by operation of section 22A of the [Landlord and Tenant Act 1899](#),

but does not include such a lease, sub-lease, contract or tenancy where the premises the subject of the lease, sub-lease, contract or tenancy are partly residential premises and partly premises that are not residential premises.

**lessee** means a person who proposes to become, or who is or was, a lessee or tenant under a lease (being a lease as defined in this subsection) and includes his or her heirs, executors, administrators and assigns.

**lessor** means a person who proposes to become, or who is or was, a lessor or landlord under a lease (being a lease as defined in this subsection) and includes his or her heirs, executors, administrators and assigns.

**member** means a member of the Board.

**money** includes a cheque.

**prescribed proceedings** means proceedings in a court (other than a prosecution) or before the Tribunal in relation to any matter which, under the terms or conditions of a lease, could, but for this Act, have given rise to a claim in relation to a rental bond deposited or paid in accordance with those terms or conditions.

**rental bond**, in relation to a lease or proposed lease, means an amount of money deposited with or paid before, on or after the date on which the lease became, or the proposed lease becomes, binding on the parties to:

- (a) the lessor under that lease or proposed lease,

- (b) a person, other than the lessor under that lease or proposed lease, in accordance with the directions of that lessor or the terms or conditions of that lease or proposed lease, or
- (c) a person, other than the lessor under that lease or proposed lease, acting on behalf of that lessor,

being money so deposited or paid in such a way that the effect is to secure, otherwise than by payment of rent in advance, that lessor against any failure by a lessee to comply with any terms or conditions (irrespective of whether those terms or conditions are related to payment of rent or not) applying to or in connection with that lease or proposed lease.

**residential premises** means:

- (a) a dwelling-house or any part thereof,
- (b) premises, other than a dwelling-house, or any part thereof, or
- (c) a residential site within the meaning of the [Residential Parks Act 1998](#) that is a person's principal place of residence, or
- (d) a relocatable home or any other moveable dwelling on a residential site, within the meaning of the [Residential Parks Act 1998](#), that is a person's principal place of residence,

used solely for the purposes of residence and, where land or appurtenances are leased with that dwelling-house or those premises (not being land or appurtenances used for commercial purposes or for the purposes of a business or an industry), includes that land or those appurtenances.

**Tribunal** means the Residential Tribunal established by the [Residential Tribunal Act 1998](#).

- (2) An amount of money deposited with or paid to a person as referred to in paragraph (b) or (c) of the definition of **rental bond** in subsection (1) in respect of a lease shall be deemed, for the purposes of section 8, to be deposited with or paid to the lessor under that lease.
- (3) For the purposes of the definition of **rental bond** in subsection (1), where money is deposited or paid as referred to in that definition in relation to a proposed lease and a lease between the parties, and of the premises, to which the proposal relates is entered into, the lease entered into shall be deemed to be the lease proposed at the time the money is deposited or paid, whether or not the lease entered into differs from the lease proposed at that time.

## **Part 2 Constitution of the Rental Bond Board**

### **5 Constitution of the Rental Bond Board**

- (1) There is hereby constituted a corporation under the corporate name of the **Rental Bond Board**.
- (2) In the exercise or performance of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), the Board shall be subject in all respects to the control and direction of the Minister.
- (3) The Board is, for the purposes of any Act, a statutory body representing the Crown.

### **6 Constitution and procedure of the Board**

- (1) The Board shall consist of 5 members of whom:
  - (a) one shall be the person for the time being holding, or acting in, the office of Director-General of the Department of Fair Trading who shall be the Chairperson of the Board,
  - (b) one shall be the person for the time being holding, or acting in, the office of Director-General of the Department of Housing,
  - (c) one shall be the person for the time being holding, or acting in, the office of Secretary of the Treasury, and
  - (d) two shall be persons appointed by the Minister, each of whom has, in the opinion of the Minister, had experience in real estate or tenancy matters.
- (2) Subject to this Act, a member appointed pursuant to subsection (1) (d) shall hold office for such term, not exceeding 3 years, as is specified in the instrument of the member's appointment.
- (3) A member appointed pursuant to subsection (1) (d) shall, if otherwise qualified, be eligible for re-appointment from time to time for such further term, not exceeding 3 years, as is specified in the instrument of the member's re-appointment.
- (4) Schedule 1 has effect.

### **7 Officers, employees etc**

- (1) Except as provided in subsection (2), such officers and employees as may be necessary to enable the Board to exercise and perform its functions shall be appointed and employed under and subject to the [Public Service Act 1979](#).
- (2) The Board may, with the approval of the Minister, appoint and employ on such terms and conditions as it thinks fit and for any particular purpose specified in a resolution of the Board any person, body or organisation considered capable of providing services,



information or advice required by the Board in exercising and performing its functions.

- (3) For the purposes of exercising and performing its functions, the Board may, with the approval of the Minister and of the Department or public authority concerned and on such terms as may be arranged, make use of the facilities, or the services of any officers, employees or servants, of any Department of the Government or public authority.

## **Part 2A Special functions of the Board (provision of residential accommodation)**

### **7A 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 shall 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.

### **7B Joint venture powers**

- (1) For the purposes of such a joint venture, the Board may, with the approval of the Minister:
  - (a) join in the formation of any company to be incorporated in the State,
  - (b) purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, any company incorporated in the State,
  - (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 such other things as are necessary or convenient for, or incidental to, the joint venture.
- (2) A company 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.

### **7C 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.

#### **7D 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.

#### **7E Finance**

- (1) Amounts may be paid from the Rental Bond Interest Account under Part 5 to meet expenditure by the Board under this Part.
- (2) Amounts may also be paid from the Rental Bond Account under Part 5 to meet so much of that expenditure as is attributable to the provision of financial accommodation (including advances).
- (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 shall be paid into the Rental Bond Interest Account under Part 5.

## Part 3 Deposit of rental bonds with the Rental Bond Board

### 8 Deposit of rental bonds with the Board

- (1) Where, before the commencement of the *Landlord and Tenant (Rental Bonds) Amendment Act 1985*, a lessor under a lease or proposed lease received a deposit or payment of money that, if it had been received after that commencement, would have been a rental bond and the money or its equivalent, as at that commencement:
- (a) has not been refunded or become refundable,
  - (b) has not become the property of that lessor, or
  - (c) is not subject to prescribed proceedings,
- that lessor, or the lessor's agent, shall, notwithstanding the terms of any agreement, any rule of law or the provisions of any other Act, deposit with the Board within one month after that commencement an amount of money equivalent to the amount deposited or paid.
- (2) Where, after the commencement of the *Landlord and Tenant (Rental Bonds) Amendment Act 1985*, a lessor receives a rental bond for a lease or a proposed lease, that lessor shall, notwithstanding the terms of any agreement, any rule of law or the provisions of any other Act, deposit with the Board an amount of money equivalent to the amount of that rental bond not later than 7 days (or, where some other period is prescribed for the purposes of this subsection, that other period) after:
- (a) the date of receipt of that rental bond, or
  - (b) the date on which the lease became, or the proposed lease becomes, binding on the parties,
- whichever is the later date.
- (3) Subsection (1) does not apply to a rental bond that:
- (a) is refunded or becomes refundable,
  - (b) becomes the property of a lessor, or
  - (c) becomes subject to prescribed proceedings,
- during the period referred to in subsection (1).
- (4) The Board may, without affecting the obligation imposed on a lessor under subsection (1) or (2), refuse to accept any amount tendered for deposit under subsection (1) or (2) that is not accompanied by a notification in or to the effect of a form approved by the Minister duly completed.

(5) If a rental bond:

- (a) exempt or excluded from the operation of subsection (1), or
- (b) exempt or excluded from the operation of subsection (2),

pursuant to section 26, subsequently ceases to be so exempt or excluded, this section shall, in respect of that rental bond, be deemed to be amended:

- (c) where paragraph (a) applies—by omitting from subsection (1) the words “after that commencement” and by inserting instead the words “after that rental bond ceases to be exempt or excluded from the operation of this subsection”, or
- (d) where paragraph (b) applies—by omitting from subsection (2) all matter following the word “after” where secondly occurring, and by inserting instead the words “that rental bond ceases to be exempt or excluded from the operation of this section”.

(6) The Minister, by instrument in writing, may:

- (a) generally or in any particular case or class of cases, extend the period prescribed by subsection (1), and
- (b) in any particular case or class of cases, extend the period prescribed by or under subsection (2).

## **9 Rental bonds to be in money**

(1) Notwithstanding the terms of any agreement, no person as lessor of residential premises shall, in respect of a lease or proposed lease of those premises, demand or receive from another person anything, other than money, that would have the effect of securing the lessor against any failure by a lessee to comply with any terms or conditions applying to or in connection with that lease or proposed lease, whether that thing is to be received by or deposited with:

- (a) the lessor,
- (b) another person in accordance with the directions of the lessor or the terms or conditions of the lease or proposed lease, or
- (c) another person acting on behalf of the lessor.

(2) Notwithstanding the terms of any agreement, a lessor of residential premises shall not, in respect of a lease or proposed lease of those premises, demand an amount of money that would, if deposited or paid, be a rental bond, or receive a rental bond, of an amount that exceeds the rental of those premises:

- (a) in the case of a lease or proposed lease of unfurnished premises—in respect of the first 4 weeks of the lease or proposed lease,

- (b) in the case of a lease or proposed lease of furnished premises—in respect of the first 6 weeks of the lease or proposed lease, or
  - (c) where some other period is prescribed for the purposes of paragraph (a) or (b), for that other period in the case of a lease or proposed lease referred to in that paragraph.
- (3) A lessor shall be deemed to have demanded a rental bond if a term or condition of the lease or proposed lease requires that rental bond to be deposited with or paid to the lessor or another person in accordance with the directions of the lessor or acting on behalf of the lessor.

#### **10 Provisions in leases relating to rental bonds**

- (1) Notwithstanding the terms of any agreement, no person (other than the Board) shall, in respect of any period after the date that an amount of money equivalent to the amount of a rental bond is deposited with the Board, be entitled to receive interest in respect of that rental bond.
- (1A) This section does not prevent the payment under section 11 of an amount equivalent to interest as referred to in section 11A.
- (2) Subject to subsection (3), the terms and conditions of a lease, to the extent that those terms and conditions are rendered inoperative by the provisions of this Act, shall be deemed to be void.
- (3) Where, but for this Act, a lessor or lessee would have a claim against a rental bond under the terms and conditions of a lease for an amount which cannot be recovered under any other provision of those terms and conditions:
- (a) that lessor may recover from the lessee as a debt an amount equivalent to the amount of the claim that the lessor would have had against that rental bond, and
  - (b) that lessee may recover from the lessor as a debt an amount equivalent to the amount of the claim that the lessee would have had against that rental bond.

#### **11 Payment out of rental bonds**

- (1) In this section:
- (a) a reference to an amount of money, in relation to a lease, is a reference to an amount of money equivalent to the amount of money, or part of the amount of money, as the case may require, held on deposit by the Board in respect of that lease, and
  - (b) where the Board has received a notification referred to in subsection (1A) from a prescribed person or organisation—a reference to a lessee includes a reference to the prescribed person or organisation.

- (1A) Where the Board is, or has been, notified that an amount of money held on deposit by the Board in respect of a lease, or that a specified part of such an amount of money, was paid to it by a prescribed person or organisation on behalf of the lessee under the lease, the Board shall, where it is required to pay out to the lessee any part of the amount of money held on deposit, pay to the prescribed person or organisation in priority to any other person so much of the amount that it is required to pay out as does not exceed the amount to which the notification relates.
- (2) An application to the Board to pay out an amount of money in respect of a lease shall be in or to the effect of a form approved by the Minister and may:
- (a) in the case of an application of a kind referred to in subsection (3)—be made at any time, or
  - (b) in the case of an application of a kind referred to in subsection (4) or (5)—be made upon termination of the lease.
- (3) Subject to subsection (11), where an application under subsection (2):
- (a) is made jointly by a lessor and a lessee under a lease,
  - (b) is made by a lessor under a lease who, in that application, directs the Board to pay out an amount of money to the lessee under that lease, or
  - (c) is made by a lessee under a lease who, in that application, directs the Board to pay out an amount of money to the lessor under that lease,
- the Board shall pay out an amount of money as directed in that application.
- (4) Where an application under subsection (2) is made by a lessor under a lease who, in that application, directs the Board to pay out an amount of money to that lessor, the Board shall, unless a notice has been given under subsection (5) in respect of that lease, give, by personal service or by post, notice in writing of the receipt of that application to the lessee under that lease.
- (5) Where an application under subsection (2) is made by a lessee under a lease who, in that application, directs the Board to pay out an amount of money to that lessee, the Board shall, unless a notice has been given under subsection (4) in respect of that lease, give, by personal service or by post, notice in writing of the receipt of that application to the lessor under that lease.
- (6) Subject to subsection (11), if an application referred to in subsection (4) or (5) is made in respect of part of an amount of money held on deposit by the Board in respect of a lease the Board shall:
- (a) in the case of an application referred to in subsection (4)— pay out to the lessee the remainder of that amount, and

(b) in the case of an application referred to in subsection (5)— pay out to the lessor the remainder of that amount.

(7) If a lessee to whom notice has been given under subsection (4):

(a) does not, within 10 days (or, where some other period is prescribed for the purposes of this subsection, that period) after personal service on the lessee of the notice or the date of posting of the notice, as the case may be, notify the Board in writing that the lessee has commenced prescribed proceedings in relation to an amount of money referred to in the notice, or

(b) does so notify the Board, but those proceedings are discontinued,

the Board shall, subject to subsection (11), pay out that amount to the lessor.

(8) If a lessor to whom notice has been given under subsection (5):

(a) does not, within 10 days (or, where some other period is prescribed for the purposes of this subsection, that period) after personal service on the lessor of the notice or the date of posting of the notice, as the case may be, notify the Board in writing that the lessor has commenced prescribed proceedings in relation to an amount of money referred to in the notice, or

(b) does so notify the Board, but those proceedings are discontinued,

the Board shall, subject to subsection (11), pay out that amount to the lessee.

(9) Where a lessor or lessee under a lease has, within the period prescribed by or under subsection (7) or (8), commenced prescribed proceedings in relation to the lease and judgment in those proceedings has been entered in or given by a court or a court or the Tribunal has made an order in those proceedings for the payment of money:

(a) the Board shall:

(i) upon being served with or obtaining a copy of that judgment or order, and

(ii) upon being satisfied that the judgment or order has not been satisfied and no steps to enforce the judgment or order have been taken under any other Act,

pay out an amount of money held by the Board on deposit in respect of that lease, as if it were the person obliged to pay under that judgment or order, or

(b) where the Board is satisfied that:

(i) the judgment has been entered or given, or the order made, and

(ii) that judgment or order has been satisfied (other than as provided in paragraph (a)),

the Board shall pay out that amount of money to the person obliged to pay under

that judgment or order.

- (10) For all purposes, money paid out by the Board under subsection (9) shall be deemed to be money paid by the person against whom the judgment was obtained or the order was made.
- (11) Where, in respect of a lease, the Board would, but for this subsection, be required to pay out an amount of money and that amount of money is in excess of the amount of money held on deposit by the Board in respect of that lease, the Board:
- (a) shall refuse to pay out the money,
  - (b) shall treat applications for payment out of the money as having been withdrawn, and
  - (c) shall inform the applicants accordingly.
- (12) The Board may pay out money in respect of a judgment or order even if there is a right of appeal against the judgment or order, but only if an appeal has not been lodged.
- (12A) If an appeal has been lodged, the Board must not pay out money in respect of the judgment or order unless satisfied that the appeal has been withdrawn or dismissed.
- (12B) A payment of money by the Board in respect of a judgment or order does not prevent an appeal being lodged.
- (13) Where proceedings have not been commenced in relation to an amount of money held by the Board within the period prescribed by or under subsection (7) or (8), a lessor or a lessee may, at any time before a payment is made in accordance with an application made by that lessor or lessee, withdraw that application and, for the purposes of this section, that application shall thereupon be deemed never to have been made.
- (14) Where the Board is required to pay out an amount of money to a person under this section, the Board may, instead of paying out that money to that person, pay out or apply that money in accordance with that person's directions.
- (15) For the purposes of this Act, a court or the Tribunal is authorised to issue:
- (a) a copy of any entry of a judgment or a copy of an order, in each case certified by the proper officer to be a true copy of the entry or order, and
  - (b) where proceedings have been discontinued, a certificate to that effect signed by the proper officer.
- (16) No claim other than a claim provided in this Act shall lie against the Board in respect of rental bonds deposited with the Board.



(17) This section applies notwithstanding the terms of any agreement, any rule of law or the provisions of any other Act.

(18) The Board may in any particular case extend the period prescribed by or under subsection (9) (a) (i).

#### **11A Payment out of amount equivalent to interest**

(1) This section applies to amounts paid out by the Board under section 11 on or after 1 January 1990 in respect of rental bonds lodged with the Board before, on or after that date.

(2) The total amount available to be paid out in respect of a rental bond is to include an amount equivalent to interest at the rate prescribed by the regulations for the time being:

(a) calculated on the minimum monthly balances from time to time of the rental bond held by the Board, and

(b) compounded as prescribed by the regulations.

(3) In subsection (2), **minimum monthly balance** means the minimum balance during January 1990 or any later, complete named month during which money in respect of a rental bond is held by the Board.

### **Part 4 Enforcement provisions**

#### **12 Receipts to be given for rental bonds**

(1) A lessor, or the lessor's agent, receiving money deposited or paid as a rental bond shall, at the time of receiving that money, give or cause to be given to the person making that deposit or payment a receipt for that money.

(2) A receipt given under subsection (1) shall contain such particulars as are prescribed for the purposes of this subsection.

(3) A lessor, or the lessor's agent, shall keep or cause to be kept, in the manner (if any) and for such term (if any) as are prescribed, a copy of each receipt given under this section.

#### **13 Information to be furnished on request**

(1) An authorised officer may orally or in writing require a person:

(a) to furnish to the authorised officer such information as the officer requires,

(b) to answer any question put to the person by the authorised officer, or

(c) to produce for inspection any books, documents or other records in the person's

custody or control,

in relation to the leasing or proposed leasing of residential premises.

- (2) An authorised officer may make copies of or take extracts from books, documents or other records produced under subsection (1).
- (3) A person shall not, in relation to a requirement under subsection (1):
  - (a) refuse or fail to furnish the information or to answer the question or to produce the books, documents or other records, or
  - (b) give any information or make any answer which is false in any particular.
- (4) Where information furnished, or an answer given, in response to a requirement under subsection (1) tends to incriminate the person giving the information or answer, neither the terms of the requirement, nor the information or answer may be used (whether or not that person objected to giving the information or answer) in any proceedings against that person except proceedings under subsection (3) (b) in relation to that information or answer.
- (5) A person is not obliged to furnish any information or to answer any question or to produce any books, documents or other records under this section unless the person has first been informed by the authorised officer making the requirement that the person is required and is obliged, by virtue of this section, to furnish the information or to answer the question or to produce the books, documents or other records.

#### **14 Contracts to evade Act prohibited**

- (1) A person shall not enter into or make any contract or arrangement, whether orally or in writing, for the purpose of, or which has the effect of, in any way, and whether directly or indirectly, defeating, evading or preventing the operation of this Act in any respect.
- (2) Any contract or arrangement referred to in subsection (1) is void whether or not a person has been convicted under that subsection in respect of that contract or arrangement.

#### **15 Proof**

A certificate purporting to be a certificate given by the Chairperson of the Board or his or her delegate certifying that no rental bond has been deposited with, or that no rental bond was or is held on deposit by, the Board in relation to a tenancy of premises specified in the certificate during a period specified in the certificate shall be received in evidence in a court and shall, until the contrary is proved, be accepted as evidence of the matters set out therein.

### 15A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if:
  - (a) it appears to the officer that the person has committed an offence against this Act or the regulations, and
  - (b) the regulations prescribe the offence as being one for which a penalty notice may be issued.
- (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 may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) 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 for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) 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.
- (9) In this section:

**authorised officer** means:

  - (a) the Director-General of the Department of Fair Trading, or
  - (b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section, or
  - (c) an investigator appointed under section 18 of the [Fair Trading Act 1987](#).

## **16 Offences and penalty**

- (1) Any person who contravenes, whether by act or omission, any provision of this Act is guilty of an offence against this Act.
- (2) Any person who is guilty of an offence against this Act shall, upon conviction, be liable to a penalty not exceeding 20 penalty units.

### **16A Offences by corporations**

- (1) If a corporation contravenes 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 shall be deemed 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 been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) This section does not apply to a person in the person's capacity as a director of, or as a person concerned in the management of, a corporation constituted by or under an Act.

## **17 Proceedings for offences**

- (1) Proceedings for offences against this Act or the regulations shall be disposed of in a summary manner before a Local Court held before a Magistrate sitting alone.
- (2) Notwithstanding anything in any Act, proceedings for an offence punishable under this Act may be brought:
  - (a) in the case of an offence in relation to a rental bond for a lease or a proposed lease—at any time before the expiration of the period of 3 years that next succeeds:
    - (i) the commission of the offence, or
    - (ii) the termination of the lease,whichever is the later, or
  - (b) in any other case—at any time before the expiration of the period of 3 years that next succeeds the commission of the offence.

## **Part 5 Accounts and finance**

## **18 Accounts**

The Board shall establish a Rental Bond Account and a Rental Bond Interest Account.

## **19 Rental Bond Account**

- (1) There shall be paid into the Rental Bond Account all rental bonds deposited with the Board in accordance with section 8.
- (2) There shall be paid from the Rental Bond Account:
  - (a) rental bonds authorised to be paid out under section 11,
  - (b) any money that the Board is authorised to invest under subsection (3) for the purpose of that investment, and
  - (c) any other payments authorised by this Act to be made from that account.
- (3) Subject to any specific or general direction given by the Minister, the Board may invest money from the Rental Bond Account:
  - (a), (b) (Repealed)
  - (c) in securities authorised by law for the investment of trust funds, or
  - (d) in any other manner prescribed for the purposes of this section.

## **20 Rental Bond Interest Account**

- (1) There shall be paid into the Rental Bond Interest Account all interest received on investments made by the Board under section 19 (3) and subsection (3).
- (2) Subject to any specific or general direction given by the Minister, there shall be paid from the Rental Bond Interest Account:
  - (a) the costs of, or the expenses incurred in, the administration of this Act,
  - (b) any money that the Board is authorised to invest under subsection (3) for the purpose of that investment, and
  - (c) any other payments authorised by this Act to be made from that Account.
- (2A) There shall be paid such contributions from the Rental Bond Interest Account, as are agreed annually by the Minister, the Minister administering the *Property, Stock and Business Agents Act 1941* and the Minister administering the *Residential Tenancies Act 1987*, the *Residential Tribunal Act 1998* and the *Residential Parks Act 1998*, for payment of half the costs of the administration of the *Residential Tenancies Act 1987*, the *Residential Tribunal Act 1998* and the *Residential Parks Act 1998* in the year ending 30 June next succeeding the year in which an agreement is made.

- (2B) Notwithstanding subsection (2A), there shall be paid from the Rental Bond Interest Account for the purposes set out in subsection (2A) such additional contributions as the Ministers referred to in that subsection may at any time agree.
- (2BA) There is payable from the Rental Bond Interest Account any amount authorised by the Director-General of the Department of Fair Trading, with the consent of the Minister, to be paid out of the account in payment of any costs and expenses incurred in the administration of the *Retirement Villages Act 1999*.
- (2C) Contributions referred to in this section shall be paid in the manner determined by the Treasurer.
- (2D) There may be paid from the Rental Bond Interest Account all amounts payable because of the operation of section 11A.
- (2E) (Repealed)
- (3) The Board may invest money from the Rental Bond Interest Account:
- (a) in the same manner as money from the Rental Bond Account may be invested under section 19 (3) (a), (b) and (c), except that the Board shall, subject to paragraph (c), only so invest money from the Rental Bond Interest Account if it is to be applied for or in connection with housing,
  - (b) by way of loan to co-operative housing societies registered under the *Co-operative Housing and Starr-Bowkett Societies Act 1998*,
  - (c) where the money is money set aside for use for the purposes referred to in subsection (2) (a), in the same manner as money from the Rental Bond Account may be invested under section 19 (3) (a), (b) and (c), or
  - (d) in any other manner prescribed for the purposes of this section.
- (4) The Board may make a grant or loan from the Rental Bond Interest Account for the purposes of:
- (a) a scheme approved by the Minister for the provision of residential accommodation,
  - (b) research being conducted, with the approval of the Minister, into matters relevant to the relationship of landlord and tenant, or
  - (c) other activities approved by the Minister that are relevant to matters associated with the relationship of landlord and tenant,
- subject to compliance with any conditions imposed by the Minister when giving the approval.

## **21 Rental advisory services**

The Board may with the approval of the Minister and subject to compliance with any conditions imposed by the Minister when giving the approval, provide from the Rental Bond Interest Account money for the establishment or administration of rental advisory services.

## **22 Temporary accommodation**

- (1) For the temporary accommodation of the Board it may obtain advances by overdraft on current account in any one or more banks, building societies or credit unions to such extent as may from time to time be approved by the Governor on the recommendation of the Treasurer.
- (2) The Treasurer may advance such money to the Board, upon such terms and conditions as to repayment and interest, as may be agreed upon.
- (3) Money advanced to the Board under this section for the purposes of the Rental Bond Account or the Rental Bond Interest Account shall be repaid from the Account in respect of which the money was advanced subject to any interest payments on those advances being paid from the Rental Bond Interest Account.

## **23 Financial year of the Board**

The financial year of the Board shall be:

- (a) where no period is prescribed as referred to in paragraph (b)—the year commencing on 1 July, or
- (b) the period prescribed for the purposes of this section.

## **24 (Repealed)**

## **25 Agents of the Board**

Any money received, invested or paid out by an agent of the Board shall be deemed to have been received, invested or paid out, as the case may be, by the Board, and money received by an agent of the Board shall be deemed to have been received by the Board on the day that it is received by the agent.

## **Part 6 General**

### **26 Exclusion from operation of Act**

- (1) The Governor may, by regulation made under this Act, exempt or exclude from the operation of all or any of the provisions of this Act:
  - (a) any person or class of persons,

(b) any statutory body or public authority or all statutory bodies or public authorities,  
or

(c) any rental bond or class of rental bond.

(2) For the purposes of, but without prejudice to the generality of, subsection (1), a class of rental bond may be described by reference to a class of lease or a class of premises in respect of which rental bonds are deposited or paid.

(3) For the purposes of, but without prejudice to the generality of, subsection (2), a class of lease may be described by reference to periods of continuous occupancy of premises under leases or by reference to terms or conditions of leases.

## **27 Continuous occupation**

For the purposes of this Act and the regulations made under this Act, where the same lessee continuously occupies the same residential premises under a series of leases from the same lessor, those leases shall be deemed to be one lease.

## **28 Rent paid in advance**

(1) Notwithstanding the terms or conditions of any lease, rent paid in advance, or money purporting to be rent paid in advance, in respect of a lease:

(a) shall not be appropriated by the lessor for any purpose other than the payment of rent, and

(b) shall (unless it is returned immediately to the payer) be applied by the lessor in respect of a period for which rent has not already been paid, being the first such period after the date of payment.

(2) Notwithstanding the terms or conditions of any lease, where a lessee has paid an amount of rent in advance in accordance with the terms or conditions of a lease, the lessor, or the lessor's agent, shall not require that lessee to pay further rent in advance otherwise than at or immediately before the expiration of the period for which the firstmentioned amount was paid.

(3) Subsection (2) does not prevent a lessee, of the lessee's own volition, paying rent in advance at any time.

## **29 False or misleading statements**

A person shall not, in any notification lodged with a rental bond deposited with the Board or in any application or direction to the Board to pay out a rental bond, wilfully make a false or misleading statement.

## **30 Annual report**

(1) The Board shall, as soon as practicable after 30 June in each year, prepare and



forward to the Minister a report of its work and activities for the 12 months preceding that date.

- (2) The Minister shall lay the report, or cause it to be laid, before each House of Parliament as soon as practicable after the receipt by the Minister of the report.

### **31 Service of notices etc**

- (1) Any notice, summons, writ or other proceeding to be served on the Board may be served:
  - (a) by being left, or
  - (b) in the case of a notice, by posting it addressed to the Board, at its office.
- (2) A letter giving a notice in writing to a lessor or lessee by post under section 11 shall be deemed to be properly addressed if it is addressed to that lessor or lessee at his or her last known address according to the records of the Board.

### **32 Authentication of documents**

Every document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by the Chairperson of the Board or his or her delegate.

### **33 Recovery of money**

Any charge, fee or money due to the Board may be recovered as a debt or liquidated demand in a court of competent jurisdiction.

### **34 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) Without prejudice to the generality of subsection (1), wherever a provision of this Act requires a form to be prescribed or a document to be in writing the Governor may make regulations, not inconsistent with this Act, prescribing:
  - (a) a form to be used for that purpose,
  - (b) where that form or document is required to be lodged with or served on or sent to any person—the manner of lodgment, service of sending, and
  - (c) particulars or information to be provided by a person completing that form or document.

- (3) Regulations may be made so as to apply differently in different circumstances according to such factors as may be specified in the regulations.
- (4) A regulation may impose a penalty not exceeding 3 penalty units for any contravention thereof, whether by act or omission.

## **Part 7 Amendment to the Consumer Claims Tribunals Act 1974**

### **35 (Repealed)**

## **Schedule 1 Provisions relating to constitution and procedure of the Board**

(Section 6 (4))

### **1 Provisions relating to the member appointed pursuant to section 6 (1) (d)**

- (1) (Repealed)
- (2) The office of a member appointed pursuant to section 6 (1) (d) shall not, for the purposes of any Act, be deemed to be an office or place of profit under the Crown.
- (3) A member appointed pursuant to section 6 (1) (d) 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) The Minister may appoint any person, qualified under section 6 (1) (d), to act in the office of a member appointed pursuant to section 6 (1) (d) while that member is absent from the member's office through illness or any other cause, and that person while so acting:
  - (a) shall have and may exercise and perform the functions of that member, and
  - (b) shall be deemed to be a member.
- (5) A member appointed pursuant to section 6 (1) (d) is, for the purposes of subclause (4), deemed to be absent from the member's office if there is a vacancy in that office which has not been filled in accordance with subclause (6).
- (6) On the occurrence of a vacancy in the office of a member appointed pursuant to section 6 (1) (d) otherwise than by the expiration of the term for which the member was appointed, the Minister may appoint a person to hold office as a member for the balance of the member's predecessor's term of office, being a person qualified under section 6 (1) (d).
- (7) A member appointed pursuant to section 6 (1) (d) shall be deemed to have vacated his or her office:
  - (a) if the member dies,

- (b) if the member becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,
  - (c) if he or she is convicted in New South Wales of an indictable 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,
  - (d) if the member 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, allowances or estate for their benefit,
  - (e) if the member is absent from 4 consecutive ordinary meetings of the Board of which reasonable notice has been given to the member, either personally or in the ordinary course of post, unless on leave granted by the Board or, unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for his or her absence from those meetings,
  - (f) if the member resigns his or her office by writing under his or her hand addressed to the Minister,
  - (g) if the member declines office, or
  - (h) if the member is removed from office by the Minister under subclause (8).
  - (i) (Repealed)
- (8) The Minister may, for any cause which to the Minister seems sufficient, remove a member appointed pursuant to section 6 (1) (d) from office.

## **2 Deputies**

- (1) A member holding office pursuant to section 6 (1) (a), (b) or (c) may appoint an officer of the Department of Fair Trading, the Department of Housing or the Treasury, respectively, to act on the member's behalf as the member's deputy, either generally or for any particular meeting of the Board.
- (2) An officer appointed pursuant to subclause (1) by the member holding office pursuant to section 6 (1) (a) shall, while acting as deputy, have and may exercise and perform the functions of Chairperson of the Board.
- (3) An appointment under subclause (1) may be revoked by the member, or by any member holding the same office as the member, who made the appointment.

### **3 Acting members**

No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the place of a member in accordance with clause 1 (4) or clause 2 (1) or as Chairperson of the Board in accordance with clause 2 (2), and all things done or omitted by the person while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted by the member or the Chairperson, as the case may be.

### **4 Meetings**

- (1) Subject to subclause (2), the Board shall hold meetings at such times as are determined by the Board.
- (2) The Board shall hold at least one meeting each quarter.
- (3) The procedure for the calling of, and for the conduct of business at, meetings of the Board shall, subject to any procedure that is specified in this Act or prescribed, be as determined by the Board.
- (4) The number of members which shall constitute a quorum at any meeting of the Board shall be 3, one of whom shall be the Chairperson of the Board or the Chairperson's deputy.
- (5) Any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.
- (6) Questions arising at a meeting of the Board shall be determined by a majority of votes of the members present and voting.
- (7) The Chairperson of the Board shall preside at all meetings of the Board.
- (8) The Chairperson of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (9) The Board shall cause minutes to be kept of its proceedings at meetings.

### **5 Protection from liability**

- (1) No matter or thing done, and no contract entered into, by the Board, and no matter or thing done by a member or by any other person acting under the direction or as delegate of the Board shall, if the matter or thing was done, or the contract was entered into, in good faith for the purposes of executing this Act, subject the member or person personally to any action, liability, claim or demand.
- (2) Nothing in subclause (1) exempts any member or other person from liability to be surcharged with the amount of any payment which is disallowed by the Auditor-General in the accounts of or relating to the Board, and which the member or other

person authorised or joined in authorising wilfully knowing the payment to be unauthorised.

## **6 Presumptions**

In proceedings by or against the Board no proof shall be required (until evidence is given to the contrary) of:

- (a) the constitution of the Board,
- (b) any resolution of the Board,
- (c) the appointment of any member referred to in section 6 (1) (d) or of any person referred to in clause 1 (4) or clause 2 (1), or
- (d) the presence of a quorum at any meeting of the Board.

## **7 Public Service Act 1979 not to apply**

The provisions of the *Public Service Act 1979* shall not apply to or in respect of the appointment of a member pursuant to section 6 (1) (d) and any member shall not, in his or her capacity as a member, be subject to the provisions of that Act during his or her term of office.