

Residential Tenancies Act 1987 No 26

[1987-26]



New South Wales

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

Notes—

- **Does not include amendments by**

Residential Tenancies Amendment (Public Housing) Act 2004 No 66, Sch 1 [6]-[8] (not commenced)

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New South Wales

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Residential Tenancies Act 1987 No 26



New South Wales

An Act relating to the rights and obligations of landlords and tenants under residential tenancy agreements; to make provision with respect to excessive rent increases and rents; to confer functions on the Consumer, Trader and Tenancy Tribunal of New South Wales with respect to landlords and tenants; to repeal the *Residential Tenancies Tribunal Act 1986* and to re-enact the provisions of that Act; to amend the *Justices Act 1902* in relation to certain penalty notices; to amend the *Consumer Claims Tribunals Act 1974* in relation to rental bonds claims; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Residential Tenancies Act 1987*.

2 Commencement

- (1) Sections 1, 2, 3 and 137 and Schedule 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

3 Definitions

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

acceptable behaviour agreement—see section 35A.

Chairperson means the Chairperson of the Tribunal.

Deputy Registrar means a Deputy Registrar of the Tribunal.

investigator means:

- (a) an officer appointed, or taken to have been appointed, as an investigator by the Minister under section 119A, or

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

landlord 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.

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

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

member means the Chairperson or any other full-time member or part-time member of the Tribunal.

moveable dwelling has the same meaning as it has in the [Local Government Act 1993](#).

officer means:

- (a) the Tenancy Commissioner, or
- (b) a person employed under the [Public Sector Management Act 1988](#) as referred to in section 117B (1), or
- (c) a person whose services are used in accordance with section 117B (2).

public housing tenancy agreement means a residential tenancy agreement under which residential premises are let by the New South Wales Land and Housing Corporation, but does not include housing let to a person in accordance with the [HomeFund Restructuring Act 1993](#) or that is substituted for housing let in accordance with that Act.

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

Registrar means the Registrar of the Tribunal.

regulations means regulations made under this Act.

rent means an amount payable by a tenant under a residential tenancy agreement in respect of a period of the tenancy.

rent rebate means an amount waived or remitted, in accordance with a scheme established under any Act, from rent payable to a social housing provider.

rental bond, in relation to a residential tenancy agreement or proposed residential tenancy agreement, has the same meaning as it has in the [Landlord and Tenant \(Rental Bonds\) Act 1977](#) in relation to a lease or proposed lease.

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

residential premises:

- (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 moveable dwelling or the site on which a moveable dwelling is situated or intended to be situated (or both the moveable dwelling and the site), if the moveable dwelling is used or intended to be used as a place of residence.

residential tenancy agreement 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.

social housing premises means residential premises let by a social housing provider under a residential tenancy agreement (otherwise than in the circumstances, if any, prescribed by the regulations).

social housing provider means any of the following:

- (a) the New South Wales Land and Housing Corporation,
- (b) the New South Wales Department of Housing,
- (c) the Office of Community Housing of the Department of Housing,
- (d) the Aboriginal Housing Office,
- (e) an organisation for the time being registered with the Office of Community Housing, or under Part 5 of the [Aboriginal Housing Act 1998](#),
- (f) an organisation prescribed by the regulations.

social housing tenancy agreement means a residential tenancy agreement in

respect of social housing premises, but does not include any such agreement that is of a class prescribed by the regulations as not being within this definition.

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

Tenancy Commissioner means the Tenancy Commissioner referred to in section 117A.

tenant 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.

this Act includes the regulations.

Tribunal means the Consumer, Trader and Tenancy Tribunal established by the [Consumer, Trader and Tenancy Tribunal Act 2001](#).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act:

- (a) a reference to a landlord includes a reference to a tenant who has granted the right to occupy residential premises to a sub-tenant, and
- (b) a reference to a tenant includes a reference to the sub-tenant of a tenant.

(4) For the purpose of determining whether an agreement is a residential tenancy agreement as defined in subsection (1), it does not matter that the person granted the right of occupation is a corporation if the premises are used (or intended for use) as a residence by a natural person.

(5) In this Act, a reference to the giving of something by a person includes a reference to the causing of that thing to be given by the person.

(6) The Chairperson may be referred to as the Chairman or Chairwoman.

(7) Notes in the text of this Act do not form part of this Act.

4 Crown bound

Except as provided by section 132 (which exempts the New South Wales Land and Housing Corporation and the Aboriginal Housing Office from certain provisions of this Act), this Act binds the Crown, not only in right of New South Wales but also, so far as the

legislative power of Parliament permits, the Crown in all its other capacities.

5 Application of Act

- (1) This Act applies to residential tenancy agreements made after the commencement of this section.
- (2) This Act (except as provided by Part 1 of Schedule 2) applies to oral residential tenancy agreements made before the commencement of this section.
- (3) This Act (except as provided by clause 9 of Schedule 2 and subsection (4)) applies to:
 - (a) written residential tenancy agreements, and
 - (b) partly written and partly oral residential tenancy agreements, made before the commencement of this section.
- (4) Until such time as the regulations provide:
 - (a) sections 64 and 65 do not apply to:
 - (i) written residential tenancy agreements, and
 - (ii) partly written and partly oral residential tenancy agreements, made before the commencement of this section, and
 - (b) clauses 10 and 11 of Schedule 2 apply to such agreements.
- (5) Where this Act applies to a residential tenancy agreement, it so applies notwithstanding the terms of any such residential tenancy agreement or any other contract, agreement or arrangement, whether made before or after the commencement of this section.

6 Agreements and premises to which Act does not apply

- (1) This Act does not apply to a residential tenancy agreement:
 - (a) if the tenant is a party to an agreement made in good faith for the sale or purchase of the residential premises,
 - (b) if the agreement arises under a mortgage made in good faith in respect of the residential premises,
 - (c) if the agreement arises under a company title scheme under which:
 - (i) a group of adjoining or adjacent premises is owned by a corporation, and
 - (ii) the premises are let by the corporation to persons who jointly have a controlling interest in the corporation,

- (c1) if the agreement is a residence contract within the meaning of the *Retirement Villages Act 1999*,
- (d) if the tenant is a boarder or a lodger, or
- (e) if the agreement is made in good faith for the purpose of giving a person a right to occupy residential premises (not being premises ordinarily used for holiday purposes) for a period of not more than 2 months for the purpose of a holiday.

(2) This Act does not apply to:

- (a) premises to which Parts 2, 3, 4 and 5 of the *Landlord and Tenant (Amendment) Act 1948* apply,
- (b) any part of a hotel or motel,
- (c) any premises ordinarily used for holiday purposes,
- (d) any part of an educational institution, hospital or nursing home,
- (e) any part of a club,
- (f) any premises used as an approved hostel within the meaning of the *Aged or Disabled Persons Care Act 1954* of the Commonwealth.
- (g) (Repealed)

(3) Nothing in subsection (2) applies to any part of premises referred to in paragraph (b), (c), (d), (e), (f) or (g) of that subsection if the part is used solely as a place of residence by a person employed as a caretaker for the premises or in any similar capacity.

7 Application of Act to moveable dwellings, residential parks and holiday parks

- (1) This Act does not apply to residential tenancy agreements to which the *Residential Parks Act 1998* applies or to occupation agreements to which the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies.
- (2) This Act applies to any other residential tenancy agreements under which the residential premises consist of a moveable dwelling, but only in the manner and to the extent specified by the regulations.
- (3) To avoid doubt, Part 6 (Powers of Tribunal and Tenancy Commissioner) applies to matters that arise by virtue of jurisdiction conferred on the Tribunal by the *Residential Parks Act 1998*.
- (4) Nothing in this section limits the operation of section 133 (3) (which enables exemptions from the operation of this Act).

Part 2 Residential tenancy agreements

8 Standard form of residential tenancy agreement

- (1) The regulations may prescribe a standard form of residential tenancy agreement.
- (2) The regulations may provide for:
 - (a) more than one standard form of residential tenancy agreement, or
 - (b) the addition of clauses to, or the omission or variation of clauses contained in, the standard form or forms,for use in relation to different classes of residential premises, agreements or parties.
- (3) A prescribed standard form of residential tenancy agreement:
 - (a) shall be deemed to contain all terms included in the agreement by Part 3,
 - (b) may set out those terms or provisions to the same effect, and
 - (c) may contain other terms not inconsistent with this Act.
- (4) A prescribed standard form of residential tenancy agreement shall include a condition report relating to the condition of the residential premises, to be completed in accordance with the regulations.
- (5) A prescribed standard form of residential tenancy agreement may not exclude the operation or vary the effect of any of the terms referred to in subsection (3) (a).

9 Agreements to be in standard form

- (1) If a standard form of residential tenancy agreement is prescribed, a residential tenancy agreement for which a form is prescribed and which is entered into on or after the day the form is prescribed, or any later day prescribed for the purpose, shall be in or to the effect of the form.
- (2) Except as provided by section 10, a residential tenancy agreement for which a standard form is prescribed is void to the extent to which it is not in or to the effect of the form.
- (3) Except as provided by this Act, the terms contained in a prescribed standard form of residential tenancy agreement shall not be varied by the parties to a residential tenancy agreement for which the form is prescribed and to the extent that they are so varied shall be deemed not to have been varied.
- (4) Nothing in subsection (2) or (3) voids a right to occupy residential premises that is granted by a residential tenancy agreement referred to in those subsections.

9A Extension of terms in standard form to existing social housing tenancy agreements

A prescribed standard form of residential tenancy agreement may contain terms expressed to extend to social housing tenancy agreements (or a class of social housing tenancy agreements) entered into before the regulations prescribing those terms took effect.

10 Additional terms

- (1) The parties to a residential tenancy agreement for which a standard form is prescribed may insert additional terms in the standard form, but only if the terms:
 - (a) do not contravene this or any other Act or any relevant code of practice, or
 - (b) are not inconsistent with the terms prescribed in the standard form.
- (2) An additional term is void if the Tribunal so orders, on application by a tenant or a landlord, on being satisfied that the additional term contravenes subsection (1).

11 Terms in Act to prevail

A term of a residential tenancy agreement is void to the extent to which it is inconsistent with any term included in the agreement by Part 3.

12 Costs of preparation etc of residential tenancy agreement

- (1) The costs of preparation of a written residential tenancy agreement by or on behalf of a landlord are payable in equal shares by the landlord and the tenant.
- (2) A landlord under a proposed written residential tenancy agreement shall give to the tenant under the proposed agreement, before the tenant enters into the agreement, a written statement of any costs of preparation of the agreement and of any other charges (including any stamp duty) payable by the tenant in respect of the agreement.
- (3) The regulations may prescribe a maximum amount payable by a tenant for the costs of preparation of a written residential tenancy agreement and for any other charges (other than stamp duty) payable by a tenant in respect of the agreement.
- (4) If the regulations prescribe a maximum amount payable by the tenant for any such costs or charges, any difference between those costs or charges and the maximum amount prescribed is payable by the landlord.

13 Certain unexecuted residential tenancy agreements enforceable

- (1) If a residential tenancy agreement has been signed by a tenant and given to the landlord or a person on the landlord's behalf and has not been signed by the landlord:
 - (a) acceptance of rent by or on behalf of the landlord without reservation, or

(b) any other act of part performance of the agreement by or on behalf of the landlord,

gives to the document the same effect it would have if it had been signed by the landlord on the first day in respect of which rent was accepted or on the day on which such an act was first performed.

(2) This section applies notwithstanding section 54A (which requires contracts for sale etc of land to be in writing) of the [Conveyancing Act 1919](#).

(3) In this section:

signed includes executed by a corporation in any manner permitted by law.

14 Continuation of fixed term agreements

(1) If a residential tenancy agreement (having no provision in its terms for continuation) that creates a tenancy for a fixed term continues after the day on which the term ends and notice of termination has not been given before that day in accordance with this Act, then:

(a) the residential tenancy agreement shall continue to apply on the same terms (other than any term relating to termination of the agreement) as last applying before that day, and

(b) the residential tenancy agreement so continues on the basis that the tenant is holding over under a periodic tenancy.

(2) The Tribunal may, on application by a landlord or a tenant, modify the terms (including terms contained in any standard form but not any terms set out in Part 3) of a residential tenancy agreement included in the agreement by this section as it considers appropriate for the continuation of the agreement.

14A Special provisions relating to social housing tenancies

(1) A landlord under a social housing tenancy agreement, the fixed term of which has ended, may, by notice in writing given to the tenant, declare that the agreement is subject to a further fixed term specified in the notice from such date as is specified in the notice.

(2) At the end of a fixed term declared under subsection (1) in relation to an agreement:

(a) any term of the agreement that provides for the continuation of the agreement applies, or

(b) if the agreement contains no such term—section 14 applies.

(3) A declaration may be made under subsection (1) in relation to an agreement on more than one occasion.

(4) This section has effect despite any other provision of this Act.

15 Parties to minimise loss from breach of residential tenancy agreement

- (1) The rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of a residential tenancy agreement.
- (2) Nothing in this section affects the operation of section 78 (which also deals with mitigation of loss).

16 Applications relating to a breach of residential tenancy agreement

- (1) If a landlord or a tenant under a residential tenancy agreement claims that a breach of a term of the agreement has occurred, the landlord or the tenant may, not later than 30 days after becoming aware of the breach, apply to the Tribunal for an order in respect of the breach.
 - (1A) If a landlord or a tenant under a residential tenancy agreement claims that a dispute has arisen under the agreement, the landlord or the tenant may refer the dispute to the Tenancy Commissioner.
 - (1B) When a dispute is referred to the Tenancy Commissioner under this section, the Tenancy Commissioner may attempt to bring the landlord and the tenant to a settlement acceptable to them.
 - (1C) If the landlord and tenant fail to make such a settlement, the landlord or the tenant may, with the consent of the Tenancy Commissioner, apply to the Tribunal for an order in respect of the dispute.
 - (1D) If a person who has paid, or required or received payment of, a reservation fee pending the making of a residential tenancy agreement claims that a dispute has arisen in relation to the reservation fee, the person may apply to the Tribunal for an order in respect of the dispute. The person may make the application whether or not the prospective residential tenancy agreement was executed.
- (2) The Tribunal may, on application by a person under this section, make one or more of the following orders:
 - (a) an order that:
 - (i) restrains any action in breach of the residential tenancy agreement, or
 - (ii) requires an action in performance of the agreement,
 - (b) an order for the payment of an amount of money,
 - (c) an order that a party to the residential tenancy agreement perform such work or take such other steps as the order specifies to remedy a breach of the agreement,

- (d) an order as to compensation, including (without limiting the Tribunal's power to make such an order):
 - (i) compensation for loss of rent, and
 - (ii) compensation where a landlord withholds or refuses consent to the removal of a tenant's fixture, and
 - (iii) compensation for any other breach of the residential tenancy agreement,
 - (e) an order that requires payment of part or all of the rent under the residential tenancy agreement into the Tribunal until the whole or part of the agreement has been performed or any application for compensation has been determined,
 - (f) an order that requires payment (out of rent paid into the Tribunal) towards the cost of remedying a breach of the residential tenancy agreement or towards the amount of any compensation.
- (3) An order under subsection (2) (a) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.
- (4) An application under this section may be made during the currency of or after the termination of a residential tenancy agreement and may be made whether or not notice of termination has been given or an order for termination has been made by the Tribunal.

Part 3 Landlords and tenants

Division 1 Rights and obligations

17 Landlord to give tenant copy of residential tenancy agreement

- (1) It is a term of every residential tenancy agreement that the landlord shall give the tenant:
- (a) a copy of the agreement, at or before the time the agreement is signed and given by the tenant to the landlord or a person on the landlord's behalf, and
 - (b) a copy of the fully executed agreement, as soon as reasonably practicable.
- (2) A landlord under a residential tenancy agreement shall not contravene or fail to comply with subsection (1).

18 Payment of rent

It is a term of every residential tenancy agreement that the tenant shall pay the rent on or before the day set out in the agreement.

19 Landlord to pay council and water rates, land tax etc

- (1) It is a term of every residential tenancy agreement that the landlord shall pay all rates, taxes or charges payable under any Act in connection with the residential premises (other than charges for electricity, gas, excess water and any other prescribed charges).
- (2) This section is subject to section 19A.

19A Social housing tenants to pay water charges

- (1) It is a term of every social housing tenancy agreement that the tenant must pay to the landlord any charges, determined in accordance with guidelines approved by the Minister, in respect of water usage by the tenant.
- (2) Without limiting subsection (1), the guidelines may:
 - (a) provide for the determination of water usage charges by reference to any of the following:
 - (i) actual usage or estimated usage,
 - (ii) the income of the tenant,
 - (iii) the rent payable for the premises to which the agreement relates (whether with or without rent rebate), and
 - (b) require water usage charges to be paid by the tenant in advance of actual usage.
- (3) The guidelines are to be made publicly available.
- (4) A copy of the guidelines is to be provided, on request, to any tenant under a social housing tenancy agreement free of charge and to other persons either free of charge or on payment of reasonable copying charges.
- (5) The guidelines may be amended or replaced from time to time.
- (6) The Energy and Water Ombudsman of NSW is to review any guidelines in force under this section as soon as possible after the period of 2 years from the date on which this section commences.

19B Payment of debts by social housing tenants

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

- (a) is to enter into arrangements with the landlord, in accordance with any reasonable request of the landlord, for the payment of that debt, and

- (b) is to comply with those arrangements (including such arrangements entered into during the term of a prior social housing tenancy agreement) and with any variations to those arrangements that may be agreed to by the landlord and tenant.

20 Legal impediments to occupation as residence

It is a term of every residential tenancy agreement on the part of the landlord that there is not any legal impediment (of which the landlord had or ought reasonably to have had knowledge at the time of entering into the agreement) to occupation of the residential premises as a residence for the period of the tenancy.

21 Vacant possession

- (1) It is a term of every residential tenancy agreement that the tenant shall have vacant possession of the residential premises on the day on which the tenant is entitled to occupy those premises under the agreement.
- (2) This section does not apply to any part of residential premises to which the tenant does not have a right of exclusive occupation.

22 Tenant's right to quiet enjoyment

- (1) It is a term of every residential tenancy agreement that:
 - (a) the tenant shall have quiet enjoyment of the residential premises without interruption by the landlord or any person claiming by, through or under the landlord or having superior title (for example, a head landlord) to that of the landlord, and
 - (b) the landlord or the landlord's agent shall not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of the tenant in using the residential premises.
- (2) A landlord or a landlord's agent under a residential tenancy agreement shall not, during the currency of the agreement, contravene or fail to comply with subsection (1).

23 Use of premises by tenant

- (1) It is a term of every residential tenancy agreement that:
 - (a) the tenant shall not use the residential premises, or cause or permit the premises to be used, for any illegal purpose,
 - (b) the tenant shall not cause or permit a nuisance, and
 - (c) the tenant shall not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of any neighbour of the tenant.

- (2) The tenant under a residential tenancy agreement entered into in respect of social housing premises is taken to have breached a term of the agreement if the tenant, or any person who, although not a tenant, is occupying (or jointly occupying) the residential premises with the consent of the tenant:
- (a) intentionally or negligently causes or permits damage to any property adjoining or adjacent to the premises (including any property available for use by the tenant in common with others), or
 - (b) uses any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others) for the purposes of the manufacture or sale of any prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*.

24 Landlord's access to residential premises

- (1) It is a term of every residential tenancy agreement that the landlord, the landlord's agent or any person authorised by the landlord, during the currency of the agreement, may enter the residential premises, but only in the following circumstances:
- (a) in an emergency (including entry for the purpose of carrying out urgent repairs),
 - (b) to inspect the residential premises, on not more than 4 occasions in any period of 12 months, if the tenant has been given not less than 7 days' notice on each occasion,
 - (c) to carry out necessary repairs (other than urgent repairs) to, or maintenance of, the residential premises, if the tenant has been given not less than 2 days' notice on each occasion,
 - (d) to show the residential premises to prospective purchasers or mortgagees, on a reasonable number of occasions, if the tenant has been given reasonable notice on each occasion,
 - (e) to show the residential premises to prospective tenants, on a reasonable number of occasions during the period of 14 days preceding the termination of the agreement, if the tenant has been given reasonable notice on each occasion,
 - (f) if the landlord forms a belief on reasonable grounds that the residential premises have been abandoned,
 - (g) at any time with the consent of the tenant,
 - (h) in accordance with an order of the Tribunal.
- (2) It is a term of every residential tenancy agreement that a person shall not enter the residential premises in the circumstances set out in subsection (1) (b), (c), (d) or (e):

- (a) on a Sunday or a public holiday, unless the tenant otherwise agrees,
 - (b) except between the hours of 8.00 am and 8.00 pm, unless the tenant otherwise agrees, and
 - (c) in the case of a person other than the landlord or the landlord's agent—except with the prior written consent of the landlord or the landlord's agent.
- (3) It is a term of every residential tenancy agreement that a written consent referred to in subsection (2) (c) must be produced to the tenant.
- (4) The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order authorising the landlord or any other person to enter the residential premises.
- (4A) Without limiting the generality of subsection (4), the Tribunal may make an order under that subsection authorising the landlord or any other person to enter the residential premises for the purpose of determining whether the tenant has breached the term of the residential tenancy agreement set out in section 23.
- (5) A landlord under a residential tenancy agreement, the landlord's agent or other person referred to in this section shall not, during the currency of the agreement, enter the residential premises except as permitted by this section.

25 Landlord's responsibility for cleanliness and repairs

- (1) It is a term of every residential tenancy agreement that:
- (a) the landlord shall provide the residential premises in a reasonable state of cleanliness and fit for habitation by the tenant, and
 - (b) the landlord shall provide and maintain the residential premises in a reasonable state of repair, having regard to the age of, rent payable for and prospective life of the premises.
- (2) In this section:
- residential premises** includes everything provided with the premises (whether under the residential tenancy agreement or not) for use by the tenant.

26 Cleanliness, notification of damage to residential premises etc

- (1) It is a term of every residential tenancy agreement that:
- (a) having regard to the condition of the residential premises at the commencement of the tenancy, the tenant shall keep the residential premises in a reasonable state of cleanliness,
 - (b) the tenant shall, as soon as practicable, notify the landlord of any damage to the

residential premises,

- (c) the tenant shall not intentionally or negligently cause or permit any damage to the residential premises, and
- (d) at the termination of the tenancy, the tenant shall leave the residential 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.

(2) In this section:

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

27 Alterations, additions etc to residential premises

(1) It is a term of every residential tenancy agreement that:

- (a) the tenant shall not, except with the landlord's written consent or unless the agreement otherwise provides, affix any fixture or make any renovation, alteration or addition to the residential premises,
- (b) the tenant shall not, except with the landlord's written consent or unless the agreement otherwise provides, remove any fixture that the tenant has affixed to the residential premises,
- (c) (Repealed)
- (d) if the tenant causes any damage to the residential premises by removing any fixture affixed by the tenant, the tenant shall notify the landlord and, at the landlord's request, repair the damage or compensate the landlord for the landlord's reasonable expenses in repairing the damage, and
- (e) if the landlord withholds or refuses consent to the removal of a fixture affixed by the tenant, the landlord shall without delay compensate the tenant for the value of the fixture.

(2) Despite section 133B of the [Conveyancing Act 1919](#) or any other law, it is not an implied term of a residential tenancy agreement that the landlord shall not unreasonably withhold or refuse consent to any proposed action by the tenant referred to in subsection (1) (a) or (b).

28 Urgent repairs

(1) It is a term of every residential tenancy agreement that the landlord shall, not later than 14 days after receiving a written notice from the tenant, reimburse the tenant for any reasonable costs (up to but not exceeding, in each case, \$500 or such other amount as may be prescribed) incurred by the tenant in making urgent repairs to the

residential premises, where:

- (a) the state of disrepair arose otherwise than as a result of a breach of the agreement by the tenant,
- (b) the tenant has given or has made a reasonable attempt to give the landlord notice of the state of disrepair,
- (c) if notice has been given, the tenant has given the landlord a reasonable opportunity to make the repairs,
- (c1) if the landlord has, in the agreement, nominated a licensed or otherwise properly qualified person or persons to carry out repairs of the kind concerned, the tenant has made a reasonable attempt to arrange for that person or one of those persons to carry out the repairs,
- (d) the repairs were carried out, where appropriate, by licensed or otherwise properly qualified persons, and
- (e) the tenant has, as soon as practicable, given or has made a reasonable attempt to give the landlord a written notice specifying details of the repairs and their costs, together with all receipts or copies of receipts for costs paid by the tenant.

(2) In this section:

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

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

- (a) a burst water service,
- (b) a blocked or broken lavatory system,
- (c) a serious roof leak,
- (d) a gas leak,
- (e) a dangerous electrical fault,
- (f) flooding or serious flood damage,
- (g) serious storm or fire damage,
- (h) a failure or breakdown of the gas, electricity or water supply to the residential premises,
- (i) a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating or laundering,

- (j) any fault or damage that causes the residential premises to be unsafe or insecure,
- (k) any other prescribed damage,

but does not include work needed to repair premises not owned by the landlord or a person having superior title (for example, a head landlord) to the landlord.

- (3) Nothing in this section prevents a tenant, with the consent of the landlord, from:
 - (a) making repairs to the residential premises, and
 - (b) being reimbursed for the costs of those repairs.

29 Locks and other security devices

- (1) It is a term of every residential tenancy agreement that:
 - (a) the landlord shall provide and maintain such locks or other security devices as are necessary to ensure that the residential premises are reasonably secure,
 - (b) neither the landlord nor the tenant shall, except with reasonable excuse or the consent of the other party, alter, remove or add or cause or permit the alteration, removal or addition of any lock or other security device, and
 - (c) a copy of the key or any other opening device or information required to open a lock or other security device which is altered, removed or added shall be given to the other party, except where the other party consents to not being given a copy or the Tribunal authorises a copy not to be given.
- (2) A landlord or a tenant under a residential tenancy agreement shall not, except with reasonable excuse or the consent of the other party, alter, remove or add or cause or permit the alteration, removal or addition of any lock or other security device of the residential premises.
- (3) It is a reasonable excuse that a lock or other security device was altered, removed or added:
 - (a) in an emergency, or
 - (b) in accordance with an order of the Tribunal,but this does not limit the meaning of reasonable excuse.
- (4) If a lock or other security device is altered, removed or added by the landlord or the tenant without the consent of the other party, it shall be presumed, in the absence of evidence to the contrary, that it was altered, removed or added by the landlord or the tenant without reasonable excuse.
- (5) The Tribunal may, on application by a landlord or a tenant under a residential tenancy

agreement:

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

if it is satisfied that it is reasonable in the circumstances to do so.

30 Tenant's liability for actions of others

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

31 Certain tenants may appoint agent

(1) A tenant under a residential tenancy agreement who because of:

- (a) intellectual impairment or physical impairment,
- (b) illiteracy or an inability to read or write English sufficiently well, or
- (c) absence from the residential premises,

is unable to deal with notices or other documents given under the agreement or this Act may appoint a person as the tenant's agent for the purpose of receiving those notices or other documents.

(2) An appointment under this section:

- (a) may be made in the residential tenancy agreement or at any time after the agreement commences, and
- (b) may be revoked at any time by the tenant,

and any such appointment or revocation has no effect until it is notified to the landlord or the landlord's agent.

(3) A landlord, the landlord's agent or the Tribunal, if notified of the appointment, shall give to a person appointed by a tenant, until such time as the appointment expires or is revoked, any notices or other documents required by the residential tenancy agreement or this Act to be given to the tenant.

- (4) A notice or other document that is required by this section to be given to a person appointed by the tenant and that is not so given shall be deemed not to have been given to the tenant.

32 Changes of name or address

- (1) A landlord under a residential tenancy agreement shall, at or before the time of entering into the agreement, give the tenant notice in writing of:
- (a) the names and residential addresses of the landlord and any person having superior title (for example, a head landlord) to that of the landlord and the name and business address of the landlord's agent (if any), or
 - (b) if the landlord or agent is a corporation—the name of the secretary (or, if there is no secretary, of another responsible officer of the corporation) and the address of the registered office of the corporation or, in the case of a statutory corporation, the business address of the corporation.
- (2) A person who succeeds another person as the landlord under a residential tenancy agreement shall, not later than 14 days after succeeding as landlord, give the tenant notice in writing of:
- (a) the names and residential addresses of the new landlord and any other person having superior title to that of the new landlord and the name and business address of the person's agent (if any), or
 - (b) if the new landlord or agent is a corporation—the name of the secretary (or, if there is no secretary, of another responsible officer of the corporation) and the address of the registered office of the corporation or, in the case of a statutory corporation, the business address of the corporation.
- (2A) A landlord is not required to give the tenant notice of the landlord's residential address under this section if the landlord has given the tenant notice in writing of the business address of the landlord's agent.
- (3) If a name or an address of which a current landlord is required to give notice under this section changes, a current landlord shall not fail to give the tenant notice in writing of the changed name or address within 14 days of becoming aware of the change.
- (4) It is a term of every residential tenancy agreement that a tenant which is a corporation (other than a statutory corporation) shall, if the address of the registered office of the corporation changes, give the landlord notice in writing of the changed address.

Division 2 Change of landlord or tenant

33 Right to assign rights or sub-let

- (1) It is a term of every residential tenancy agreement that:
 - (a) the tenant may, with the prior consent of the landlord, assign the whole or part of the tenant's interest under the agreement or sub-let the residential premises, and
 - (b) (Repealed)
 - (c) the landlord shall not make any charge for giving such a consent, other than for the landlord's reasonable expenses in giving consent.
- (2) Despite section 133B of the *Conveyancing Act 1919* or any other law, it is not an implied term of a residential tenancy agreement that the landlord shall not unreasonably withhold or refuse consent to an assignment or sub-letting referred to in subsection (1).
- (3) (Repealed)

34 Attornment (ie acknowledgement of purchaser as landlord)

A notice of the sale of residential premises subject to a residential tenancy agreement, given to a tenant by or on behalf of the landlord, that:

- (a) specifies the name of the purchaser, and
- (b) directs the tenant to pay all future rent to the purchaser,

shall be deemed to operate as an attornment as tenant to the purchaser by the tenant at the rent, and subject to the terms of the agreement, as at the date the notice is given.

35 Recognition of certain persons as tenants

- (1) A person who is occupying residential premises may:
 - (a) on the death of the tenant under a residential tenancy agreement to which the premises are subject, or
 - (b) if the tenant no longer occupies the premises,apply to the Tribunal to be recognised as a tenant under the agreement or to be joined as a party to any proceedings before the Tribunal relating to the premises, or both.
- (2) An application by a person to be recognised as a tenant may be made at the same time as any other application or during proceedings before the Tribunal or independently of any such other application or proceedings.
- (3) The Tribunal may, on application by a person under this section:
 - (a) make an order recognising the person as a tenant under a residential tenancy

agreement and the person shall be deemed, for the purposes of this or any other Act and of the agreement, to be a tenant under the agreement, or

(b) make an order joining the person as a party to proceedings,
or both.

- (4) The Tribunal may, if a person has made an application to be recognised as a tenant and if it thinks it appropriate to do so in the circumstances, make an order vesting a tenancy over the residential premises in the person on such of the terms and conditions that applied under the previous residential tenancy agreement for the premises as are in its opinion, having regard to the circumstances of the case, appropriate.

Division 3 Acceptable behaviour agreements

35A Acceptable behaviour agreements for public housing tenants

- (1) The New South Wales Land and Housing Corporation may, by notice in writing given to a tenant under a public housing tenancy agreement, request the tenant to give a written undertaking (referred to in this Act as an **acceptable behaviour agreement**), in the terms specified in the notice, not to engage in specified anti-social behaviour on any of the following:
- (a) the premises to which the tenancy agreement relates,
(b) any property adjoining or adjacent to those premises (including any property that is available for use by the tenant in common with others).
- (2) The operation of an acceptable behaviour agreement extends to the behaviour of any other person occupying (or jointly occupying) the premises with the consent of the tenant (a **lawful occupier**). Accordingly, if any such lawful occupier engages in any anti-social behaviour that is specified in the agreement, the tenant is taken to have engaged in the behaviour and breached the agreement.
- (3) The Corporation may request a tenant to enter into an acceptable behaviour agreement under subsection (1) only if the Corporation is of the opinion that, based on:
- (a) the history of the tenancy concerned, or
(b) the history of any prior tenancy under a public housing tenancy agreement entered into by the tenant and the Corporation,

the tenant, or a lawful occupier of the premises to which the tenancy relates, is likely to engage in anti-social behaviour on those premises or any property adjoining or adjacent to those premises (including any property that is available for use by the tenant in common with others).

(4) In making a request under subsection (1), the Corporation must inform the tenant that if:

- (a) the tenant fails or refuses to enter into an acceptable behaviour agreement as requested, or
- (b) the tenant, after entering into such an agreement, seriously or persistently breaches the terms of the agreement,

the Corporation may give notice of the termination of the tenancy agreement entered into by the Corporation and the tenant.

(5) An acceptable behaviour agreement is of no effect unless the Corporation has complied with subsection (4) in relation to the agreement.

(6) In this section, a reference to anti-social behaviour includes a reference to emission of excessive noise, littering, dumping of cars, vandalism and defacing of property.

35B, 35C (Repealed)

Part 4 Rents

Division 1 General matters

36 Reservation fees

A person shall not, except in such circumstances as may be prescribed, require or receive from:

- (a) a tenant or prospective tenant, or
- (b) any person on behalf of a tenant or prospective tenant,

an amount in consideration for not letting residential premises pending the making of a residential tenancy agreement.

37 Nature of amounts to be paid for agreement

A person shall not require or receive from a tenant or prospective tenant any monetary consideration for or in relation to entering into, renewing, extending or continuing a residential tenancy agreement other than:

- (a) rent,
- (b) a rental bond, and
- (c) such fees or other amounts as may be prescribed.

38 Rent in advance

- (1) A person shall not require:
 - (a) if the rent under a proposed residential tenancy agreement does not exceed the prescribed rent—more than 2 weeks' rent, or
 - (b) if the rent exceeds the prescribed rent—more than 1 month's rent,to be paid as rent in advance under the agreement.
- (2) A person shall not require the payment of any rent (other than the first payment) under a residential tenancy agreement for a period of the tenancy to be made before the end of the previous period for which rent has been paid.

- (3) In this section:

prescribed rent means rent of \$300 per week or such other amount as may be prescribed.

39 Post-dated cheques

A person shall not, in payment of rent under a residential tenancy agreement, require a cheque or other negotiable instrument that is post-dated.

40 Rent receipts

- (1) If rent under a residential tenancy agreement is paid in person, any person who receives payment of the rent shall, without delay, give to the person making the payment a receipt for the payment.
- (2) If rent is not paid in person, the landlord or the landlord's agent shall, on receipt of the rent, prepare or cause to be prepared a receipt for the rent and make the receipt available for collection by the tenant or post it to the tenant.
- (3) A receipt for rent is not a receipt for the purposes of this section unless it includes the following particulars:
 - (a) the name of the person who receives the rent or on whose behalf the rent is received,
 - (b) the name of the person paying the rent or on whose behalf the rent is paid,
 - (c) the address of the residential premises for which the rent is paid,
 - (d) the period for which the rent is paid,
 - (e) the date on which the rent is received,
 - (f) the amount of rent paid.

- (4) This section does not apply to rent paid in accordance with an agreement between the landlord and the tenant into an account at a bank, building society, credit union or other similar body nominated by the landlord.

41 Rent records

- (1) A landlord under a residential tenancy agreement or the landlord's agent shall keep, or cause to be kept, a record showing rent received under the agreement.
- (2) A record showing rent received and copies of all rent receipts issued by or on behalf of a landlord under a residential tenancy agreement shall be kept by the landlord or the landlord's agent for a period of not less than 12 months following the receipt of the rent.
- (3) A person shall not knowingly make an entry which is false in a material particular in a record kept under this section.

42 Penalty rent terms

A term of a residential tenancy agreement is void to the extent that it provides that, if the tenant breaches the agreement or this or any other Act, the tenant is liable to pay:

- (a) all or any part of the rent remaining payable under the agreement,
- (b) increased rent,
- (c) any amount as a penalty, or
- (d) any amount as liquidated damages.

43 Premium rent terms

A term of a residential tenancy agreement that provides that, if the tenant does not breach the agreement or this or any other Act:

- (a) the rent shall or may be reduced, or
- (b) the tenant shall or may be granted or paid a rebate or refund of rent or other benefit,

shall be deemed to have been varied from the commencement of the agreement or the commencement of the application of this section to the agreement (whichever is the later) so that the tenant is immediately entitled to the reduction, rebate, refund or other benefit.

Division 2 Rent increases and excessive rents

44 Application of Division

- (1) This Division applies to a rent increase even though the amount of the rent increase, or a method for calculating the amount of the increase, is set out in a residential tenancy agreement.

- (2) An increase in the amount payable by a tenant because of the cancellation or reduction of a rent rebate is not a rent increase for the purposes of this Division, and such a cancellation or reduction does not constitute a withdrawal of goods, services or facilities as mentioned in section 47.

Note—

However, a social housing tenant may apply to the Tribunal for an order that rent is excessive under section 47A if the rent rebate of the tenant is cancelled.

45 Increase of rent

- (1) The rent payable by a tenant under a residential tenancy agreement shall not be increased except by notice in writing given to the tenant specifying the amount of the increased rent and the day from which the increased rent is payable.
- (2) A day specified as the day from which increased rent is payable shall not be earlier than 60 days after the day on which notice of the increase was given under this section.
- (2A) A notice given under this section may be cancelled by a later notice or a later notice may provide for a lesser increase than that specified in the earlier notice.
- (2B) A later notice has effect instead of the earlier notice and takes effect from the date on which the earlier notice was to take effect.
- (3) A notice of increase of rent given in accordance with this section (and not cancelled by a later notice or affected by any order of the Tribunal) varies the residential tenancy agreement so that the increased rent specified in the notice is payable under the agreement from the day specified in the notice.
- (4) The rent payable by a tenant under a residential tenancy agreement that creates a tenancy for a fixed term shall not be increased during the currency of the term unless the amount of the increase, or a method for calculating the amount of the increase, is set out in the agreement.
- (5) A rent increase (including a rent increase permitted under subsection (4) or provided for in any other residential tenancy agreement) is not payable by a tenant under a residential tenancy agreement unless the rent is increased in accordance with this section or by an order of the Tribunal.
- (6) A landlord shall not contravene or fail to comply with this section.

45A Tenant may apply for refund of overpaid rent

- (1) A tenant under a residential tenancy agreement may apply to the Tribunal for an order directing the refund of overpaid rent on the ground that the rent increase was not duly notified under section 45.

- (2) The Tribunal may make an order directing the refund.
- (3) An application under this section must be lodged no later than 12 months after the relevant notice of the rent increase was given to the tenant.

46 Tenant may apply for an order that a rent increase is excessive

A tenant under a residential tenancy agreement may apply to the Tribunal for an order declaring that a rent increase is excessive not later than 30 days:

- (a) after being given notice of the rent increase, or
- (b) after being given notice of a rent increase payable under a proposed residential tenancy agreement for residential premises already occupied by the tenant.

47 Tenant may apply for an order that rent is excessive

- (1) A tenant under a residential tenancy agreement may, at any time, apply to the Tribunal for an order declaring that the rent payable under a residential tenancy agreement or a proposed residential tenancy agreement for residential premises already occupied by the tenant is excessive, having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises.
- (2) This section applies whether or not the goods, services or facilities are provided under the agreement or a separate contract, agreement or arrangement or were provided under a previous contract, agreement or arrangement.

47A Social housing tenant may apply for an order that rent is excessive

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

48 Matters to be considered in determining rent applications

The Tribunal may, in determining whether or not a rent increase or rent payable under a residential tenancy agreement or a proposed residential tenancy agreement for residential premises is excessive, have regard to the general market level of rents for comparable premises (other than premises let by a government department, administrative office or public authority) in the locality or a similar locality and may also have regard to:

- (a) the value of the residential premises,

- (b) the amount of any outgoings in respect of the residential premises required to be borne by the landlord under the residential tenancy agreement or proposed agreement,
- (c) the estimated cost of any services provided by the landlord or the tenant under the residential tenancy agreement or proposed agreement,
- (d) the value and nature of any fittings, appliances or other goods, services or facilities provided with the residential premises,
- (e) the accommodation and amenities provided in the residential premises and the state of repair and general condition of the premises,
- (f) any work done to the premises by or on behalf of the tenant, to which the landlord has consented, and
- (g) any other relevant matter.

49 Orders as to excessive rent increases or rents

- (1) The Tribunal may, on application by a tenant under section 46, 47 or 47A, and after considering any matters it considers appropriate under section 48, determine that a rent increase or rent is excessive.
- (2) If the Tribunal determines, on application by a tenant under section 46, that a rent increase is excessive, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the day from which the increased rent was payable, the rent shall not exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.
- (3) If the Tribunal determines, on application by a tenant under section 47, that a rent is excessive having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the date of that reduction or withdrawal, the rent shall not exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.
- (3A) If the Tribunal determines, on application by a tenant under section 47A, that a rent is excessive following the cancellation of the rent rebate of the tenant, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the date of that cancellation, the rent is not to exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.
- (4) An order made by the Tribunal specifying a maximum amount of rent:
 - (a) has effect for such period, not exceeding 12 months, as is specified by the Tribunal in the order, and

- (b) binds only the parties to the residential tenancy agreement or the proposed residential tenancy agreement under which the rent is payable.

50 Payments under separate agreements

If:

- (a) the residential premises occupied by a tenant are held under a residential tenancy agreement, and
- (b) goods or fittings in, or connected with the tenant's occupation of, the premises are let to the tenant by a separate agreement,

the Tribunal may, in making any order under section 49, declare the separate agreement to be part of the residential tenancy agreement and may make orders under that section in respect of that agreement as if any amounts payable under it were payable under the residential tenancy agreement.

51 Interim orders suspending rent increases or rent

If an application is made to the Tribunal for an order that a rent increase or rent is excessive, the Tribunal may, if it is of the opinion that the circumstances so require, make an order that has the effect of suspending payment of the whole or part of the rent increase or the rent until such time as the Tribunal finally determines the application.

52 Contravention of rent order

- (1) A landlord shall not wilfully contravene or fail to comply with an order that rent shall not exceed an amount specified by the Tribunal.
- (2) A person (other than a landlord) shall not demand, require or receive any rent from a tenant of an amount exceeding an amount specified by the Tribunal.
- (3) A court before which proceedings for an offence under subsection (1) or (2) have been brought or the Tribunal, on application by a tenant, may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the tenant against whom the offence was committed an amount equal to the amount of any rent unlawfully received from the tenant.

Part 5 Termination of residential tenancy agreements

Division 1 Termination generally

53 Termination of residential tenancy agreements

A residential tenancy agreement terminates only in one or more of the following circumstances:

- (a) if the landlord or the tenant gives notice of termination under this Part and:

- (i) the tenant delivers up vacant possession of the residential premises on or after the day specified in the notice, or
- (ii) the Tribunal makes an order under section 64 (which relates to applications to the Tribunal by the landlord for termination) terminating the agreement,
- (b) if the Tribunal makes an order terminating the agreement,
- (c) if a person having superior title (for example, a head landlord) to that of the landlord becomes entitled to possession of the residential premises,
- (d) if a person succeeding to the title of the landlord (for example, a purchaser) becomes entitled to possession of the residential premises to the exclusion of the tenant,
- (e) if a mortgagee in respect of the residential premises becomes entitled to possession of the premises to the exclusion of the tenant,
- (f) if the tenant abandons the residential premises,
- (g) if the tenant delivers up vacant possession of the residential premises with the prior consent of the landlord, whether or not that consent is subsequently withdrawn,
- (h) by merger (that is, where the interests of the landlord and the tenant become vested in the one person),
- (i) by disclaimer (for example, on repudiation by the tenant accepted by the landlord).

54 Apportionment and recovery of rent on termination

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

55 Breach or notice of termination not waived by acceptance of rent

A demand for, any proceedings for the recovery of, or acceptance of, rent payable under a residential tenancy agreement by a landlord:

- (a) does not operate as a waiver of:
 - (i) any breach of the agreement, or
 - (ii) any notice of termination on the ground of breach of the agreement given by the landlord, and
- (b) is not evidence of the creation of a new tenancy.

Division 2 Notices of termination

56 Notice of termination on ground that premises are being sold

- (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant on the ground that the landlord has (after entering into the agreement) entered into a contract for the sale of the residential premises under which the landlord is required to give vacant possession of the premises.
- (2) A notice of termination given under this section shall not specify a day earlier than 30 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the landlord.
- (3) This section does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

57 Notice of termination on ground of breach of agreement

- (1) A landlord or a tenant may give notice of termination of a residential tenancy agreement to the other party on the ground that the other party has breached a term of the agreement.
- (2) A notice of termination given under this section shall not specify a day earlier than 14 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be or will be delivered up to the landlord.
- (3) A notice of termination given by a landlord on the ground of a breach of the agreement to pay rent has no effect unless the rent has remained unpaid in breach of the agreement for not less than 14 days before the notice is given.
- (4) A notice of termination given by a landlord on the ground of a breach of the agreement to pay rent is not ineffective because of any failure of the landlord or the landlord's agent to make a prior formal demand for payment of the rent.
- (5) A notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term given under this section is not ineffective because the day specified as the day on which vacant possession of the residential premises is to be or will be delivered up to the landlord is earlier than the day the term ends.

57A (Renumbered as sec 63I)

58 Notice of termination by landlord without any ground

- (1) A landlord may give notice of termination of a residential tenancy agreement without specifying any ground for the termination.
- (2) A notice of termination given under this section shall not specify a day earlier than 60 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the landlord.

(2A) (Repealed)

(3) This section does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

59 Notice of termination by tenant without any ground

(1) A tenant may give notice of termination of a residential tenancy agreement without specifying any ground for the termination.

(2) A notice of termination given under this section shall not specify a day earlier than 21 days after the day on which notice is given as the day on which vacant possession of the residential premises will be delivered up to the landlord, unless it specifies an earlier day to which the landlord has consented.

(2A) (Repealed)

(3) This section does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

60 Notice of termination of fixed term agreement without any ground

(1) A landlord or a tenant may 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.

(2) A notice of termination given under this section shall not specify a day earlier than 14 days after the day on which the notice is given or the day the term of the residential tenancy agreement ends, whichever is the later, as the day on which vacant possession of the residential premises is to be or will be delivered up.

(3) (Repealed)

61 Notice of termination where agreement frustrated

(1) If residential premises under a residential tenancy agreement are, otherwise than as a result of a breach of the agreement, destroyed or rendered wholly or partly uninhabitable or cease to be lawfully usable for the purpose of a residence or are appropriated or acquired by any authority by compulsory process:

(a) the rent abates accordingly, and

(b) the landlord or the tenant may give immediate notice of termination to the other party.

(1A) For so long as a residential tenancy agreement is not terminated under subsection (1) (b), then, for the purposes of subsection (1) (a):

(a) the landlord and tenant may agree in writing as to the amount of rent payable, or

(b) failing such agreement, either the landlord or tenant may apply to the Tribunal for an order determining the amount of rent payable.

(1B) The Tribunal may, on application made under subsection (1A) (b):

(a) by order, determine the amount of rent payable, from a day specified by the Tribunal, for the purposes of subsection (1) (a), and

(b) order the landlord to repay to the tenant any rent paid by the tenant since the specified day that is in excess of the amount determined by the Tribunal, and

(c) make such other orders with respect to the application as the Tribunal thinks fit.

(2) A notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term given under this section is not ineffective because the notice is given before the day the term ends.

62 Effect of notice of termination of periodic tenancy

A notice of termination of a residential tenancy agreement that creates a periodic tenancy given under this Act is not ineffective because the day for delivering up vacant possession of the residential premises is not:

(a) the last day of a period of the tenancy, or

(b) any other day on which the tenancy would (for breach or any other reason) have ended if this Act had not been enacted.

63 Form of notice of termination

(1) A notice of termination of a residential tenancy agreement given to a tenant by a landlord shall:

(a) be in writing,

(b) be signed by the landlord or the landlord's agent,

(c) identify the residential premises the subject of the agreement,

(d) specify the day on which vacant possession of the residential premises is to be delivered up to the landlord,

(e) specify and give particulars of the ground (where applicable) on which the notice is given, and

(f) include a statement which indicates that information regarding tenancy rights and obligations is contained in the residential tenancy agreement.

(2) A notice of termination of a residential tenancy agreement given to a landlord by a tenant shall:

- (a) be in writing,
- (b) be signed by the tenant or the agent of the tenant (if any) appointed under section 31,
- (c) identify the residential premises the subject of the agreement,
- (d) specify the day on which vacant possession of the residential premises will be delivered up to the landlord, and
- (e) specify and give particulars of the ground (where applicable) on which the notice is given.

Division 2A Special provisions relating to social housing tenancy agreements

63A Operation of Division

This Division does not limit the operation of the other provisions of this Part in relation to social housing tenancy agreements.

63B Notice of termination may be given on ground that tenant not eligible for social housing

A landlord under a social housing tenancy agreement may give notice of termination of the agreement to the tenant on the ground that the landlord has determined, as the result of an assessment carried out under section 63C, that the tenant is not eligible to reside in the class of social housing premises to which the agreement applies.

63C Eligibility assessments of social housing tenants

- (1) In carrying out an assessment of the eligibility of a tenant under a social housing tenancy agreement to reside in the class of social housing premises concerned, the landlord is to apply the criteria approved by the Minister for the purposes of this section.
- (2) Any such criteria may differ from the criteria used to assess a person's eligibility to commence residing in that class of social housing premises.
- (3) The criteria used for the purposes of an assessment under this section must not relate to any of the following:
 - (a) whether or not the tenant has complied with any term of the agreement,
 - (b) whether or not the tenant has entered into, or complied with any term of, an acceptable behaviour agreement.
- (4) The landlord may request the tenant to provide any information that is reasonably required to enable the landlord to determine whether the tenant meets the criteria for

the purposes of an assessment under this section.

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

63D Review of decision to give notice on ground that tenant not eligible for social housing

- (1) **Notice to be given before notice of termination** Before giving notice of termination of a social housing tenancy agreement to the tenant on the ground referred to in section 63B, the landlord is to advise the tenant of the decision to do so by notice in writing.
- (2) **Right to review** A notice given under this section must:
 - (a) contain particulars of the reasons why the tenant is no longer considered eligible to reside in the premises, and
 - (b) state that the tenant may apply to the landlord for a review of the decision within 30 days after the notice is given and give particulars of how such an application may be made, and
 - (c) state that the tenant is entitled to make representations to the landlord in writing, or (if the tenant wishes) orally, as to why the agreement should not be terminated.
- (3) The tenant may, in accordance with the notice:
 - (a) apply to the landlord for a review of the decision, and
 - (b) make representations in writing, or (if the tenant wishes) orally, to the landlord as to why the agreement should not be terminated.
- (4) If the tenant applies to the landlord for a review under this section, the landlord is to review the decision, in accordance with any procedures approved by the Minister for the purposes of this section, and consider any representations made by the tenant.
- (5) **Decision of landlord following review** After the review is carried out, the landlord may:
 - (a) give notice of termination of the agreement on the ground referred to in section 63B, or

(b) advise the tenant, by notice in writing, that the landlord has decided not to give notice of termination of the agreement.

(6) **Procedural fairness taken to have been observed** If the landlord complies with this section, the landlord is taken to have complied with any rules of procedural fairness required to be observed by the landlord before giving notice of termination to the tenant on the ground referred to in section 63B.

63E Time periods to be observed in giving notice of termination on ground that tenant not eligible for social housing

- (1) A notice of termination of a social housing tenancy agreement is not to be given to the tenant on the ground referred to in section 63B before the later of the following:
 - (a) the end of the 30-day period within which the tenant may apply for a review under section 63D of the decision to give the notice of termination,
 - (b) the end of any such review carried out in respect of that decision.
- (2) The notice of termination is not to specify as the day on which vacant possession of the premises is to be delivered up to the landlord a day that is earlier than:
 - (a) in the case of a tenancy agreement that creates a tenancy for a fixed term—60 days after the day on which the notice is given or the day the term of the agreement ends, whichever is the later, or
 - (b) in any other case—60 days after the day on which the notice of termination is given.

63F Notice of termination may be given on ground that tenant offered alternative social housing premises

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

63G Review of decision to give notice on ground that tenant offered alternative social housing premises

- (1) **Notice to be given before notice of termination** Before giving notice of termination of an existing agreement to the tenant on the ground referred to in section 63F, the landlord is to advise the tenant of the decision to do so by notice in writing.
- (2) The landlord may make the offer to enter into a new social housing tenancy agreement and give notice of the decision at the same time.
- (3) **Right to review** A notice given under this section must:

- (a) contain particulars of the reasons why the landlord wishes the tenant to move to alternative premises, and
 - (b) state that the tenant may apply to the landlord for a review of the decision within 14 days after the notice is given and give particulars of how such an application may be made, and
 - (c) state that the tenant is entitled to make representations to the landlord in writing, or (if the tenant wishes) orally, as to why the existing agreement should not be terminated.
- (4) The tenant may, in accordance with the notice:
- (a) apply to the landlord for a review of the decision, and
 - (b) make representations in writing, or (if the tenant wishes) orally, to the landlord as to why the existing agreement should not be terminated.
- (5) If the tenant applies to the landlord for a review under this section, the landlord is to review the decision, in accordance with any procedures approved by the Minister for the purposes of this section, and consider any representations made by the tenant.
- (6) **Decision of landlord following review** After the review is carried out, the landlord may:
- (a) give notice of termination of the existing agreement on the ground referred to in section 63F, or
 - (b) advise the tenant, by notice in writing, that the landlord has decided not to give notice of termination of the existing agreement, or
 - (c) make a new offer to the tenant to enter into a new social housing tenancy agreement in respect of alternative premises that differ from those the subject of the offer in respect of which the review was carried out.
- (7) **Right to second review if new offer made** If a new offer is made under subsection (6) (c), subsections (1)–(6) apply in relation to giving notice of termination in connection with the new offer. Accordingly, the landlord is required to give a second notice, and the tenant is entitled to a second review, under this section. However, the landlord is not required to give any further notice, and the tenant is not entitled to any further review, under this section in relation to giving notice of termination following a second review.
- (8) **Procedural fairness taken to have been observed** If the landlord complies with this section, the landlord is taken to have complied with any rules of procedural fairness required to be observed by the landlord before giving notice of termination to the tenant on the ground referred to in section 63F.

63H Time periods to be observed in giving notice of termination on ground that tenant

offered alternative social housing premises

- (1) A notice of termination of a social housing tenancy agreement is not to be given to the tenant on the ground referred to in section 63F before the later of the following:
 - (a) the end of the 14-day period within which the tenant may apply for any review under section 63G of the decision to give the notice of termination,
 - (b) the end of any such review carried out in respect of that decision.
- (2) However, if the landlord and tenant enter into a new social housing tenancy agreement before the end of that 14-day period or any such review, the notice of termination may be given on or after the day on which they enter into the new agreement.
- (3) The notice of termination is not to specify a day earlier than 30 days after the day on which the notice is given as the day on which vacant possession of the premises the subject of the existing agreement is to be delivered up to the landlord, unless it specifies an earlier day to which the tenant has consented.
- (4) The notice of termination is ineffective unless the alternative premises in connection with which the notice of termination is given are available for occupation no later than 7 days before the date specified in the notice as the day on which vacant possession is to be delivered up to the landlord.
- (5) In the case of a social housing tenancy agreement that creates a tenancy for a fixed term—the notice of termination is not ineffective merely because a day earlier than the day on which the term ends is specified as the day on which vacant possession is to be delivered up to the landlord.

63I Notice of termination of public housing tenancy agreement—acceptable behaviour agreements

- (1) The New South Wales Land and Housing Corporation may give notice of the termination of a public housing tenancy agreement to the tenant on either of the following grounds:
 - (a) the tenant has failed or refused to enter into an acceptable behaviour agreement as requested by the Corporation,
 - (b) the tenant has seriously or persistently breached the terms of an acceptable behaviour agreement.
- (2) A notice of termination given under this section is not to specify a day earlier than 14 days after the day on which the notice is given as the day on which vacant possession of the premises to which the tenancy agreement relates is to be delivered up to the Corporation.

- (3) A notice of termination given under this section of a tenancy agreement that creates a tenancy for a fixed term is not ineffective because the day specified as the day on which vacant possession of the premises to which the tenancy agreement relates is to be delivered up to the Corporation is earlier than the day the term ends.

Division 3 Termination of residential tenancy agreements by Tribunal

64 Application to Tribunal by landlord for termination and order for possession

(1) If:

- (a) a landlord or a tenant gives notice of termination of a residential tenancy agreement under this Part, and
- (b) the tenant fails to deliver up vacant possession of the residential premises on the day specified,

the landlord may, not later than 30 days after that day, apply to the Tribunal for an order terminating the agreement and an order for possession of the premises.

(2) The Tribunal, on application by a landlord under this section, is to make an order terminating the agreement if it is satisfied:

- (a) in the case of a notice given by a landlord on a ground referred to in section 56 or 61—that the landlord has established the ground, or
- (b) in the case of a notice given by a landlord on the ground referred to in section 57, relating to a breach of the agreement:
 - (i) that the landlord has established the ground, and
 - (ii) that the breach, in the circumstances of the case, is such as to justify termination of the agreement, or
- (c) in any other case (except in the case of a notice given by a landlord on a ground referred to in section 63B, 63F or 63I):
 - (i) that the tenant has seriously or persistently breached the agreement, or
 - (ii) that, having considered the circumstances of the case, it is appropriate to do so.

(2A) The Tribunal, on application under this section by a landlord under a social housing tenancy agreement, is to make an order terminating the agreement (***the existing agreement***) if it is satisfied:

- (a) in the case of a notice given on a ground referred to in section 63B—that the landlord has determined, as the result of an assessment carried out under section 63C, that the tenant is not eligible to reside in the class of social housing premises

to which the agreement applies, or

(b) in the case of a notice given on a ground referred to in section 63F:

- (i) that the landlord has offered to enter into a new social housing tenancy agreement with the tenant in respect of alternative premises to the premises the subject of the existing agreement, and
- (ii) that alternative premises (which may or may not be the same as the alternative premises in connection with which the notice was given) are available for occupation by the tenant.

(2B) In deciding whether or not to make an order under subsection (2A) (a), the Tribunal is not to review the eligibility of the tenant to reside in the class of social housing premises to which the agreement applies.

(2C) In deciding whether or not to make an order under subsection (2A) (b), the Tribunal is not to review the landlord's reasons for making the offer concerned.

(2D) The Tribunal is, on application by the New South Wales Land and Housing Corporation on a ground referred to in section 63I, to make an order terminating the agreement if:

(a) in the case of the ground referred to in section 63I (1) (a):

- (i) the Corporation has requested, in accordance with section 35A, that the tenant enter into an acceptable behaviour agreement, and
- (ii) the Tribunal is satisfied that the tenant has failed or refused to do so, or

(b) in the case of the ground referred to in section 63I (1) (b):

- (i) the Tribunal is satisfied that the tenant has entered into an acceptable behaviour agreement, and
- (ii) the tenant has failed to satisfy the Tribunal that the tenant has not seriously or persistently breached the terms of that agreement.

(3) Except as provided by section 66, the Tribunal shall not make an order terminating a residential tenancy agreement under this section unless it is satisfied that notice of termination was given and that it was given in accordance with this Part.

(3A) The Tribunal is not to make an order terminating a social housing tenancy agreement on the ground referred to in section 63B or 63F unless it is satisfied that:

- (a) except as provided by section 66, any notice required to be given under section 63D or 63G before giving notice of termination was given and that it was given in accordance with that section, and

- (b) any review required to be carried out under section 63D or 63G was carried out and that it was carried out in accordance with that section.
- (4) Without limiting the obligations of the Tribunal under subsection (2) (b) or (c), in considering the circumstances of a case concerning social housing premises under that provision, the Tribunal, in addition to having regard to the circumstances of the tenant and other circumstances of the case, is to have regard to such of the following matters as may be relevant:
- (a) any serious adverse effects the tenancy has had on neighbouring residents or other persons,
 - (b) whether any breach of the residential tenancy agreement was a serious one (and, in particular, whether it was one to which subsection (6) applies), and whether, given the behaviour or likely behaviour of the tenant, a failure to terminate the agreement would subject, or continue to subject, neighbouring residents or any persons or property to unreasonable risk,
 - (c) the landlord's responsibility to its other tenants,
 - (d) whether the tenant, wilfully or otherwise, is or has been in breach of an order of the Tribunal,
 - (e) the history of the tenancy concerned.
- (5) If the Tribunal makes an order terminating a residential tenancy agreement under this section, it must make a further order for possession of the residential premises, specifying the day on which the order takes effect.
- (6) If the residential premises concerned are social housing premises, an order for possession made under this section is to be expressed to take effect immediately if, in the case of a breach of the agreement, the breach:
- (a) involves the use of the premises, or any property adjoining or adjacent to the premises (including any property available for use by the tenant in common with others), for the purposes of the manufacture or sale of any prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
 - (b) subjects persons or property to unreasonable risk,
- unless the Tribunal considers that it would be unjust to do so.
- (7) Nothing in this section affects the operation of section 68.

65 Suspension or refusal of orders for termination

- (1) The Tribunal may suspend the operation of an order for possession of residential premises (other than premises which are part of the landlord's principal place of

residence) for a specified period if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused to the landlord and the tenant by the suspension.

- (1A) The Tribunal may, as a condition of the suspension of the operation of an order for possession, require the tenant to pay to the landlord an occupation fee specified by the Tribunal for the period for which the order for possession is suspended.
- (2) Notwithstanding section 64, the Tribunal may refuse to make an order terminating an agreement and an order for possession under that section if it is satisfied:
- (a) that the landlord was wholly or partly motivated to give notice of termination by the fact that:
 - (i) the tenant had applied or proposed to apply to the Tribunal for an order,
 - (ii) the tenant had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a tenant, or
 - (iii) an order of the Tribunal was in force in relation to the landlord and the tenant,
 - (b) that in the case of a notice given by the landlord on the ground of a breach of the residential tenancy agreement by the tenant—the tenant has remedied the breach, or
 - (c) that in the case of a notice given by the landlord on the ground that the landlord has entered into a contract for the sale of the residential premises—the sale is not proceeding.
- (3) In this section, a reference to a tenant includes a reference to a person who has applied to the Tribunal for an order under section 35 (which relates to the recognition of certain persons as tenants).

66 Tribunal may waive defect in notices

The Tribunal may, if it thinks it appropriate to do so in the special circumstances of the case, make an order terminating a residential tenancy agreement and an order for possession of residential premises even though there is a defect in any notice of termination of the agreement or any notice required to be given under section 63D or 63G.

67 Notice of termination not required in certain cases

An application under section 68, 69, 69A or 70 may be made whether or not notice of termination has been given.

68 Tribunal may terminate residential tenancy agreement where tenant causes serious

damage or injury

- (1) The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the tenant has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit:
 - (a) serious damage to the residential premises, or
 - (b) injury to the landlord, the landlord's agent or any person in occupation of or permitted on adjoining or adjacent premises.
- (2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal shall also make an order for possession of the residential premises taking effect immediately.
- (3) In the case of a tenancy of social housing premises, a reference in subsection (1) (a) to the residential premises is taken to include a reference to any property adjoining or adjacent to the premises (including any property available for use by the tenant in common with others).

69 Tribunal may terminate residential tenancy agreement where landlord would otherwise suffer undue hardship

- (1) The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the landlord would, in the special circumstances of the case, suffer undue hardship if the agreement were not terminated.
- (2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal:
 - (a) shall also make an order for possession of the residential premises specifying the day on which the order takes effect, and
 - (b) may make such other orders (including an order that the landlord pay to the tenant compensation for the tenant's loss of the tenancy) as it thinks fit.
- (3) The tenant must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.

69A Tribunal may terminate residential tenancy agreement where tenant would otherwise suffer undue hardship

- (1) The Tribunal may, on application by a tenant under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the tenant would, in the special circumstances of the case, suffer undue hardship if the agreement were not terminated.

- (2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal:
 - (a) is also to make an order for the repossession by the landlord of the residential premises specifying the day on which the order takes effect, and
 - (b) may make such other orders as it thinks fit (including an order that the tenant pay to the landlord compensation for the landlord's loss of the tenancy).
- (3) The landlord must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.

70 Tribunal may terminate residential tenancy agreement for breach

- (1) The Tribunal may, on application by a tenant under a residential tenancy agreement, make an order terminating the agreement if it is satisfied:
 - (a) that the landlord has breached the agreement, and
 - (b) that the breach, in the special circumstances of the case, is such as to justify termination of the agreement under this section.
- (2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal shall also make an order for possession of the residential premises specifying the day on which the order takes effect.

Division 4 Recovery of possession of residential premises

71 Prohibition on certain recovery proceedings in courts

No proceedings in the Supreme Court, the District Court or a Local Court to obtain recovery of possession of residential premises subject to a residential tenancy agreement shall be commenced by a landlord against a tenant or former tenant of the landlord.

72 Recovery of possession of residential premises prohibited except by order

- (1) A person shall not, except in accordance with a judgment, warrant or order of a court or an order of the Tribunal, enter residential premises or any part of such premises of which another person has possession:
 - (a) under a residential tenancy agreement, or
 - (b) as a former tenant holding over after termination of a residential tenancy agreement,for the purpose of recovering possession of the premises or part of the premises.
- (2) This section applies to a person who enters residential premises or any part of such premises, whether on his or her own behalf or on behalf of another person.

- (3) A court before which proceedings for an offence under this section are brought may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the person against whom the offence was committed such compensation as it thinks fit.

73 Enforcement of orders for possession

- (1) If an order for possession of residential premises is made by the Tribunal, then the Chairperson, any other member, the Registrar or a Deputy Registrar may:
- (a) on the application of the person in whose favour the order was made, and
 - (b) if satisfied that the order for possession or a condition of suspension of the order has not been complied with,
- issue a warrant, in or to the effect of the prescribed form, authorising a sheriff's officer to enter the residential premises and to give possession to the person in whose favour the order was made.
- (2) A sheriff's officer enforcing an order for possession of residential premises may enter the premises and take all such steps as are reasonably necessary to enforce the order and shall produce the warrant authorising the enforcement.
- (3) A member of the police force may, at the request of a sheriff's officer, assist the sheriff's officer to enforce the order for possession.
- (4) A sheriff's officer enforcing an order for possession may use such force as is reasonably necessary for that purpose.
- (5) A person shall not hinder or obstruct a sheriff's officer in the exercise of the functions conferred by this section.
- (6) No matter or thing done by a sheriff's officer or member of the police force, in the exercise or purported exercise of functions conferred by this section, shall, if the matter or thing was done in good faith for the purposes of enforcing an order for possession, subject a sheriff's officer or member of the police force so doing personally to any action, liability, claim or demand.
- (7) A delay on the part of an applicant who is a social housing provider in making an application under this section is not to be regarded by the Tribunal as good cause to refuse to grant the application, to the extent that the delay is attributable to bona fide attempts by the applicant to reach agreement with the tenant for reinstatement of the tenancy.

74 Liability of tenant remaining in possession

- (1) If a tenant fails to comply with an order for possession of residential premises made by the Tribunal, the tenant is liable:

- (a) to pay compensation to the landlord for any loss caused to the landlord by that failure, and
 - (b) to pay an occupation fee to the landlord equal to the amount of rent that would have been payable by the tenant for the residential premises for the period the tenant remains in possession after termination of the residential tenancy agreement.
- (2) The Tribunal may, on application by a landlord under this section made not later than 30 days after the day on which the order for possession took effect, order a tenant to pay to the landlord such compensation or an amount equal to an occupation fee, or both, as it thinks fit.

75 Notice of proposed recovery of premises by person with superior title

- (1) This section applies where a person (***the plaintiff***) brings proceedings in a court or the Tribunal (whether under this Act or otherwise) for the recovery of possession of residential premises.
- (2) The court or Tribunal shall not give judgment or make an order for possession, unless it is satisfied:
- (a) as to whether or not there is a person in possession of the residential premises as:
 - (i) a tenant under a residential tenancy agreement, or
 - (ii) a former tenant holding over after termination of a residential tenancy agreement, and
 - (b) if there is such a person in possession of the residential premises and the plaintiff is not the landlord or former landlord under the residential tenancy agreement—that the person has had reasonable notice of the proceedings brought by the plaintiff.
- (3) Failure to comply with this section does not invalidate or otherwise affect the judgment or order.

76 Order for tenancy against person with superior title

- (1) This section applies to a person who is or was in possession of residential premises as:
- (a) a tenant under a residential tenancy agreement, or
 - (b) a former tenant holding over after termination of a residential tenancy agreement,
- at a time when proceedings for the recovery of possession of the premises had been commenced before a court or the Tribunal (whether under this Act or otherwise) by a person (***the plaintiff***) who is not the landlord or former landlord under the agreement.

- (2) A person to whom this section applies may apply for an order under this section and such an application may be made to:
 - (a) the court or Tribunal before which the proceedings are pending, or
 - (b) if the proceedings have been completed or possession has been recovered—the Tribunal,and must be made within a reasonable time after the applicant was given notice of the proceedings or (if no notice was given) within a reasonable time after the recovery of possession of the residential premises.
- (3) The court or Tribunal may, on such an application, and if it thinks it appropriate to do so in the special circumstances of the case, make an order vesting a tenancy over the residential premises in the applicant.
- (4) The tenancy shall be held of the plaintiff, and on such terms and conditions as the court or Tribunal thinks fit, having regard to the circumstances of the case.
- (5) Such an application or order may be made, even though:
 - (a) notice was not given to the applicant of the proceedings brought by the plaintiff, or
 - (b) the proceedings brought by the plaintiff have been completed or possession of the residential premises has been recovered by the plaintiff.

Division 5 Abandoned premises and goods

77 Abandoned premises

- (1) The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order that declares that the residential premises were abandoned by the tenant on a day specified by the Tribunal.
- (2) The tenant shall be deemed for the purposes of this Act to have abandoned the residential premises on that day.

78 Right of landlord to compensation where tenant abandons premises

- (1) If a tenant under a residential tenancy agreement abandons the residential premises, the tenant is liable to pay compensation to the landlord for any loss (including loss of rent) caused by the abandonment.
- (2) The landlord shall take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.
- (3) The Tribunal may, on application by the landlord, order a tenant to pay to the landlord such compensation (including compensation for loss of rent) as it thinks fit.

79 Goods abandoned by tenant after residential tenancy agreement is terminated

- (1) If a residential tenancy agreement is terminated and goods are left by the tenant on the residential premises, the former landlord may:
 - (a) apply to the Tribunal for an order under this section, or
 - (b) dispose of the goods in accordance with any provision made by the regulations, or both.
- (2) The Tribunal may, on application by a former landlord under this section, make any one or more of the following orders:
 - (a) an order authorising the removal, destruction or disposal of abandoned goods,
 - (b) an order authorising the sale of abandoned goods,
 - (c) an order directing that notice of any action or proposed action in relation to abandoned goods be given to the former tenant or any other person,
 - (d) an order as to the manner of sale of abandoned goods,
 - (e) an order as to the proceeds of sale of abandoned goods,
 - (f) any ancillary order which the Tribunal, in the circumstances, thinks appropriate.
- (3) A purchaser of goods sold by a landlord in accordance with an order of the Tribunal or the regulations acquires a good title to the goods in defeasance of the interest of the former tenant or any other person who has an interest in the goods.
- (4) A former landlord does not incur any liability in respect of the removal, destruction, disposal or sale of goods in accordance with an order of the Tribunal or the regulations.

79A Goods left by tenant, but not abandoned, after residential tenancy agreement is terminated

- (1) If a residential tenancy agreement is terminated and goods are left by the tenant on the residential premises:
 - (a) the tenant, or
 - (b) any other person having an interest in the goods,may apply to the Tribunal for an order for the delivery of the goods into the tenant's or other person's possession.
- (2) The Tribunal may, on application under this section, make any one or more of the following orders:

- (a) an order for the delivery of the goods into the tenant's or other person's possession,
 - (b) an order requiring the tenant or other person to pay any reasonable costs incurred by the landlord in connection with the removal, storage or delivery of the goods,
 - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) A former landlord does not incur any liability in respect of the disposal of goods in accordance with an order of the Tribunal under this section.
- (4) To avoid doubt, an application may be made under subsection (1) even though, when the application is made, the goods are no longer on the residential premises.

79B Time within which application under section 79 or 79A to be made

An application under section 79 or 79A may not be made more than 28 days after the date on which the landlord gains possession of the residential premises concerned, whether as a result of the tenant delivering up vacant possession of the premises to the landlord, the tenant abandoning the premises, the landlord recovering possession of the premises under an order for possession or otherwise.

Part 6 Powers of Tribunal and Tenancy Commissioner

Division 1

80-82 (Repealed)

Division 2 Powers of Tribunal

83 Jurisdiction and functions of the Tribunal

- (1), (2) (Repealed)
- (3) The Tribunal has jurisdiction in respect of a claim by a landlord or a tenant under a residential tenancy agreement in respect of a rental bond.

84 (Repealed)

85 Orders of the Tribunal

- (1) The Tribunal may, in any proceedings before it, make any one or more of the following orders:
 - (a) an order for which an application may be made by any person (whether under this or any other Act) to the Tribunal,
 - (b) an order arising out of the Tribunal's jurisdiction with respect to rental bonds,
 - (c) an order that varies or sets aside, or stays or suspends the operation of, any order

made in the proceedings or in earlier proceedings,

(d) any ancillary order which the Tribunal thinks appropriate.

(2) An order may be made by the Tribunal:

(a) in the absence of any party, or

(b) as an interim order,

or both.

(3) The Tribunal shall not make an order for:

(a) the payment of an amount that exceeds \$5,000 or such other amount as may be prescribed, or

(b) the performance of work or the taking of steps the cost of which may or will exceed \$5,000 or such other amount as may be prescribed.

Division 3 Powers of Tenancy Commissioner

86-94 (Repealed)

95 Tenancy Commissioner may represent tenant

In any proceedings before the Tribunal, a tenant may, notwithstanding anything in section 33 of the *Residential Tribunal Act 1998*, be represented by the Tenancy Commissioner or by a barrister, solicitor or agent for the Commissioner.

96 Tenancy Commissioner may take or defend proceedings

(1) If a tenant, not being a corporation, has made a complaint to the Tenancy Commissioner and the Commissioner:

(a) after investigating the complaint, is satisfied that the tenant may have a right to take or defend proceedings before the Tribunal, and

(b) is of the opinion that it is in the public interest that the Commissioner should take or defend those proceedings on behalf of the tenant,

the Commissioner, may, with the consent of the tenant, take or defend those proceedings on behalf of and in the name of the tenant.

(2) If the Minister so directs and the tenant consents, the Commissioner shall take or defend proceedings before the Tribunal on behalf of a tenant.

97 Conduct of proceedings by Tenancy Commissioner

If the Tenancy Commissioner takes or defends proceedings before the Tribunal on behalf

of a tenant:

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

98 Intervention by Tenancy Commissioner

- (1) Without limiting section 96, the Tenancy Commissioner may, if the Commissioner is of the opinion that it would be in the public interest to do so, or, at the direction of the Minister shall, intervene, and has a right to be heard personally or by barrister, solicitor or agent, in any proceedings arising under any Act before the Tribunal.
- (2) The Commissioner, on intervening in any proceedings, becomes a party to the proceedings and has all the rights of such a party.

99-117 (Repealed)

Part 7 Administration

117A Tenancy Commissioner

- (1) A Tenancy Commissioner shall be employed under the *Public Sector Management Act 1988*.
- (2) The Tenancy Commissioner has the functions conferred or imposed on the Tenancy Commissioner by or under this or any other Act.
- (3) If the Tenancy Commissioner is absent from duty, the Minister may appoint an officer to act as Tenancy Commissioner during that absence and an officer so acting has the functions of the Tenancy Commissioner.
- (4) It shall be presumed, unless the contrary is proved, that an officer purporting to act under subsection (3) has been duly appointed under that subsection.
- (5) The Tenancy Commissioner (including an acting Tenancy Commissioner) is, in the exercise of his or her functions as Tenancy Commissioner, subject to the control and direction of the Minister.

117B Staff

- (1) Such staff as may be necessary to enable the Tenancy Commissioner to exercise his or her functions shall be employed under the *Public Sector Management Act 1988*.

- (2) The Tenancy Commissioner may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, administrative office or a public or local authority.

118 Functions of Tenancy Commissioner

The Tenancy Commissioner has, in addition to any other functions conferred or imposed on the Commissioner, the following functions:

- (a) to investigate and carry out research into matters relating to or affecting the relationship between landlords and tenants,
- (b) to investigate and attempt to resolve complaints by landlords and tenants and to take such action, including prosecution, as the Commissioner thinks appropriate,
- (c) to distribute information about this Act and the services provided by the Commissioner and the Tribunal in relation to landlords and tenants,
- (d) to investigate and report on any matters, or make inquiries in relation to any matters, referred to the Commissioner by the Minister in connection with this Act or by the Tribunal,
- (e) to work, consult, co-operate and exchange information with, and provide financial help to, government departments, administrative offices, public authorities and any other bodies that or persons who:
 - (i) advise landlords and tenants with respect to residential tenancy agreements,
 - (ii) distribute information about residential tenancy agreements, or
 - (iii) investigate or carry out research into matters relating to or affecting the relationship between landlords and tenants.

119 Delegation by Tenancy Commissioner

- (1) The Tenancy Commissioner may delegate to a person the exercise of any of the Commissioner's functions under this Act other than this power of delegation.
- (2) A delegation under this section:
 - (a) shall be in writing,
 - (b) may be general or limited, and
 - (c) may be revoked (wholly or partly) by the Commissioner.
- (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.
- (4) A function delegated under this section, when exercised by the delegate, shall be

deemed to have been exercised by the Commissioner.

- (5) A delegation under this section does not prevent the exercise of a function by the Commissioner.
- (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is approved, be deemed to have been duly exercised by a delegate under this section.

119A Office and identification of investigator

- (1) The Minister may appoint an officer as an investigator for the purposes of this Act.
- (2) The Minister may provide an investigator with a certificate of identification as an investigator.
- (3) An investigator may not exercise in any premises a function conferred by section 119B unless the investigator produces his or her certificate of identification if requested to do so by a person apparently in charge of those premises or apparently in charge of any work being performed on those premises.
- (4) A person is not required to give to an investigator information or evidence, or to produce a document, in compliance with a notice under section 119B unless the investigator produces, if requested to do so, his or her certificate of identification.

119B Power of investigator to obtain information, documents and evidence

- (1) If the Tenancy Commissioner believes on reasonable grounds that a person is capable of giving information, producing documents or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act, an investigator may, by notice in writing given to the person, require the person:
 - (a) to provide an investigator, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and given to the investigator within the time and in the manner specified in the notice, with any such information, or
 - (b) to produce to an investigator, in accordance with the notice, any such documents, or
 - (c) to appear before an investigator at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.
- (2) If the Tenancy Commissioner believes on reasonable grounds that a person has engaged, or is engaging, in conduct that constitutes, or may constitute, an offence against this Act, an investigator may, for the purpose of ascertaining by the examination of documents in the possession or under the control of the person

whether the person has engaged, or is engaging, in that conduct:

- (a) enter any premises, and
- (b) inspect any documents in the possession or under the control of the person, and
- (c) make copies of, or take extracts from, those documents.

(3) A person shall not:

- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it, or
- (b) in purported compliance with such a notice, provide information, or give evidence, that the person knows is false or misleading, or
- (c) hinder or obstruct an investigator exercising his or her functions under subsection (2).

(4) A person is excused from providing information, giving evidence or producing or permitting the inspection of a document in accordance with this section on the ground that the information, evidence or document may tend to incriminate the person.

(5) This section does not authorise any person to enter a part of any premises that is being used for residential purposes without the consent of the occupier of that part of the premises.

119C Inspection of documents by Tenancy Commissioner and others

(1) The Tenancy Commissioner, a person authorised by the Commissioner or an investigator may inspect a document produced in accordance with a notice under section 119B and may make copies of, or take extracts from, the document.

(2) For the purposes of this Act, the Tenancy Commissioner or an investigator may:

- (a) take possession, and
 - (b) retain possession for as long as is necessary for those purposes,
- of a document produced in accordance with a notice under section 119B.

(3) A person who is otherwise entitled to possession of a document retained under this section is entitled to be supplied, as soon as practicable, with a copy certified by an officer to be a true copy and the certified copy is admissible as evidence in all courts as if it were the original document.

119D Exclusion of personal liability

No personal liability is incurred by the Tenancy Commissioner, an investigator or any other officer, for any act done or omitted in good faith for the purpose of executing this Act.

119E Annual report

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Tenancy Commissioner shall prepare and forward to the Minister a report of the operations of the Tenancy Commissioner under this or any other Act during that year.
- (2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Part 8 Miscellaneous

120 Contracting out prohibited

- (1) The provisions of this Act have effect despite any stipulation to the contrary in any agreement, contract or arrangement and no residential tenancy agreement, contract or other agreement or arrangement, whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of this section, operates to annul, vary or exclude any of the provisions of this Act.
- (2) A person shall not enter into any agreement, contract or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.

120A Costs in court proceedings

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

121 Disclosure of information

A person shall not disclose any information obtained in connection with the administration or execution of this Act, unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Act,
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings,
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

122 (Repealed)

123 Authentication of certain documents

Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal if signed by the Chairperson or by any member of the staff of the Tribunal authorised to do so by the Chairperson.

124 Evidence and proceedings for offences

- (1) In any legal proceedings, proof is not required (until evidence is given to the contrary) of:
 - (a) the constitution of the Tribunal, or
 - (b) the appointment of, or the holding of office by, any member.
- (2) Except as provided by subsection (3), proceedings for an offence against this Act shall be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.
- (3) Proceedings for an offence against section 72 (1) shall be dealt with by:
 - (a) a Local Court constituted by a Magistrate sitting alone, or
 - (b) with the consent of the Minister—the Supreme Court in its summary jurisdiction.
- (4) The maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 50 penalty units or such other amount as may be prescribed.
- (5) Proceedings for an offence against this Act may be brought within the period of 3 years that next succeeds the commission of the offence or, only with the consent of the Attorney General, at any time.

125 Offences and penalties

- (1) A person who contravenes or fails to comply with a provision set out below is guilty of an offence against this Act and liable to a penalty not exceeding the penalty specified in relation to that provision:
 - section 12 (2)—2 penalty units,
 - section 17 (2)—5 penalty units,
 - section 22 (2)—5 penalty units,
 - section 24 (5)—5 penalty units,
 - section 29 (2)—2 penalty units,
 - section 32 (1), (2), (3)—2 penalty units,

section 36—5 penalty units,
section 37—20 penalty units,
section 38 (1), (2)—5 penalty units,
section 39—5 penalty units,
section 40 (1), (2), (3)—5 penalty units,
section 41 (1), (2), (3)—5 penalty units,
section 45 (6)—5 penalty units,
section 52 (1), (2)—50 penalty units,
section 72 (1)—200 penalty units,
section 73 (5)—5 penalty units,
section 119B (3)—5 penalty units,
section 120 (2)—20 penalty units,
section 121—5 penalty units.

(2) A contravention or failure to comply with a provision of this Act that is not listed in subsection (1) does not give rise to an offence.

(3) (Repealed)

126 Contracts Review Act 1980

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

127 Offences by corporations

(1) If a corporation contravenes, whether by act or omission, any provision of this Act, 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.

(4) This section does not apply to or in respect of a person who is a director, or who is

concerned in the management, of a statutory corporation.

128 Offences against this Act

A person who:

- (a) aids, abets, counsels or procures a person to contravene,
- (b) induces, or attempts to induce, a person, whether by threats or promises or otherwise, to contravene,
- (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of, or
- (d) conspires with others to contravene,

a provision of this Act referred to in section 125 (1) is guilty of an offence against this Act and liable to the same penalty as a person who contravenes the provision.

129 (Repealed)

130 Service of documents

- (1) A notice or other document (other than a notice of termination) required to be given to a tenant under this Act may be given:
 - (a) by delivering it personally to the tenant or a person apparently of or above the age of 16 years by whom the rent payable by the tenant is ordinarily paid,
 - (b) by delivering it to the residential premises occupied by the tenant and by leaving it there with some person apparently of or above the age of 16 years for the tenant,
 - (c) by sending it by post to the residential premises occupied by the tenant, or
 - (d) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.
- (2) A notice or other document (other than a notice of termination) required to be given to a landlord under this Act may be given:
 - (a) by delivering it personally to the landlord, the landlord's agent under a residential tenancy agreement or a person apparently of or above the age of 16 years to whom the rent payable to the landlord is ordinarily paid,
 - (b) by sending it by post to the landlord's usual place of residence or business or employment,
 - (b1) by sending it by facsimile transmission to the landlord's usual place of residence or business or employment, or

(c) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.

(3) A document given or an application made to the Tribunal may be given or made to the Tribunal or lodged with the Registrar by leaving it at, by sending it by facsimile transmission or by sending it by post to:

(a) the office of the Tribunal,

(b) if it has more than one office—any one of its offices, or

(c) any other prescribed place.

(4) A notice of termination given under this Act may be given in such manner as may be prescribed for the purposes of this section.

(5) Nothing in subsection (3) affects the operation of any provision of a law or of the rules of a court authorising a document to be given to or lodged with the Tribunal in a manner not provided for by subsection (3).

(6) In subsection (1), a reference to a tenant shall be read as a reference to a person appointed by a tenant under section 31 (which relates to the appointment of agents).

131 (Repealed)

132 Exemptions

(1) Sections 40 and 41 do not apply to the New South Wales Land and Housing Corporation and the Aboriginal Housing Office.

(2) Section 35 does not apply to premises of which the New South Wales Land and Housing Corporation or the Aboriginal Housing Office is the landlord.

(3) Notice under section 45 (1) is not required to be given to a tenant of premises of which the New South Wales Land and Housing Corporation is the landlord if the tenant receives a rent rebate from the Corporation in relation to those premises.

(4) Section 45 (4) does not apply to premises let under a social housing tenancy agreement.

133 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 and, in particular, for or with respect to:

(a) the completion by or on behalf of a landlord and a tenant of condition reports in relation to the condition of residential premises before the commencement, or

- after the termination, or both, of a tenancy,
- (b) the provision of information to the tenant by the landlord at the time of entering into a residential tenancy agreement,
 - (c) the maximum charge by a landlord or the landlord's agent for preparation of a residential tenancy agreement or any other matter connected with preparation of a residential tenancy agreement,
 - (d) the execution of a residential tenancy agreement by a tenant or prospective tenant suffering under a disability,
 - (e) residential tenancy agreements relating to, and the occupation by tenants of, moveable dwellings or sites on which a moveable dwelling is situated or intended to be situated,
 - (f) the service of notices or other documents under this Act,
 - (g) a standard form or forms of residential tenancy agreement,
 - (h) goods abandoned by a tenant,
 - (i) the procedure and practice to be followed in proceedings before the Tribunal (including the practice and procedure to be followed in the office of the Registrar) and any incidental or related matters,
 - (j) regulating, or empowering the Registrar to regulate, the business of the Tribunal and empowering the Chairperson or the Registrar to give directions as to the steps to be taken to make any proceedings before the Tribunal ready for hearing,
 - (k) the duties of, and the records to be kept by, the Registrar in relation to, or for the purposes of, any proceedings before the Tribunal, and
 - (l) fees to be paid under this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
- (3) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind,
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or
 - (d) exempt from the operation of this Act or any specified provision of this Act any

specified person, residential tenancy agreement or premises or any specified class of persons, residential tenancy agreements or premises, either unconditionally or subject to conditions,

or may do any combination of those things.

134 Repeal of Act No 60, 1986

The *Residential Tenancies Tribunal Act 1986* is repealed.

135, 136 (Repealed)

137 Savings, transitional and other provisions

Schedules 2 and 4 have effect.

Schedule 1 Provisions relating to the members of the Tribunal

(Section 80)

1 (Repealed)

2 Terms of office of members

- (1) Subject to this Schedule, a member shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the member but is eligible (if otherwise qualified) for re-appointment.
- (2) A member shall, before first sitting as a member, take an oath or make an affirmation in the prescribed form that the member will faithfully and impartially discharge the duties of the office of a member.

3 Effect of certain other Acts

- (1) The *Public Service Act 1979* does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.
- (2) If provision is made by or under any other Act:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member.

4 Remuneration of members

- (1) The Chairperson and any other full-time member are entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of each of them.
- (2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member.

5 Casual vacancies in office of member

- (1) A member shall be deemed to have vacated office if the member:
- (a) dies,
 - (b) is unavailable for duty as a member for a period of 28 consecutive days except on leave granted, in the case of the Chairperson, by the Minister, or in the case of any other member, by the Chairperson,
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
 - (d) becomes a temporary patient or a continued treatment patient within the meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*,
 - (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
 - (f) resigns the office by instrument in writing addressed to the Minister, or
 - (g), (h) (Repealed)
 - (i) is removed from office by the Governor under subclause (3).
- (2) (Repealed)
- (3) The Governor may remove a member from office for incapacity, incompetence or misbehaviour.

6 Filling of vacancy in office of member

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

7 Acting members and acting Chairperson

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and shall be deemed to be a member.
- (2) The Minister may, from time to time, appoint another full-time member who is qualified to be appointed as Chairperson to act in the office of the Chairperson, and the full-time member, while so acting, has and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.
- (3) The Minister may remove any person from any office to which the person was appointed under this clause.
- (4) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (5) For the purposes of this clause:
 - (a) a vacancy in the office of a member or the Chairperson shall be deemed to be an absence from office of the member or the Chairperson, and
 - (b) a full-time member shall be deemed to be absent from office as a member during any period when the member acts in the office of the Chairperson pursuant to an appointment under this clause.

8 Preservation of rights of full-time member previously public servant etc

- (1) Subject to subclause (2) and to the terms of appointment, if a full-time member was, immediately before being appointed as a full-time member:
 - (a) an officer of the Public Service or the Teaching Service,
 - (b) a contributor to a superannuation scheme,
 - (c) an officer employed by a statutory body, or
 - (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,he or she:
 - (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person,
 - (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a full-time member, and

(g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a full-time member and:

(h) his or her service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred, and

(i) he or she shall be deemed to be an officer or employee for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If the full-time member would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled on becoming (whether on appointment as a full-time member or at any later time while holding office as a full-time member) a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) cease to apply to or in respect of him or her in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to a full-time member on his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(4) A full-time member is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

(5) In this clause:

statutory body means any body declared under clause 10 to be a statutory body for the purposes of this Schedule.

superannuation scheme means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

9 Full-time member entitled to re-appointment to former employment in certain cases

(1) A person who:

(a) ceases to be a full-time member by reason of the expiration of the period for which the person was appointed or by reason of resignation, and

(b) was, immediately before being appointed as a full-time member:

- (i) an officer of the Public Service or the Teaching Service, or
- (ii) an officer or employee of a statutory body,
- (c) (Repealed)

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a full-time member.

(2) Where subclause (1) does not apply to a person who:

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b), and
- (b) is after that appointment appointed as a full-time member,

the person has the rights (if any) to appointment as such an officer or employee, in the event of ceasing to be a full-time member, as are specified in the instrument of appointment as a full-time member or as are agreed on by the person and by or on behalf of the Government.

(3) In this clause:

statutory body means any body declared under clause 10 to be a statutory body for the purposes of this Schedule.

10 Declaration of statutory bodies

The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Schedule 2 Savings, transitional and other provisions

(Sections 5, 137)

Part 1 Existing oral residential tenancy agreements

1 Certain provisions not to apply

Sections 12, 17, 20, 21 and 25 (1) (a) do not apply to an oral residential tenancy agreement made before the commencement of section 5.

2 Application to previous breaches

An application may not be made under section 16, 57 or 70 in respect of a dispute or breach of an oral residential tenancy agreement that occurred before the commencement of section 5.

3 Charges

Section 19 does not apply to or affect charges paid or payable before the commencement of section 5 by a landlord or tenant under an oral residential tenancy agreement.

4 Condition of residential premises at termination

In its application to an oral residential tenancy agreement, section 26 (1) (d) shall be read as if the words “as set out in any condition report forming part of the residential tenancy agreement” were omitted and the words “as they were in at the commencement of the tenancy” were inserted instead.

5 Urgent repairs

Section 28 does not confer on a tenant under an oral residential tenancy agreement any right to seek reimbursement for costs incurred before the commencement of section 5.

6 Changes of names and addresses

Section 32 (1), and section 32 (3) to the extent that it relates to a breach of section 32 (1), do not apply to an oral residential tenancy agreement made before the commencement of section 5.

7 Rights of persons in possession

Sections 75 and 76 do not apply:

- (a) to proceedings for recovery of residential premises subject to an oral residential tenancy agreement if the proceedings were commenced before the commencement of section 5, or
- (b) if possession of residential premises was recovered before the commencement of section 5.

8 Previous actions etc not affected

Nothing in this Act affects:

- (a) the validity of any action done or payment made before the commencement of section 5 in pursuance of a term of an oral residential tenancy agreement that contravenes, is ineffective or is void because of this Act, or
- (b) any right or remedy which a landlord or a tenant under an oral residential tenancy agreement would have had but for this Act in relation to such an action or payment or any breach of the agreement that occurred before the commencement of section 5.

Part 2 Existing written and partly written residential tenancy

agreements

9 Application of Act to written and partly written residential tenancy agreements

Part 2, sections 17–33 of Part 3 and sections 53–63, 66–70 and 74–79 of Part 5 apply to written and partly written and partly oral residential tenancy agreements made before the commencement of section 5:

- (a) from a day prescribed for the purposes of this clause, and
- (b) only in the manner and to the extent specified by the regulations.

10 Termination of written and partly written residential tenancy agreements

- (1) This clause applies to written and partly written and partly oral residential tenancy agreements made before the commencement of section 5.
- (2) If:
 - (a) a landlord or a tenant gives notice of termination of a residential tenancy agreement, and
 - (b) the tenant fails to deliver up vacant possession of the residential premises on the day specified,the landlord may, not later than 30 days after that day, apply to the Tribunal for an order terminating the agreement and an order for possession of the premises.
- (3) The Tribunal may, on application by a landlord under this clause, make an order terminating the agreement if it is satisfied that the landlord is entitled to terminate the agreement.

11 Suspension or refusal of orders for termination

- (1) The Tribunal may suspend the operation of an order for possession of residential premises made under clause 10 (other than premises which are part of the landlord's principal place of residence) for a specified period if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused to the landlord and tenant by the suspension.
- (2) Notwithstanding clause 10, the Tribunal may refuse to make an order terminating an agreement and an order for possession under that clause if it is satisfied that the landlord was wholly or partly motivated to give notice of termination by the fact that:
 - (a) the tenant had applied or proposed to apply to the Tribunal for an order,
 - (b) the tenant had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a tenant, or

(c) an order of the Tribunal was in force in relation to the landlord and tenant.

(3) In this clause, a reference to a tenant includes a reference to a person who has applied to the Tribunal for an order under section 35.

Part 3 General

12 Recovery of possession of premises

(1) Nothing in this Act (including section 71) or Schedule 1 to the *Landlord and Tenant (Amendment) Act 1987* affects or prevents from being taken:

(a) any proceedings for the recovery of possession of land subject to a residential tenancy agreement, if the proceedings were commenced before the commencement of section 5, or

(b) the recovery of possession of that land in pursuance of any judgment, order or direction made in any such proceedings.

(2) In this clause, a reference to proceedings for recovery of possession of land includes a reference to the giving of a notice to quit.

13 Continuity of Tribunal

The Residential Tenancies Tribunal, as constituted by this Act, is a continuation of, and the same legal entity as, the Residential Tenancies Tribunal constituted by the *Residential Tenancies Tribunal Act 1986*.

14 Appointments etc under the Residential Tenancies Tribunal Act 1986

Any function exercised or any other act, matter or thing done or authorised by or under a provision of the *Residential Tenancies Tribunal Act 1986* (including the appointment of the members of the Tribunal and the staff of the Tribunal) shall be deemed to have been exercised or done or authorised by or under the corresponding provision (if any) of this Act and has effect accordingly.

15 Residential Tenancies Tribunal Regulation 1986

(1) The *Residential Tenancies Tribunal Regulation 1986* shall be deemed to have been made under this Act and to have taken effect on and from the commencement of section 133.

(2) Nothing in subclause (1) requires the Regulation referred to in that subclause to be re-made, laid before Parliament or published in the Gazette.

16 Rental bonds claims

The repeal of section 4A of the *Consumer Claims Tribunals Act 1974* by this Act does not affect any proceedings relating to a claim referred to in that section that were

commenced before that repeal.

17 Savings and transitional regulations

- (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act or the *Landlord and Tenant (Amendment) Act 1987*.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.
- (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule (other than clause 13 and clause 14 to the extent that clause 14 relates to the appointment of the members and staff of the Tribunal).

Schedule 3 (Repealed)

Schedule 4 Savings, transitional and other provisions

(Section 137)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Residential Tenancies (Caravan Parks and Manufactured Home Estates) Amendment Act 1994

Residential Tenancies Amendment Act 1996

Residential Tenancies Amendment Act 1998

Residential Tenancies Amendment (Public Housing) Act 2004

Residential Tenancies Amendment (Social Housing) Act 2005

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Residential Tenancies (Caravan Parks and Manufactured Home Estates) Amendment Act 1994

2 Continuation of unamended Act in certain circumstances

Schedule 3 does not apply to any action taken under this Act in relation to a residential site agreement that was in force immediately before the commencement of that Schedule and any such action may be continued or completed as if that Schedule had not been enacted.

Part 3 Provisions consequent on enactment of Residential Tenancies Amendment Act 1996

3 Definition

In this Part, **amending Act** means the *Residential Tenancies Amendment Act 1996*.

4 Application of section 79A to existing circumstances

Section 79A applies to goods left on residential premises by a tenant under a residential tenancy agreement terminated before the commencement of the amending Act in the same way as it applies to goods left on residential premises by a tenant under a residential tenancy agreement terminated after that commencement.

5 Application of amendments to Schedule 3 to existing circumstances

Schedule 3, as amended by the amending Act, applies to compensation arising from a notice or order referred to in clause 9, 10, 11, 12 or 13 of Schedule 3, being a notice given or made before the commencement of the amending Act, in the same way as it applies to

compensation arising from such a notice or order given or made after that commencement.

Part 4 Provisions consequent on the enactment of Residential Tenancies Amendment Act 1998

6 Application of certain amendments

- (1) An amendment made by the *Residential Tenancies Amendment Act 1998*, does not apply in respect of a residential tenancy agreement entered into before the commencement of that amendment.
- (2) Despite subclause (1), the amendment made to section 69 in the *Residential Tenancies Amendment Act 1998*, extends to a residential tenancy agreement entered into before the amendment commences.
- (3) Despite subclause (1), section 69A, as inserted by the *Residential Tenancies Amendment Act 1998*, extends to a residential tenancy agreement entered into before the section commences.

Part 5 Provisions relating to certain rent increases

7 Certain rent increases validly made

- (1) Any increase in rent made before 1 January 1999 in respect of property of which the New South Wales Land and Housing Corporation was landlord when the increase was made is not invalid, and is taken never to have been invalid, merely because notice was not given in accordance with section 45 (1) in relation to the increase.
- (2) Nothing in subclause (1) affects the judgment of the Supreme Court in *New South Wales Land and Housing Corporation v Stannard & Anor*[2000] NSWSC 681 as between the parties to those proceedings.
- (3) For avoidance of doubt, a reference in subclause (1) to the New South Wales Land and Housing Corporation includes, in any case where the Corporation exercised its functions or otherwise acted in the name of the Department of Housing, a reference to that Department.

Part 7 Provisions consequent on the enactment of Residential Tenancies Amendment (Social Housing) Act 2005

9 Definition of “amending Act”

In this Part:

amending Act means the *Residential Tenancies Amendment (Social Housing) Act 2005*.

10 Declaration of further fixed term in relation to existing social housing tenancy

agreements

Section 14A, as inserted by the amending Act, extends to a social housing tenancy agreement entered into before the section commences.

11 Existing social housing tenants to pay water charges

Section 19A, as inserted by the amending Act, extends to a social housing tenancy agreement entered into before the section commences.

12 Payment of debts by existing social housing tenants

Section 19B, as inserted by the amending Act, extends to a social housing tenancy agreement entered into before the section commences.

13 Application of special provisions relating to termination of social housing tenancy agreements

- (1) Division 2A of Part 5, as inserted by the amending Act, extends to a social housing tenancy agreement entered into before the Division commences.
- (2) Despite subclause (1), notice of termination of a social housing tenancy agreement on a ground referred to in section 63B, as inserted by the amending Act, may not be given to a person who has been a tenant of social housing premises (including more than one such premises or class of premises) for a continuous period starting before 1 July 2005.
- (3) The amendments made to section 64 by the amending Act in relation to social housing tenancy agreements extend to any such agreements entered into before the amendments commence.

14 Application of amendments relating to rent increases

The amendments made to section 132 by the amending Act extend to an increase of rent payable under a social housing tenancy agreement entered into before the amendments commence.